



# **CITY OF HARRISONBURG**

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# **PROCUREMENT POLICY MANUAL**

EFFECTIVE OCTOBER 08, 2024

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HARRISONBURG, ADOPTING THE CITY OF HARRISONBURGS PROCUREMENT POLICY MANUAL**

WHEREAS, the City of Harrisonburg (City) is dedicated to securing high quality goods and services at reasonable cost while ensuring: that all purchasing actions be conducted in a fair and impartial manner with no impropriety or appearance thereof; that all qualified vendors have access to City business; and that no Bidder or Offeror be arbitrarily or capriciously excluded from participation in City procurement; that procurement procedures involve openness and administrative efficiency, and that the maximum feasible degree of competition is achieved; and

WHEREAS, the Virginia Public Procurement Act (“VPPA”) §2.2-4300 et seq. of the Code of Virginia (as amended) enunciates public policies pertaining to governmental procurement from nongovernmental sources which may or may not result in monetary consideration for either party or a third party and is applicable whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration; and

WHEREAS, the Code of Virginia, §15.2-1236 (as amended) requires all purchases of and contracts for supplies, materials, equipment and contractual services to be in accordance with Chapter 43 of Title 2.2 of the Code of Virginia; and

WHEREAS, §2.2-4343 of the Code of Virginia (as amended) permits the adoption by resolution of alternative policies and procedures that are consistent with the VPPA and (i) based on competitive principles and (ii) generally applicable to procurement of goods and services, with certain exceptions; and

WHEREAS, the Procurement Policy Manual contains policies and procedures for procurement of goods and services in the City of Harrisonburg that are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services; and

WHEREAS, the Code of Virginia, §15.2-1543, empowers the City Council to employ a City Purchasing Agent and set his duties as prescribed by the Code of Virginia, §15.2-831, §15.2-1233 through §15.2-1240, and §15.2-1543; and

WHEREAS, the City of Harrisonburg empowers the City’s Purchasing Agent to prepare and maintain a Procurement Policy Manual containing detailed rules and regulations consistent with the laws of the Commonwealth of Virginia;

NOW, THEREFORE, BE IT RESOLVED THAT: The HARRISONBURG CITY COUNCIL hereby supports this adoption of the City of Harrisonburg Procurement Policy Manual. ADOPTED this 8th day of October 2024.

BY: \_\_\_\_\_  
Deanna R. Reed, Mayor

ATTEST: \_\_\_\_\_  
Pam Ulmer, City Clerk

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## **SECTION 01: GENERAL PROVISIONS**

### **1.1. General**

This manual sets forth the policies and high-level procedures of the City of Harrisonburg (hereinafter referred to as the “City”) for the procurement of goods, services, insurance, and/or construction (collectively “goods and services”) and is to be followed by all City agencies and departments. This manual has been adopted by the City of Harrisonburg City Council to meet the requirements of Virginia Code § 2.2-4343(A) and constitutes Council’s policies to ensure fairness and competitiveness in the procurement of goods and services for the City. The City adheres to all portions of the Act that are applicable to local government agencies and that are mandatory under Virginia Code § 2.2-4343.12.

The information contained in this manual is intended for the use and guidance of all employees, staff, officers and representatives in the performance of their official duties.

The Purchasing Office may, from time to time, issue memoranda and opinions pertaining to procurement that are effective until they are included in a revision to this manual or until rescinded. Likewise, the Purchasing Office may make changes to the procedures, forms, contracts and solicitation documents without the necessity of presenting the changes to Council for approval prior to implementation. This edition of the manual supersedes all previous editions. Comments, suggestions and questions of interpretation should be provided to the Purchasing Office.

### **1.2. Purpose of this Manual**

This manual is based upon, and should be read in conjunction with, the Virginia Public Procurement Act (hereinafter sometimes referred to as the “Act” or “VPPA”), which is located at Virginia Code § 2.2-4300 et seq.

The purpose of this policy manual is to:

- a. Provide an understanding of the responsibilities, objectives, limitations and duties of the Purchasing Agent
- b. Convey to employees, staff, officers and representatives, and through them, to vendors and the public, a clear understanding of the City’s procurement policies and objectives;
- c. Increase public confidence in procurement by the City;
- d. Foster competition in the procurement process to the maximum feasible extent;
- e. Ensure all qualified vendors are given access to City business;
- f. Ensure all procurement procedures are conducted in an administratively efficient, fair and impartial manner without impropriety or appearance of impropriety;
- g. Maximize the procurement value of public funds;
- h. Obtain high quality goods and services at the lowest possible price or for the best value to the City;
- i. Provide for a procurement system of quality and integrity;
- j. Establish reasonable standards against which internal and external auditors can measure the performance of the Purchasing Office’s functions.

It is expected and required that City personnel always put the public’s interests first when purchasing goods and services and will use this Manual as a guide to the City’s procurement policies.

### **1.3. Overview of the Procurements Subject to this Manual & the Act**

This manual and the Act have broad application to the purchase of goods and services by the City from nongovernmental sources.

- General: This manual and the Act apply to all public contracts with nongovernmental sources for the purchase or lease of goods or the purchase of services, insurance, or construction, each of which must be awarded after competitive sealed bidding or competitive negotiation, unless specifically exempted under the Act.
- Procurements using nongovernmental funds are subject to manual: This manual and the Act apply to the procurement of goods and services by the City even though private funds and/or grant funds are used for any portion of the procurement.
- Procurements by lease are subject to manual: This manual and the Act apply to the procurement of goods and services acquired pursuant to a lease if the predominant purpose of the lease is to secure goods or services from a vendor. Neither this manual nor the Act apply to the purchase, lease, and sale of real property.
- Procurements by which the City is paid for allowing a service are subject to manual: This manual and the Act apply to the procurement of services by which the City is paid by the vendor for allowing a service to be provided.
- Procurement that may or may not result in monetary consideration for either party: These policies shall apply and govern all procurement-related transactions, regardless of whether monetary consideration is involved (Virginia Code § 2.2-4300).
- Other law authorizes procurement subject to manual: This manual and the Act may apply if another statute grants procurement authority to the City. Whether this manual and the Act apply shall be determined on a case-by-case basis.

#### 1.4. Definitions

The City utilizes all terminology and definitions stated in Virginia Code § 2.2-4301, 2.2-4368, and 2.2-4379. Any term used in this manual which is not defined in the Virginia Public Procurement Act, Chapter 43.1, or in this manual shall be given its common and ordinary meaning unless the term has been defined elsewhere in the City Code or by statute, regulation, or by the Virginia Supreme Court or the Virginia Court of Appeals, and the definition is applicable to the context in which the term is used.

In addition to these stated definitions, the City also utilizes the following:

- a. “*Change Order*” is a written alteration to a contract or purchase order in accordance with the terms of the contract.
- b. “*City*” means the City of Harrisonburg, Virginia as well as any department, agency, or other unit thereof.
- c. “*Competitive negotiation*” or “*Request for Proposal (RFP)*”: A formal request for a proposal from prospective vendor (offerors) which will indicate the general terms which are sought to be procured from the offeror and where negotiations are conducted to come to a final contract. The RFP will specify the evaluation criteria to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement. Procedures for contractor selection per Virginia Code § 2.2-4302.2 and the RFP document.
- d. “*Competitive sealed bidding*” or “*Invitation to Bid (ITB)*”: A formal request which is made to prospective suppliers (bidders) for their quotation on goods, services, or construction desired by the City. The issuance of an ITB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement. Procedures for contractor selection per Virginia Code § 2.2-4302.1 and the ITB document.
- e. “*Conflict of Interest*”: An actual or potential situation in which the personal interests of a vendor, employee or public official are, or appear to be, in conflict with the best interests of the City. (Virginia Code § 2.2-3101)
- f. “*Contract Modification*” is any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties to the contract.

- g. “*Contractor*” is any person having a contract with the City or an agency thereof.
- h. “*Cost Analysis*” means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
- i. “*Department*” means all City departments, offices, Constitutional Officers, agencies or boards within the City, who are using City funds to procure goods or services or are surplusing items that were purchased with City funds. City funds include monetary and/or value resources of the City, however derived.
- j. “*Direct Participation*” or “*Indirect Participation*” means involvement in any procurement transaction through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- k. “*Employee*” means an individual drawing a salary or wages from the City whether elected or not; any noncompensated individual performing personal services for the City or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of this City and noncompensated individual serving as an elected official of the City.
- l. “*Governing Body*” means the City Council of Harrisonburg, Virginia
- m. “*Immediate family*” means an employee’s spouse, child(ren), parents, brothers and sisters, any other person living in the same household as the employee, and any other person who is a dependent of the officer or employee. (Virginia Code § 2.2-4368 & 2.2-3101)
- n. “*Payment Date*” means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days after receipt of a proper invoice by the state agency or its agent or forty-five days after receipt by the local government or its agent responsible under the contract for approval of such invoices for the amount of payment due, or (b) thirty days after receipt of the goods or services by the state agency or forty-five days after receipt by the local government, whichever is later.
- o. “*Price Analysis*” is the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.
- p. “*Procurement*” or “*Purchasing*” may be used interchangeably in this document to refer to similar roles, duties, offices or positions.
- q. “*Procurement transaction*” means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. (Virginia Code § 2.2-4368)
- r. “*Public employee*” means any person employed by a public body, including elected officials or appointed members of governing bodies. (Virginia Code § 2.2-4368)
- s. “*Purchasing Agent*” means the person designated by the City Manager that is given the authority and responsibility for all procurement transactions for the City of Harrisonburg, Virginia.
- t. “*Qualified Products List*” is an approved list of goods, services, or construction items described by model or catalogue number, which prior to competitive solicitation, the City has determined will meet the applicable specification requirements.
- u. “*Scope of Work*” means a descriptive outline of the needs and desires for service provision. It is generally a description of the outcome desired, allowing the vendor to provide a solution.
- v. “*Specification*” means any description of the physical or functional characteristics, or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing, or preparing a good, service or construction item for delivery.
- w. “*Task Order*” means a written document supplementary to an existing task order-based contract detailing the work statement of the task(s) to be performed by the contractor.

## **1.5. Purchasing Agent Authority**

The City Manager shall designate the City’s Purchasing Agent who will report to the City’s Director of Finance. The Purchasing Agent shall have the authority to procure goods, services, insurance and construction in accordance with this chapter as well as to manage and dispose of surplus property and supplies.

The Purchasing Agent may develop an operational procedures manual and maintain forms, contracts, solicitation documents and other related materials to implement these policies that are consistent therewith. The Purchasing Agent and his/her staff have the duty to assist in any purchasing activity, and to interpret and apply these policies and any subsequent procedures. The Purchasing Agent, in conjunction with the Director of Finance, may create and maintain an operational procedures manual relating to accounts payable transactions. The Purchasing Agent may amend Appendix G as necessary to comply with federal regulations and/or federal grant requirements.

The City may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of the VPPA and City procurement policies. (Virginia Code § 2.2-4375)

### **1.6. Delegated Authority**

The Purchasing Agent may delegate authority for the procurement of certain goods and services to other employees of the City if such delegation is deemed necessary by the Purchasing Agent for the effective procurement of those items.

Delegation of any signature authority by the Purchasing Agent to other City staff shall be authorized in the Procurement Procedures Manual and shall be reviewed annually.

### **1.7. Unauthorized Purchases**

Except as herein provided, no official, elected or appointed, or any employee shall purchase or contract for any goods, services, insurance or construction within the preview of this chapter. Any purchase order or contract made contrary to the provisions hereof is not approved and the City shall not be bound thereby.

### **1.8. Code of Virginia Compliance**

Although not specifically detailed or fully cited in this Manual, the City shall be in compliance with all applicable policy and procedure requirements of the Virginia Public Procurement Act per Title 2.2, Chapter 43 of the Code of Virginia as well as Chapter 43.1 Construction Management and Design-Build Contracting. All of the sections that are applicable to local government agencies contained within or referenced to, shall be followed. Additional applicable sections and Acts contained in the Code of Virginia may apply to City procurements but may not be explicitly cited or referenced in this manual. The City shall be in compliance with any additional Code sections, as applicable.

## **SECTION 02: METHODS OF PROCUREMENT**

The City shall adhere to the processes detailed in Virginia Code § 2.2-4302.1 & 2.2-4302.2 for competitive sealed bidding and/or competitive sealed negotiation.

Pursuant to Virginia Code § 2.2-4303 (G), the following guidelines and thresholds shall apply to single or term contracts for goods, non-professional services and professional services. Splitting up purchases, projects, orders, contracts or related methodology to avoid procurement processes is not allowed.



<b>GOODS &amp; NON-PROFESSIONAL SERVICES</b>	
\$10,000 & Under	No quotes required but encouraged. PO not required.
\$10,001 - \$100,000	Three (3) written quotes on vendor letterhead. PO required.
Over \$100,000	Sealed, Advertised ITB or RFP. PO required.
<b>PROFESSIONAL SERVICES*</b>	
\$80,000 & Under	No quotes required. PO required for purchases over \$10,000.
Over \$80,000	Sealed, Advertised

*\*Professional Services are defined Virginia Code § 2.2-4301.*

If the purchase is for construction, compliance with the Uniform State Building Code will be required.

In accordance with Virginia Code § 2.2-4331, B. except in case of emergency affecting the public health, safety, or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

The City shall not discriminate based on race, religion, color, sex or national origin of any Bidder or Offeror.

### **2.1. Public Advertisement of Sealed Solicitations and Notices of Award**

Aside from this manual, the City has not adopted alternative procedures to the competitive sealed bidding and competitive negotiation procedures authorized under the VPPA.

Invitations to Bid (ITB), Request for Proposals (RFP) and Notices of Award shall be posted on the state procurement website, eVA. In the event of extenuating circumstances, the Purchasing Agent may authorize the ITB, RFP or Notice of Award posted on the City’s website instead of eVA. In accordance with Virginia Code § 2.2-4302.1, any additional solicitations of businesses shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity.

The City may elect to post informal requests for quotation or written proposal, sole source or emergency award notices on the eVA website (Virginia Code § 2.2-4303 E & F), otherwise sole source and emergency award notices shall be publicly posted on the City’s website.

### **2.2. Electronic Responses (Virginia Code § 2.2-4303 A)**

The Procurement Office shall be responsible for official receipt of all bids and proposals. Only bid openings for ITB shall be public openings. All other solicitation openings shall be done by the City and available per Virginia Code at a later date. Effective on or before January 01, 2025, the City shall provide an option to submit bids or proposals through eVA or other electronic means. In cases where bids or proposals are submitted electronically, the City may also require a certain number of paper submissions for review purposes.

### **2.3. Agent or Broker Services for Procurement of Insurance (Virginia Code § 2.2-4303 C)**

For use of licensed agent or broker services in the procurement of insurance, City Council shall review on case-by-case basis and determine whether to approve use by determining competitive negotiation is either not practicable or not fiscally advantageous.

### **2.4. Approval for Use of Design-Build Procurements for Construction (Virginia Code § 2.2-4303 D)**

The City shall adhere to the processes detailed in Chapter 43.1 pertaining to governmental procurement of construction utilizing the design-build procurement methods. The Purchasing Agent is authorized to enter into

contracts on a fixed price or not-to-exceed price design-build basis as outlined in the procedures in Appendix A. This Chapter shall apply regardless of the source of financing for the project.

## **2.5. Term Contracts for Architectural & Engineering Services (Virginia Code § 2.2-4303.1 A)**

A contract for architectural or professional engineering services relating to multiple projects may be awarded by the City, 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 is limited to a term of one (1) year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

Such contracts may be renewable for three (3) additional terms at the option of the City. Any unused amounts from one contract term shall not be carried forward to any additional term. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

The sum of all projects performed in a contract term shall not exceed \$10 million, and the fee for any single project shall not exceed \$2.5 million.

## **2.6. Job Order Contracts (Virginia Code § 2.2-4303.2)**

A job order contract may be awarded by the City for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one (1) year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first. Contractors may be selected through either competitive sealed bidding or competitive negotiation.

Such contracts may be renewable for three (3) additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed the maximum threshold amount.

Beginning on July 1, 2024, the maximum threshold amount shall be \$10 million. Subject to the maximum threshold amount, no individual job order shall exceed \$1 million. For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed above is prohibited.

The City shall not issue or use a job order, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in Virginia Code § 54.1-400. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term.

Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass. However, job order contracting may be used for safety improvements or traffic calming measures for individual job orders up to \$250,000, subject to the maximum annual threshold amount established in this section.

## **2.7. Option to purchase Owner-Controlled Insurance in Construction Projects (Virginia Code § 2.2-4308.1)**

The City shall have the option to purchase Owner-Controlled insurance for construction projects of any value.

## **2.8. Modification of the Contract (Virginia Code § 2.2-4309)**

Any fixed-price contract increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, must request advance written approval of City Council before proceeding.

## **2.9. Encouragement for participation of small, women-owned, minority-owned and service-disabled veteran-owned business (Virginia Code § 2.2-4310)**

The City's program for participation of small, women-owned, minority-owned and service-disabled veteran-owned businesses per Virginia Code § 2.2-4310 shall be incorporated into this policy manual as Appendix B.

## **2.10. Prequalification of Bidders – Construction (Virginia Code § 2.2-4317)**

The process for prequalification of Bidders for construction projects per Virginia Code § 2.2-4317 shall be outlined in Appendix C.

## **2.11. Procedures for Negotiation with the Lowest Responsible Bidder (Virginia Code § 2.2-4318)**

The procedures for negotiation with the lowest responsible bidder per Virginia Code § 2.2-4318 shall be outlined in Appendix D.

## **2.12. Procedures for Suspending or Debarring a Vendor (Virginia Code § 2.2-4321)**

The Purchasing Agent or his designee shall have the express authority to suspend or debar a vendor according to procedures for debarment of a vendor per Virginia Code § 2.2-4321 outlined in Appendix E.

## **2.13. Preference for Local Products and Firms (Virginia Code § 2.2-4328)**

The City shall not give preference to any bidder or offeror based on their geographic location except in the case of a tie bid. In the case of a tie bid, tie shall be decided by lot.

## **2.14. Bonding Requirements**

### **2.14.1 Construction Projects**

The City reserves the right to require a bid bond or alternative form of security for any construction project of any value and shall require bid bond for all project dollar value limitations imposed in Virginia Code § 2.2-4336 for nontransportation-related construction contracts and transportation-related contracts.

The City reserves the right to require performance and payment bonds or alternative form of security for any construction project of any value and shall require performance and payment bonds for all project dollar value limits imposed in Virginia Code § 2.2-4337 for nontransportation-related construction contracts and transportation-related contracts. Actions on performance bonds shall be per Virginia Code § 2.2-4340 and actions on payment bonds shall be per Virginia Code § 2.2-4341.

### **2.14.2 Non-Construction Goods & Services**

The City may require a bid, payment or performance bond for contracts for non-construction goods or services if provided in the Invitation to Bid or Request for Proposal per Virginia Code § 2.2-4339.

### **2.14.3 Surety Requirements**

All bonds shall be from a surety company selected by the Bidder that is authorized to do business in Virginia. Per Virginia Code § 2.2-4338, in lieu of a bid, payment or performance bond, Bidders may furnish an alternative form of security as listed in the Code.

#### **2.15. Public Inspection of Certain Records (Virginia Code § 2.2-4342)**

In the event the City issues a competitive sealed bid, competitive sealed negotiation or design-build procurement and the City decides not to accept any of the bids or proposals and decides not to reopen the contract, the procurement records may be sealed from public inspection.

In the event the City issues a competitive sealed bid, competitive sealed negotiation or design-build procurement and the City decides not to accept any of the bids or proposals and decides to reopen the contract, the procurement records from the initial procurement shall be sealed until after a contract is awarded on the reopened (new) contract.

An inspection of procurement records is subject to reasonable restrictions imposed by the Purchasing Agent to ensure the security and integrity of the records and/or the procurement process.

#### **2.16. Conflicts with Federal Requirements (Virginia Code § 2.2-4343 B)**

In the event that a procurement transaction involves the expenditure of federal assistance or contract funds, the City shall comply with all mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter. In the case of conflicts, the conflict shall be noted in the appropriate procurement file by the Purchasing Agent and federal law shall take precedence.

#### **2.17. Alternative Dispute Resolution (Virginia Code § 2.2-4366)**

It is the City's preference not to utilize arbitration and/or mediation procedures.

#### **2.18. Exceptions to Requirements for Competitive Procurement**

Exceptions to the requirements for competitive procurement may include government to government purchases, legal services (Virginia Code § 2.2-4344), election materials and services (Virginia Code § 2.2-4346), and other services defined in Virginia Code § 2.2-4344.

##### **2.18.1 Government to Government Purchases; Commercial Activities List**

In accordance with the provisions of §2.2-614.4, if, at any time, the City intends to purchase a service for an amount over \$25,000 from another government agency, and such service is found on the commercial activities list, which is maintained by the Department of Planning and Budget in accordance with Virginia Code § 2.2-1501.1, the City shall post notice on its procurement website. Additionally, the City shall provide the opportunity for comment by, or the submission of information from, the private sector on each such intended purchase. The provisions of this section shall not apply to mandatory purchases pursuant to Virginia Code § 53.1-47 or contracts specifically exempted pursuant to Article 3 (§ 2.2-4343 et seq.) of the Virginia Public Procurement Act.

#### **2.19. Conflicts of Interest (Virginia Code § 2.2-4367 - 2.2-4377; 2.2-3100 et seq.)**

City employees and/or members of Council having procurement duties shall adhere to the ethics section of the VPPA, Virginia Code § 2.2-4367-2.2-4377. The following is a general highlight of the laws pertaining to conflicts of interest in public contracting. These laws generally prohibit officers or employees of the City from having personal interests in the contracts and or/procurement transactions. Additional conflict of interest

scenarios may be highlighted, and terminology defined, in the Virginia State & Local Government Conflicts of Interest Act Virginia Code § 2.2-3100 et seq. which the City adheres to.

No officer or employee of the City shall have a personal interest in a contract with the City of Harrisonburg, other than his own contract of employment.

### **Evaluation Committee**

A conflict of interest or the appearance of a conflict of interest may occur if you are directly or indirectly involved with an organization that has submitted a proposal for evaluation. No person may serve on an evaluation committee where the action of that committee might benefit that person, a member of that person's immediate family, or any organization or business with which that person is associated.

Prior to reviewing any proposals, an employee shall inform the Purchasing Office immediately of any potential conflicts of interest or the appearance thereof. If unsure, the employee should check with the Purchasing Office. If the employee becomes aware of any potential conflict of interest at any point during the evaluation process, they shall contact the Purchasing Office immediately. Failure to do so may void the evaluation process and can potentially result in criminal charges per Virginia Code § 2.2-437, and for City of Harrisonburg employees, can result in disciplinary action up to and including termination for City employees per Human Resources policy 9.6.

An employee may be disqualified as an evaluator if they conduct themselves in a way that could create the appearance of bias or unfair advantage with or on behalf of any potential vendor, agent, subcontractor, or other business entity, whether through direct association with contractor representatives, indirect associations, through recreational activities or otherwise.

An employee may be required to affirm their understanding of and adherence to this policy by signing a Conflict of Interest form before serving on an evaluation committee or in other procurement capacities.

### **2.20. Disclosure of Subsequent Employment (Virginia Code § 2.2-4370)**

No City of Harrisonburg employee having official responsibility for procurement transactions, including service as a committee member on an evaluation committee, shall accept employment with any bidder, offeror, or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee provides written notification to the Purchasing Agent prior to commencement of employment by that bidder, offeror or contractor.

The laws of the Commonwealth dictate a higher standard of conduct for procurement officials than for public employees generally because of the trust and responsibility exercised by public officials conducting procurement transactions, and because of the expectation by the public that this trust and responsibility be exercised properly. We must conduct business above reproach in every respect. Transactions relating to the expenditure of public funds require the highest degree of public trust.

## **SECTION 03: PUBLIC-PRIVATE PARTNERSHIPS**

### **3.1. Guidelines for the Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002**

The Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code § 56-575.16 (the "PPEA"), grants the City, a responsible public entity as defined in the Act, 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 need

for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Individually negotiated interim or comprehensive agreements between a private entity and the City will define the respective rights and obligations of the City and the private entity. Although guidance with regard to the application of the PPEA is provided herein, it will be incumbent upon the City and all private entities to comply with the provisions of the PPEA as applicable.

The City's guidelines for implementation of the Act may be found in Appendix F.

## **SECTION 04: DISPOSAL OF SURPLUS PROPERTY**

The Purchasing Agent shall be responsible for the disposal of surplus property in a manner consistent with the methods indicated below or in a means which is in the best interest of the City (Virginia Code § 15.2-951). The disposal method that is selected by the City for the sale of surplus property takes into consideration several factors, which includes:

- Assessment of the condition and age of item(s)
- Quantity of the surplus item or items
- Current market demand and pricing for such materials
- Size and weight of the material and related transport and storage issues
- Location of potential buyers or donees (local or out of area)

### **4.1 Definition of Surplus Property**

Surplus materials means personal property including materials, supplies, equipment, and recyclable items, but does not include property as defined in Virginia Code § 2.2-1147 (real property or real estate), that is determined to be surplus.

### **4.2 Purchases by City Employees**

Employees are allowed to purchase surplus property under the same conditions as the general public. Under no circumstances are employees to take City property without proper documentation. Per Virginia Code § 2.2-3110 A. (7), City employees are limited to a \$500 maximum contract amount, including any buyer premium and state/local sales and/or use tax, per item. This also applies to any family member living in the same household. If any employee is found to have been awarded an auction on an item over \$500, the award will be cancelled. Employees should not bid during their working hours.

### **4.3 Transfer, Sale or Disposal of Surplus Property**

As a first preference, any surplus property shall be attempted to be relocated or transferred to another City department. If no City department is able to utilize the surplus property, the Purchasing Agent may authorize it to be conveyed by one of the following methods (but not limited to):

- Public auction (in-person)
- Public auction (online/virtual)
- Trade-in on similar equipment
- Sales by sealed bid
- Negotiated Sale
- Set or Fixed Price
- Transfer or direct sale to another public agency
- Contract (established for certain surplus items that are generated on a continuing basis)

Any property which is unusable and/or determined to have no commercial value, or that the cost of sale would exceed the expected returns, may be destroyed or disposed of. The Purchasing Agent or designee shall make this decision. Disposal may be made by:

- Scrap items that have sale value for material content only, such as recyclable material
- Items that have little commercial value and can be donated to appropriate entities
- Items that have little or no commercial value and are acceptable for landfilling or trash disposal

If surplus property is not suitable for sale or the cost of selling it would exceed the potential revenue, and special circumstances pertaining to the property make the other disposal methods listed above inappropriate, the Purchasing Agent shall review such special circumstances and to suggest alternative method(s) of disposal. Following a review of the alternative methods of disposal that are available, an alternative method may be permitted by the Purchasing Agent. Any revenue generated by the sale of surplus property shall be promptly deposited with the City Treasurer.

Federal acquisitions often carry stipulations regarding disposal. These stipulations are noted in the original grant agreement and should be reviewed prior to disposing of equipment that was originally purchased with federal funds.

The Purchasing Office may require special consideration for specific surplus disposal which will be further outlined in the Procurement Procedures Manual.

## **SECTION 05: FEDERAL GOVERNMENT CONTRACTING**

The City's guidelines for procurements using federal funds and implementation of Uniform Guidance may be found in Appendix G.

Any department applying for federal funding shall provide advance notification to the Purchasing Agent and seek assistance with expending federal funding as appropriate.

**APPENDIX A. DESIGN-BUILD (D-B) PROCEDURES AS ADOPTED BY THE CITY OF  
HARRISONBURG BY RESOLUTION EFFECTIVE JANUARY 1, 2022**

In accordance with the provisions of Chapter 43.1 of the Code of Virginia, City Council hereby adopts the following procedures for the procurement of Design-Build (“D-B”) contracts, as defined in the Chapter, which shall be followed by all departments of the City of Harrisonburg (“City”). These procedures shall be effective January 1, 2022.

- A. **DEFINITION:** Pursuant to §2.2-4379 of the Code of Virginia, *Design-Build Contract* means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, or other item specified in the contract.
  
- B. **LEGISLATIVE AUTHORITY:** Under the authority of the Code of Virginia, the City may contract to secure D-B projects on a fixed price or not-to-exceed basis in accordance with these procedures and the regulations adopted pursuant to §2.2-1502 of the Code of Virginia.
  
- C. **CRITERIA AND APPROVAL FOR USE OF D-B CONTRACTS:** The City shall follow all the criteria for use of D-B as set forth in the Code of Virginia.
  
- D. **PREDETERMINATION PROCEDURES:** Pursuant to § 2.2-4382 (B), prior to making a determination as to the use of D-B for a specific construction project, the City shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the City regarding the use design-build for that project and (ii) assist the City with the preparation of the Request for Proposal (RFP) and the evaluation of such proposals.

Pursuant to § 2.2-4382 (C), a written determination shall be made in advance by the City that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize D-B. The determination shall be included in the Request for Qualifications and be maintained in the procurement file.

- E. **USE OF STATE OR FEDERAL TRANSPORTATION FUNDS:** If state or federal transportation funds are used for the contract, the City shall comply with §§ 33.2-209 and 33.2-214 of the Code of Virginia, and shall request from the Virginia Department of Transportation the authority to administer the project in accordance with pertinent state and federal guidelines (which are discussed in Section VIII below).
  
- F. **D-B SELECTION PROCEDURES:** The following procedures shall be used in selecting a Design-Builder and awarding a contract:
  - a. The City shall appoint an Evaluation Committee (“Committee”) which shall consist of at least three (3) members from the City, including a licensed design professional, if possible.
  - b. The basis of the award of the contract shall be in accordance with the Code of Virginia and the criteria for the award shall be established in advance and provided in the Request for Proposals (RFP) document. It is noted that cost is a critical component of the selection process.
  - c. **Selection of Qualified Offerors (STEP 1):** On projects approved for D-B, the City shall conduct a prequalification process as follows to determine which Offerors are qualified to receive Request for Proposals (RFPs).



- i. The City shall prepare a Request for Qualifications (“RFQ”) containing the City’s Facility Requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate RFQ Responses and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All Offerors shall have a licensed Class “A” contractor and an Architect or Engineer registered in the Commonwealth of Virginia as part of the Project Team.
  - ii. The RFQ shall be posted in accordance with Chapter 43.1 and the City shall include in the RFQ acceptable methods of response submission.
  - iii. The Committee shall evaluate each Offeror’s RFQ responses and any other relevant information and shall determine which Offerors are fully qualified and suitable for the project.
  - iv. The RFQ evaluation shall result in a short list of at least two (2) Offerors to receive the RFP. An Offeror may be denied prequalification only as specified under § 2.2-4317 or those capabilities or qualifications beyond licensure set out in the RFQ, but the short list shall consist of those deemed best qualified. It is possible for an offeror to be found qualified, but not be selected to the short list.
  - v. The RFQ evaluation process shall evaluate an Offeror’s proposal to determine whether the Offeror has constructed, by any method of project delivery, at least three (3) projects similar in program and size.
  - vi. At least thirty (30) days prior to the date established for the submission of proposals, the City shall advise in writing each Offeror which sought prequalification whether that Offeror has been prequalified. In the event that an Offeror is denied prequalification, the written notification to such Offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.
- d. Selection of Design-Build Contractor (Step 2):
- i. The City shall send an RFP to the D-B Offerors on the short list for the project and request formal proposals from them. The criteria for award shall be included in the RFP. The City shall include in the RFP if responses may be submitted electronically and/or via paper response.
  - ii. Sealed Technical Proposals as described in the RFP shall be submitted to the City. Cost Proposals shall be sealed separately and submitted to the City. The Cost Proposals shall be kept sealed until the evaluation of the Technical Proposals and design adjustments are completed.
  - iii. The Committee will evaluate the Technical Proposals based on the criteria contained in the RFP. It will inform each D-B Offeror of any adjustments necessary to make its Technical Proposal fully comply with the requirements of the RFP. In addition, the City may require that Offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the Committee during design development.
  - iv. Based on the adjustments made to the Technical Proposals, the Offeror may amend its Cost Proposal.
  - v. The Committee shall evaluate (and rank if technical rankings are to be considered as a criterion for award) the Technical Proposals and the Cost Proposals. After evaluation and ranking, the Committee shall conduct negotiations with two (2) or more offerors submitting the highest ranked proposals. The Committee shall make its recommendation

for the selection of an offeror to the City based on its evaluation of the Technical Proposal, Cost Proposal, and the outcome of negotiations.

Should the City determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror after approval of the Purchasing Agent. Otherwise, the City shall open the Cost Proposals and apply the criteria for award as specified in the RFP and approved by the Purchasing Agent.

- vi. The Committee shall make its recommendation for the selection of a Design Builder to the Purchasing Agent. The contract shall be awarded to the Offeror who is fully qualified and has been determined to have provided the best value in response to the RFP. Once the selection has been made as to which Offeror will be awarded the contract, the Purchasing Agent will post a Notice of Award on eVA at <https://eva.virginia.gov>.
- vii. The award documentation will subsequently be followed by a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Offeror's Technical and Cost Proposals as negotiated.
- viii. The City will notify all Offerors who submitted proposals which Offeror was selected for the project. In the alternative, the City may notify all Offerors who submitted proposals of the City's intent to award the contract to a particular Offeror at any time after the City has selected the Design-Builder. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one Offeror.
- ix. Upon request, documentation of the process used for the final selection shall be made available to the unsuccessfully Offerors.

## **APPENDIX B. PARTICIPATION OF SMALL BUSINESSES AND MINORITY-OWNED, WOMEN-OWNED, AND SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

This program outlines the City of Harrisonburg's policy promoting procurement from small businesses, and businesses owned by minorities, women, and service-disabled veterans.

1) Definitions: The terms set forth below shall have the following meanings unless the context clearly requires otherwise.

- a) The terms "Minority individual," "Minority-owned business," "Service-disabled veteran," "Service disabled veteran business," "Small business," and "Women-owned business" shall be as defined in Virginia Code 2.2-4310 (F) or its successor(s), as amended.
- b) SWAM means Small, Women-owned, and Minority-owned businesses
- c) ITB means Invitation to Bid
- d) RFP means Request for Proposal
- e) DBE means Disadvantaged Business Enterprise

2) The City of Harrisonburg Purchasing Office is committed to procurement diversity by making frequent use of the Virginia Department of Small Business and Supplier Diversity website. The Purchasing staff frequently uses this source to invite vendors to respond to our Invitations to Bid, Requests for Proposals and quotes.

3) Vendors are encouraged to become SWAM certified with the Department of Small Business and Supplier Diversity at <https://sbsd.virginia.gov/>.

4) The City of Harrisonburg posts all sealed ITB's and RFP's on Virginia's e-procurement web site (eVA). Vendors are encouraged to register as a vendor with Virginia's electronic procurement system. eVA may be accessed at <https://eva.virginia.gov/register-now.html>. Vendors will be automatically notified by eVA when solicitations are issued. All qualified vendors are encouraged to submit responses to our ITB's and RFP's.

6) The City participates to the maximum extent possible in local and regional purchasing fairs for small businesses and minority-owned, woman-owned, and service disabled veteran-owned businesses.

7) The City of Harrisonburg Department of Public Transportation (HDPT) has a DBE Program in accordance with regulations of the U.S. Department of Transportation (DOT). HDPT receives assistance from the Department of Transportation, and as a condition of receiving this assistance, HDPT has signed an assurance that it will comply with 49 CFR Part 26. The HDPT DBE program and goal are available at [www.harrisonburgva.gov/hdpt-forms](http://www.harrisonburgva.gov/hdpt-forms).

**APPENDIX C. PROCEDURES FOR PREQUALIFICATION OF BIDDERS FOR CONSTRUCTION  
(VIRGINIA CODE §2.2-4317)**

The City adopts the following as its prequalification process to prequalify prospective construction contractors to bid on selected projects:

1. The Purchasing Agent or his designee may, in his discretion, when he believes it to be in the best interest of the City, require prequalification of prospective contractors to bid on a specific construction project for the City of Harrisonburg. The purpose of such prequalification shall be to limit prospective bidders for the specific construction project to contractors who demonstrate themselves to be qualified to construct the project. When the prequalification process is used for a project, only contractors who have complied with the prequalification process and have been determined qualified will be eligible to submit bids for the project.
2. In conducting prequalification of potential contractors, the Purchasing Agent or his designee shall follow this prequalification process and the requirements of Code of Virginia §2.2-4317.
3. The Purchasing Agent or his designee shall develop the appropriate documentation for potential contractors to apply for prequalification. The Purchasing Agent or his designee may prescribe in such documentation specific mandatory requirements contractors must meet in order to prequalify for specific projects. The documentation used in the City's prequalification process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The documentation shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The documentation shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor as part of its prequalification application shall be considered a trade secret or proprietary information subject to the provisions of subsection F of Code of Virginia §2.2-4342.
4. In all instances in which the City requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submissions shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the prequalification process to be accomplished.
5. At least thirty (30) days prior to the date established for submission of bids under the procurement for which the prequalification applies, the City shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.
6. A decision by the Purchasing Agent or his designee under this prequalification process shall be final and conclusive unless the contractor appeals the decision as provided in Code of Virginia §2.2-4357.
7. The City may deny prequalification to any Contractor only if the City finds one of the following:
  - a. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
  - b. The contractor does not have appropriate experience to perform the construction project in question;

- c. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten (10) years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;
  - d. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body, including the City of Harrisonburg, without good cause. If the City has not contracted with a particular contractor in any prior construction contracts, the City may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The City may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
  - e. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including but not limited to, a violation of (i) Article 6 of the Virginia Public Procurement Act (§ 2.2-4367, et seq.), (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1 or (iv) any substantially similar law of the United States or another state;
  - f. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
  - g. The contractor failed to provide to the City in a timely manner any information requested by the City relevant to subdivisions a through f of this subsection.
8. In determining if a contractor has the “appropriate experience” under Subsection 8.b. to be prequalified, the City may consider and use specific minimum experience requirements established by the Purchasing Agent or his designee for the specific project. The City of Harrisonburg may also consider the contractor’s past performance on the projects that provide its past experience to determine if the projects provide the appropriate experience required.
  9. To the extent any provision in this process is deemed to be inconsistent with Code of Virginia §2.2-4317, whether due to amendment of that statutory provision or otherwise, then the provisions of §2.2-4317 shall control as to such inconsistency.
  10. The provisions of this process and its implementation are intended to be severable, and if any provision is deemed invalid, this shall not be deemed to affect the validity of other provisions.
  11. This prequalification process does not apply to any procurement done under the Public-Private Education Facilities & Infrastructure Act of 2002 (“the PPEA”), Code of Virginia §56-575.1 et seq., and is in no way intended to limit the City of Harrisonburg’s discretion in the way it selects contractors under the PPEA.
  12. A determination that a contractor is prequalified does not necessarily preclude the City from determining that such contractor is not responsible following bid opening. Among other things, a change in circumstances, change in information, or different criteria allowed to be considered for prequalification versus responsibility, may lead to a different result. For example, a prequalified contractor that becomes debarred between prequalification and bid opening, or a contractor who is subsequently discovered not to have been totally candid in answering its prequalification questionnaire, might be deemed non-responsible at the bid opening.
  13. Prequalification of a contractor to bid on a specific project does not prequalify that contractor to bid on a different project. Prequalification of a contractor to bid on a specific project does not mean that the contractor will necessarily be deemed to be a responsible bidder for a different project.

14. Neither this prequalification process nor its implementation by the City of Harrisonburg shall be deemed to create any contract right in any prospective contractor or to give any prospective contractor any right beyond that conferred by Code of Virginia §2.2-4317. All prospective contractors shall be responsible for their own expenses in applying for prequalification, and the City shall have no liability for any such expense.

#### **APPENDIX D. PROCEDURES TO NEGOTIATE WITH LOW BIDDER (VIRGINIA CODE §2.2-4318)**

Per Virginia Code 2.2-4318, if the bid from the lowest responsive and responsible bidder exceeds available funds, the City may negotiate with the apparent low bidder to obtain a contract price with available funds.

The term “available funds” shall mean those funds which were budgeted by the City for this contract prior to the issuance of the written Invitation to Bid.

The Purchasing Agent or his designee shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the City wishes to negotiate a lower contract price. The purpose of this provision is not to force a bidder to take a lower price but rather to negotiate an acceptable change in requirements, including price, that is agreeable to both parties.

Negotiations with the low bidder may include any combination of the following examples of potential modifications: bid price, Scope of Work/Specifications to be performed, extended delivery date, reduced quantity, different accessories, etc., with a corresponding reduction in price.

The times, places, and manner of negotiating shall be agreed to by the City and the lowest responsive, responsible bidder.

All negotiations undertaken with the low bidder shall be documented in writing and included in the final contract document.

No projects that are federally-funded shall be negotiated with the apparent low bidder.

## **APPENDIX E. PROCEDURES FOR SUSPENDING OR DEBARRING A VENDOR (VIRGINIA CODE §2.2-4321)**

Vendors who do not meet their obligations or have other performance or non-performance issues may be suspended or debarred from contracting with the City of Harrisonburg through the suspension or debarment procedures outlined herein.

Vendors that have been suspended and/or debarred by the City are identified in a list that shall be maintained by the Purchasing Agent or his designee. The list shall be made publicly available by the Purchasing Agent on the City's website or other website of choice.

Vendors who are debarred from bidding by any other agency in the Commonwealth may be prevented from submitting a response to a sealed solicitation for the City of Harrisonburg.

### **Procedures for Suspension**

The Purchasing Agent or designee is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be a period not to exceed three (3) months. Corrective action may result in reinstatement sooner.

Suspension imposes bidding restrictions on a contractor when the contractor fails to fulfill its obligations. Suspension is used for issues that can be corrected. A vendor or contractor may be suspended for the following reasons:

- Delinquency
- Unwillingness or inability to fulfill a contract
- Failure to comply with the CPSM and General Conditions

### **Procedures for Debarment**

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Agent or designee is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be a period not to exceed three (3) years.

Debarment is disqualification of an individual or firm (or any successor company) from contracting with the City. A vendor or contractor may be debarred for the following performance and non-performance related causes:

- Breach of contract
- Unwillingness or inability to honor a binding bid
- Falsifying or misrepresenting manufacturer's specifications
- Use of abusive or obscene language or a threatening manner toward City personnel
- Involvement in any criminal offense related to public contracting
- Any offenses indicating a lack of moral, ethical, or business integrity
- Giving or offering any gift, favor, or advantage to any employee or agent of the City
- Failing to disclose a conflict of interest
- 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 (i.e. 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)

### **Notice of decision**



A copy of the decision shall be furnished immediately to the debarred or suspended person or vendor.

**Finality of decision**

A decision by the Purchasing Agent or his designee to suspend or debar shall be final and conclusive.

## **APPENDIX F. GUIDELINES FOR THE IMPLEMENTATION OF PUBLIC PRIVATE EDUCATION FACILITIES & INFRASTRUCTURE ACT OF 2002 (PPEA GUIDELINES)**

The following are the adopted guidelines for the implementation of the Public-Private Education Facilities and Infrastructure Act of 2002. These guidelines are intended to encourage competition, guide selection of projects for the City of Harrisonburg (“City”), and channel innovative solutions to public problems through a multi-phase approach.

The PPEA grants a responsible public entity the authority to create public-private partnerships for the development of a wide range of projects for public use if the entity determines that there is a need for a project that such a partnership might provide the project to the public in a more timely or cost-effective manner than standard procurement under the Virginia Public Procurement Act (“VPPA”). It may also incorporate innovative and creative concepts in project delivery, operation, maintenance or finance. The City is a responsible public entity under the PPEA and adopts these guidelines to manage its implementation of the PPEA.

Because the PPEA is intended to encourage innovative partnerships between responsible public entities and private entities, the City is able to maintain an open dialogue with private entities to discuss the need for infrastructure improvements.

Although guidance with regard to the application of the PPEA is provided in this document, it is incumbent upon all entities, both public and private, to comply with the provisions of the PPEA and other applicable laws. In the event that the applicable law is amended in a manner that conflicts with these Guidelines or concerns material matters not addressed by these Guidelines, then these Guidelines shall be interpreted in a manner to conform to the law. The City may amend these Guidelines from time to time consistent with applicable law. If these Guidelines are not amended prior to the effective date of the new law, these Guidelines nonetheless shall be interpreted in a manner to conform to the PPEA as amended.

### **1.0 SUMMARY OF THE PPEA PROCESS**

#### **1.1 Solicited vs. Unsolicited**

PPEA procurements may be structured either as “solicited” or “unsolicited.” A solicited proposal features release and advertisement of a general request for proposals or invitation for bids, for which creative responses are sought and evaluated. The requirements for any particular solicited proposal shall be as specified in the solicitation document published by the City for that proposal. An unsolicited proposal is for a public-private solution where the public body has made it known that a problem exists that it needs to solve. This is often included in a locality’s comprehensive plan, capital improvements program, or other strategic or long-term planning document.

For the purposes of these guidelines, a submission on an unsolicited basis is not an offer responding to the City’s previously published solicitation.

#### **1.2 Phases of the PPEA Process**

Regardless of whether a proposal is solicited or unsolicited, the general phases are:

1. *Conceptual (Initial) Phase.* Firms or groups of firms make proposals to the public body for how they would solve the relevant infrastructure problem. An evaluation team is formed to analyze the proposals and meet with the Offerors and advise City Council on how best to proceed. This initial phase should contain information regarding the Offeror’s qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project benefit and compatibility.
2. *Detailed Phase.* The public body may—but need not—proceed to the detailed phase with one or more Offerors. The selected Offeror(s) and the public body’s evaluation team might meet several more times

to refine ideas to meet the public body's needs. In the event that the conceptual proposal is sufficiently detailed to permit the City to proceed to negotiation of the interim or comprehensive agreement, the City may elect to dispense with the detailed phase and move directly to negotiation of an interim or comprehensive agreement.

3. *Interim Phase.* Based on the detailed phase, the public body may proceed to the interim phase with one or more Offerors. During the interim phase, design work; acquisition of real estate interests; arrangement of financing, permitting, and other contingencies; and negotiations of the comprehensive agreement, as appropriate and necessary to the project, begin in earnest. The Offeror(s) are typically paid for some of this work on a time-and-material, fixed-price, or mixed basis. In the event that contingencies have been sufficiently mitigated in the detailed phase, the City may elect to dispense with the interim phase and proceed directly to the comprehensive phase.

An Interim Agreement may or may not be elected to be used. In the instance where an Interim Agreement is elected to be used, it may allow for the Offeror to commence activities relating to the Qualifying Project (i.e. planning & development, design & engineering, environmental analysis & mitigation, survey & ascertaining availability of financing for the facility). The Interim Agreement may establish the process and timeline of negotiating the Comprehensive Agreement.

4. *Comprehensive Phase.* The comprehensive phase is when the "work" of the agreement really happens. Depending on the nature of the project, there may be two sub-phases to the comprehensive phase:
  - a. *Construction Sub-Phase.* This is when the physical work occurs.
  - b. *Operations Sub-Phase.* This is the long-term operation and maintenance involved in achieving the goals of the project.

A Comprehensive Agreement shall be executed with required information as addressed in 56-575.9. A copy of the Comprehensive Agreement must be submitted within 30 days of execution to the Auditor of Public Accounts electronically per 56-575.9 F & 56-575.18. The Comprehensive Agreement shall establish a date for commencement of activities as related to the Qualifying Project per 56-575.4 F.

Each of these phases is subject to numerous additional specific requirements. Nevertheless, because of the flexibility built into the PPEA processes, multiple considerations must be taken into account. PPEA proposals fall into several different types, and contain widely differing scopes of work.

### **1.3 Interim (Optional) & Comprehensive Agreements**

Prior to execution of any Interim or Comprehensive Agreement, City Council shall review and approve the proposed agreement. In accordance with 56-575.17 C, after negotiation but before signature, the City shall post on the Commonwealth's e-procurement website, eVA, a copy of the Interim or Comprehensive Agreement.

### **1.4 Qualifying Project**

In order for a project to come under the PPEA, it must meet the definition of a "Qualifying Project" as defined in 56-575.1. Delivery of services may be included as part of a Qualifying Project in accordance with 56-575.5. Other projects may only be deemed as Qualifying Projects by City Council per 56-575.4 C

### **1.5 Responsible Public Entity When Additional Agencies Involved**

The City most often will be the responsible public entity under any PPEA project; however, under some circumstances the City might work with other political subdivisions or agencies of the Commonwealth to form positive partnerships for the community. If the proposal is submitted to multiple public entities, they shall make a determination within 60 days of submission of the proposal which entity will be the coordinating responsible public entity.

## **2.0 GUIDELINES FOR SUBMISSION**

PPEA proposals may either be solicited (i.e., initiated by issuance of a solicitation by the City) or unsolicited (i.e., initiated by a potential private partner in response to a need expressed by the City).

The City Purchasing Agent shall serve as the point of contact to receive proposals submitted under the PPEA and to respond to inquiries regarding the PPEA or these Procedures. Except where a decision is expressly reserved to the City Council by law, the City Manager or Purchasing Agent has discretion to seek a decision or direction by City Council at any decision point in the PPEA process.

## **2.1 Solicited Proposals**

The City may issue solicitations inviting proposals from private entities to develop, finance, operate, and/or maintain projects (Virginia Code §§ 56-575.4(B), 33.2-1803(B)). In such a case, the City will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA. The timeline for advertisement and acceptance of conceptual proposals for a solicited PPEA will be set forth in the solicitation.

Under the PPEA, the City may issue a solicitation at any time it determines that the public interest may be served by solicitation of proposals. The solicitation should specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals (Virginia Code §§ 2.2-4302.1, 2.2-4302.2.). The solicitation will contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences will be held as deemed appropriate by the City.

There is no proposal review fee for processing solicited proposals.

## **2.2 Unsolicited Proposals**

The City's general policy is to reserve acceptance of unsolicited proposals for cases of truly innovative ideas, because, in other cases, traditional procurement processes are generally viewed as more likely to achieve full and open competition from the bidding community. Additionally, the City discourages unsolicited proposals for capital projects when the City has already paid for design of the project because such a proposal will duplicate work. Accordingly, the City will likely reject an unsolicited proposal that lacks truly innovative ideas or which is for a project wherein the design is substantially underway or completed (Virginia Code §56-575.3:1(B)(1)).

The detailed proposal should contain specified deliverables, namely, project benefits, scope of work and a financial plan that contains enough specificity so that the City may fairly evaluate the financial feasibility of the qualified project. The cost analysis of a proposal should not be linked solely to the financing plan, as the City may determine to finance the project through other available means.

Proposals should be prepared simply and economically, providing a concise description of the Offeror's capabilities to complete the proposed Qualifying Project and the benefits to be derived from the project by the City. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project.

For a complete list of what should be included in the unsolicited proposal, see Annex 2. Unsolicited Proposal Checklist – Conceptual Stage.

Any unsolicited proposal shall be submitted to the City by delivering one (1) hard and one (1) electronic copies (additional copies may be requested by the City at the Offeror's expense), together with any required review fees, to:

Attn: Purchasing Agent,  
409 S. Main St., Third Floor,

### **2.3 Affected Jurisdictions (56-575.6)**

Any “Affected Jurisdiction” as defined by 56-575.1 shall be notified by the Offeror within five (5) business days of submission of the proposal to the City. The Offeror shall provide at least one (1) copy of the proposal to the Affected Jurisdiction(s) by certified mail, express delivery, or hand delivery. The City reserves the right to request proof of delivery and receipt to the Affected Jurisdiction(s) from the Offeror. It is important that Affected Jurisdictions are part of the process and have input in potential Qualifying Projects. The private entity should consider the Qualifying Project’s compatibility with any Affected Jurisdiction’s comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.

Per 56-575-6 B, the Affected Jurisdiction(s) shall have sixty (60) days from receipt of the proposal to submit written comments to the City and to indicate whether the proposed Qualifying Project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, and/or (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by the City prior to entering a comprehensive agreement pursuant to 56-575.9; however, the City may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from Affected Jurisdictions. No negative inference shall be drawn from the absence of comment by an Affected Jurisdiction(s).

### **2.4 Proposal Review Fee for Unsolicited Proposals (56-575.4 D)**

The City may charge a fee to the private entity submitting an unsolicited proposal to cover the costs of processing, reviewing, and evaluating any unsolicited proposal or competing unsolicited proposal submitted under the PPEA, including but not limited to, City staff time, cost of materials or supplies expended, a fee to cover the costs of outside attorneys, consultants, and financial advisors. Any fee charged for such review of a proposal will be reasonable in comparison to the level of expertise required to review the proposal and will not be greater than the direct costs associated with evaluating the proposed qualifying project. “Direct costs” may include (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the out-of-pocket costs of attorneys, consultants, and financial advisors.

The proposal fee may cover all or part of the initial review process. The City may require a proposal fee in an amount sufficient to cover all anticipated direct costs associated with evaluating the proposal, or may require a smaller initial processing fee with an additional proposal fee to be charged should the project proceed beyond the initial review.

*(i) Initial fee:* Private Entities interested in submitting an Unsolicited Proposal are required to pay a non-negotiable Proposal Review Fee at the time of submitting the Unsolicited Proposal to the City. The Proposal Review Fee is \$25,000.00 for all Unsolicited Proposals submitted with a total proposed and conceptual value of under \$50M. For Unsolicited Proposals submitted with a total proposed and conceptual value of \$50M and greater, the Proposal Review Fee will be \$50,000.00. The form and manner of the Proposal Review Fee payment submission shall be determined and specified by the Responsible Public Entity. Offerors submitting multiple Proposals for unrelated projects will be required to submit a Proposal Review Fee for each Unsolicited Proposal submission. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the City in order for the City to proceed with its review.

*(ii) Additional fees.* Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the City reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The City will notify the private entity of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the City will continue to process, review, and evaluate the proposal.

(iii) *Reimbursement of excess fees paid.* In the event the total fees paid by the private entity exceed the City's total costs incurred in processing, reviewing, and evaluating the proposal, the City shall reimburse the difference. Otherwise, the City shall retain all fees paid.

### **3.0 REVIEW & DETERMINATION OF ACCEPTANCE OF UNSOLICITED PROPOSAL**

Upon review of the Unsolicited Conceptual Proposal, the Purchasing Agent or designee may choose to accept or not accept the unsolicited proposal for further consideration. (56-575.16)

#### **3.1 Unsolicited Proposal Accepted By City Council**

If the proposal is accepted for consideration, the Purchasing Agent or designee will notify the applicant of the decision. The Purchasing Agent or designee will coordinate a presentation of the proposal to City Council for final acceptance of proposal consideration pursuant to 56-575.16.

Upon acceptance by City Council, an Interim or Comprehensive Agreement will be executed.

#### **3.2 Unsolicited Proposal Not Accepted By City Council**

If the proposal is not accepted for consideration, the Purchasing Agent or designee will notify the private entity and City Council, with an explanation of why no further consideration is warranted and return the proposal along with any accompanying documentation. The City reserves the right to retain a copy of the proposal and any accompanying documentation for reference.

### **4.0 UNSOLICITED PROPOSAL ACCEPTED: CONCEPTUAL PROPOSAL PHASE**

#### **4.1 Public Posting of Conceptual Proposal (Notice Period) & Receipt of Competing Conceptual Proposals**

Conceptual proposals submitted in accordance with PPEA § 56-575.17 and accepted by the City shall be posted on the Commonwealth's e-procurement website eVA within 10 working days after acceptance (56-575.17, A.2). At least one copy of the proposals shall be made available for public inspection.

Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity. (56-575.17, A. 2)

The notice should state that the City (i) has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the Offeror based on the proposal, and (iv) will receive for simultaneous consideration any competing proposals that comply with the procedures adopted by the City and the PPEA. The notice also must summarize the proposed qualifying project or projects, and identify their proposed locations.

#### **4.2 Conceptual Proposal Review Evaluation**

After reviewing the original proposal and any competing proposals submitted during the notice period, the City may determine:

1. Not to proceed further with any proposal;
2. To proceed to the detailed phase of review with the original proposal;
3. To proceed to the detailed phase with a competing proposal;
4. To proceed to the detailed phase with multiple proposals; or

5. To request modifications or amendments to any proposals.

In the event that more than one proposal will be considered in the detailed phase of review, the City will consider whether the unsuccessful Offeror should be reimbursed for costs incurred in the detailed phase of review, and such reasonable costs may be assessed to the successful Offeror in the comprehensive agreement.

Discussions between the City and private entities about the need for a Qualifying Project(s) shall not limit the ability of the City to later determine to use standard procurement procedures to meet its needs. The City retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement. With respect to a PPEA proposal, if the City rejects a proposal initiated by a private entity that purports to develop specific cost savings, the City shall specify the basis for the rejection.

#### **4.3 Detailed Review**

Review at the detailed stage will be specifically tailored to the project and the proposal. Formatting suggestions for proposals at the conceptual stage are found in Annex 3. Unsolicited Proposal Checklist – Detailed Phase. In the event that the conceptual proposal is sufficiently detailed to allow negotiation of an interim or comprehensive agreement, the City may elect to dispense with the detailed phase and move on to execute a Comprehensive Agreement.

#### **4.4 Public Hearing Held**

At least 30 days prior to entering into Interim or Comprehensive Agreement, City shall hold public hearing on the proposals during the proposal review process (56-575.17, B)

### **5.0 PUBLIC INSPECTION OF PROCUREMENT RECORDS RELATED TO PPEA**

The records relating to a PPEA procurement shall be open to public inspection only after an Interim or Comprehensive Agreement is executed. The open records inspection shall not include trade secrets, etc listed above in #1 (56-575.17, D)

Cost estimates shall not be open to public inspection (56-575.17, E)

Inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records (56-575.17, F)

**ANNEX 1. SAMPLE TIMELINE FOR UNSOLICITED PPEA**

Receipt of unsolicited proposal	Day 1 (“D”)
Decision whether to accept the unsolicited proposal, whether to use competitive sealed bidding or competitive negotiation, and structure of process	D + 45
Prepare notice of unsolicited proposal, post, publish, and allow for public inspection	D + 75
Receive competing conceptual proposals	D + 135
Evaluation of conceptual proposals, determine whether to proceed to detailed phase, and what proposer(s) to invite to proceed to detailed phase	D + 195
Receive detailed phase proposals	D + 225
Evaluate detailed phase proposals, conduct interviews, and select proposer(s) for negotiation of interim or comprehensive agreement	D + 270
Negotiate interim agreement or comprehensive agreement	D + 350
Advertise proposals for public hearing and post negotiated interim or comprehensive agreement on City website	D + 400
Hold public hearing and obtain City Council approval	D + 430
Execute approved interim or comprehensive agreement	D + 460



**ANNEX 2. UNSOLICITED PROPOSAL CHECKLIST – CONCEPTUAL STAGE**

Matters to be included in the conceptual stage proposal for a PPEA include:

Submission Requirement	YES	NO	Waived
<b>Qualifications and Experience</b>			
1. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.			
2. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.			
3. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.			
4. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater.			
5. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.			
<b>Project Characteristics</b>			
6. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.			
7. Identify and fully describe any work to be performed by the City.			
8. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.			
9. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.			
10. Identify the projected positive social, economic, and environmental impacts of the project.			
11. Identify the proposed schedule for the work on the project, including the estimated time for completion.			
12. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.			

13. State assumptions related to ownership, legal liability, law enforcement, and operation of the project and the existence of any restrictions on the City's use of the project.			
14. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.			
15. List any other assumptions relied on for the project to be successful.			
16. List any contingencies that must occur for the project to be successful.			
<b>Project Financing</b>			
17. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.			
18. Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports.			
19. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.			
20. Identify the proposed risk factors and methods for dealing with these factors.			
21. Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the City's credit or revenue.			
22. Identify the amounts and the terms and conditions for any revenue sources.			
23. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.			
24. For a transportation facility, identify the risks, liabilities, and responsibilities to be transferred, assigned, or assumed by the private entity for the development and/or operation of the facility, including revenue risk and operations and maintenance.			
25. For a transportation facility, identify how the proposal will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency.			
<b>Project Benefits and Capability</b>			
26. Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall community, region, or state.			

27. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition for the project.			
28. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.			
29. Describe the anticipated significant benefits to the community, region, or state, including anticipated benefits to the economic condition of the City and whether the project is critical to attracting or maintaining competitive industries and businesses to the City or the surrounding region.			
30. Describe compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.			
31. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with this project with regard to the following types of businesses: (i) minority-owned businesses, (ii) woman-owned businesses, and (iii) small businesses.			
<b>Other</b>			
32. Written request for protection of confidential/proprietary materials, providing justification as to (i) trade secrets, (ii) financial records, or (iii) other information that would otherwise affect the financial interest or bargaining position of the City or private entity.			

*Based on City of Harrisonburg, Virginia, PPEA Guidelines and Va. Code §§ 56-575.4(A) and 33.2-1803(A).*

**Attach reasons for waivers in separate memorandum.**

**ANNEX 3. UNSOLICITED PROPOSAL CHECKLIST – DETAILED PHASE**

Detailed stage proposals and the procedures to evaluate them will differ significantly based on the type and scope of the project.

Matters to be included in the detailed stage proposal for a PPEA include:

<b>Submission Requirement</b>	<b>YES</b>	<b>NO</b>	<b>Waived</b>
1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the pro-posed project			
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings			
3. A statement and strategy setting out the plans for securing all necessary property			
4. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties			
5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both; expected useful life of facility; and estimated annual operating expenses			
6. A detailed discussion of assumptions about user fees or rates, and usage of the project or projects			
7. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications			
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans			
9. Explanation of how the proposed project would impact local development plans of each affected jurisdiction			
10. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact the City’s consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§§ 2.2-3100 et seq.) of Title 2.2			
11. Additional material and information as the City may reasonably request			

**ANNEX 4. SAMPLE PUBLIC HEARING NOTICE**

NOTICE IS HEREBY GIVEN, pursuant to § \_\_\_\_\_, Code of Virginia, 1950, as amended, that a public hearing will be held before the Harrisonburg City Council on \_\_\_\_\_, or as soon thereafter as may be heard, in the Council Chamber of the City Hall, 409 South Main Street, Harrisonburg, VA 22801, for the purposes of receiving public comment on \_\_\_\_\_ (\_\_\_\_\_) proposal(s) received by the City of Harrisonburg (City) pursuant to the authority of Public Private Education Facilities & Infrastructure Act 2002. Such proposal(s) was/were, respectively, submitted by \_\_\_\_\_, relate to \_\_\_\_\_, and are available for public inspection and review at the City's Purchasing Office, 409 South Main Street, Third Floor, Harrisonburg, VA 22801, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.). A negotiated Comprehensive Agreement concerning such/one of such proposal(s) will be posted publicly in accordance with applicable law and considered by the Harrisonburg City Council for acceptance at a later date. All interested persons are invited to appear at the said public hearing and present their views. Questions and/or comments may be referred to \_\_\_\_\_, the City's \_\_\_\_\_, who may be contacted by phone at \_\_\_\_\_ and by email at \_\_\_\_\_.

**ANNEX 5. SAMPLE COMPREHENSIVE AGREEMENT**

WHEREAS, the \_\_\_\_\_ (“\_\_\_\_\_”) grants responsible public entities the authority to create public-private partnerships for the development of a wide range of public facilities or projects; *and*

WHEREAS, the City of Harrisonburg, Virginia (“City”) is a responsible public entity and has adopted guidelines which establish procedures for the development of public facilities or projects through public-private partnerships pursuant to the \_\_\_\_\_; *and*

WHEREAS, the City received an unsolicited proposal from \_\_\_\_\_, pursuant to the \_\_\_\_\_ and the said guidelines for the \_\_\_\_\_ of a \_\_\_\_\_ (the “Project”), said proposal being expressly incorporated herein by reference; *and*

WHEREAS, given the Project is permitted under the \_\_\_\_\_, the City reviewed such proposal, determined it met the City’s needs, advertised for competing proposals, received \_\_\_\_\_ (\_\_\_\_\_) other competing proposal(s), and after reviewing such proposal(s), selected \_\_\_\_\_ proposal for negotiation of a comprehensive agreement; *and*

WHEREAS, a Comprehensive Agreement for the Project has been thoroughly negotiated between the City and \_\_\_\_\_, and the applicable requirements of § \_\_\_\_\_ of the Code of Virginia, 1950, as amended, were duly satisfied by the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HARRISONBURG:

1. That the negotiated Comprehensive Agreement between the City of Harrisonburg, Virginia (“City”) and \_\_\_\_\_ (\_\_\_\_\_), dated \_\_\_\_\_, specific to the Project, is hereby approved. Such Comprehensive Agreement is expressly incorporated herein by reference, and the City Manager is authorized and directed to execute such Comprehensive Agreement on behalf of the City, on or after \_\_\_\_\_; the Clerk of Council shall attest the same, and the City Attorney shall approve the form of the same.
2. That the Purchasing Agent is authorized and directed, on behalf of the City, under such terms and conditions as he may deem appropriate, to \_\_\_\_\_, and the like which may be related to fulfilling the purpose(s) and/or responsibilities of the said Comprehensive Agreement, and to take any and all other actions he may deem necessary and pertinent to fulfilling the purpose(s) and/or responsibilities of the said Comprehensive Agreement.
3. That this Ordinance shall be effective upon its adoption.

Adopted:

Certified: \_\_\_\_\_  
Clerk of Council

## APPENDIX G. GUIDELINES TO PROCUREMENT USING FEDERAL FUNDS

### CITY OF HARRISONBURG, VA

#### 2 CFR §§ 200.317 – 327 “UNIFORM GUIDANCE” (UG)

In addition to complying with all applicable Commonwealth of Virginia law, City Ordinances and City Procurement policies, any Procurement which involves the expenditure of federal grant funds must comply with the standards set forth in The Code of Federal Regulations, **2 CFR §§ 200.317 – 327** as well as any requirements of the grant award.

The City recognizes that federal law supersedes all state and local laws and in the event a state or local law is stricter in governance, the City will comply with the more stringent governing law. If there is any type of procedural conflict between the City’s procurement manual and any applicable federal procurement procedure, the federal procurement procedure would take precedence when utilizing federal funds.

All purchase orders and contracts that utilize federal grant funds shall include applicable clauses from **2 CFR § 200.327**.

#### 1.0 DEPARTMENTAL RESPONSIBILITIES

Departments applying for federal grant funding shall be required to read, fully understand and adhere to the grant award letter details and/or relevant circular for any specific requirements of the award. In addition, Departments shall:

1. Indicate on their purchase requisition whenever federal grant funding is being used for a purchase. A copy of the grant award document and any other guidance issued by the federal granting agency shall be provided to the Purchasing Office upon request.
2. Provide contract administration oversight and coordinate with the Purchasing Office to ensure that the Contractor performs in accordance with the terms, conditions, and Specifications of the contract or purchase order (**2 CFR § 200.318 b**).
3. Ensure employees adhere to the conflicts of interest standards of the City (**2 CFR § 200.318 c 1**).
4. Avoid acquisition of unnecessary or duplicative items (**2 CFR § 200.318 d**).
5. Perform any necessary analysis to ensure the most economical approach is used (i.e. lease vs. purchase) items (**2 CFR § 200.318 d**).
6. Be encouraged to work together with other agencies to procure common or shared goods and services (**2 CFR § 200.318 e**).
7. Use excess or surplus property in lieu of purchasing new whenever feasible to reduce project costs (**2 CFR § 200.318 f**).
8. Utilize value engineering clauses in construction contracts whenever practicable (**2 CFR § 200.318 g**).
9. Only award contracts to responsible contractors (**2 CFR § 200.318 h**).
10. Work with the Purchasing Office to ensure detailed records of the history of the procurement are maintained, including but not limited to (**2 CFR § 200.318 i**):
  - a. Rationale for the method of procurement
  - b. Selection of contract type
  - c. Contractor selection or rejection
  - d. Basis for the contract price
11. Only utilize Time and Materials type contract after a written determination that no other contract is suitable and only if the contract includes a ceiling price that the contractor exceeds at its own risk. The Using Department shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls (**2 CFR § 200.318 j**).
12. Not use geographical preferences in evaluation of a solicitation except when required by state statute or in the case of architectural and engineering services only if it is not overly restrictive (**2 CFR § 200.319 c**).

13. Work with the Purchasing Office and/or other City staff to perform a cost or price analysis for every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. Independent estimates shall be obtained for all sealed solicitations (**2 CFR § 200.324 a**).
14. Analyze and determine a fair negotiation of profit (**2 CFR § 200.324 b**).

## **2.0 PURCHASING OFFICE RESPONSIBILITIES**

The Purchasing Office shall ensure, in coordination with the Departments, that the Procurement complies with the Procurement standards set forth in the Uniform Guidance as well as any other requirements of the grant award. In addition to any other requirements stated in the aforementioned, the Purchasing Office will do the following:

1. Follow City Procurement procedures provided that the Procurement conforms to applicable Federal law and the standards set forth in Uniform Guidance.
2. Identify any conflict between the City Procurement procedures and the requirements set forth in Uniform Guidance or other requirements of the award and determine a resolution.
3. Ensure that the procurement transaction complies with the requirements of Article VI of the Virginia Public Procurement Act (Code of Virginia § 2.2-4367 et seq.) and the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2.3100 et seq.), to ensure that there is no actual conflict of interest or the appearance thereof with respect to the procurement transaction.
4. Where appropriate, enter into state and local intergovernmental agreements or inter-entity agreements for Procurement for use of common or shared goods or services to foster greater economy and efficiency.
5. Maintain records sufficient to detail the history of the Procurement.
6. Authorize use of a Time and Materials type contract only after a written determination by the Using Department
7. Be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims (**2 CFR § 200.318 k**).
8. Conduct Procurement in a manner providing full and open competition in accordance with **2 CFR § 200.319** and *avoid* situations considered to be restrictive of competition including but not limited to the following (**2 CFR § 200.319 b**):
  - a. Placing unreasonable requirements on firms in order for them to qualify to do business;
  - b. Requiring unnecessary experience and excessive bonding;
  - c. Noncompetitive pricing practices between firms or between affiliated companies;
  - d. Noncompetitive contracts to consultants that are on retainer contracts;
  - e. Organizational conflicts of interest;
  - f. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the Procurement; and
  - g. Any arbitrary action in the procurement process.
9. Conduct Procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract (**2 CFR § 200.319c**).
10. Authorize the use of only the Methods of Procurement compliant with those allowed by **2 CFR § 200.320**. See below for table of options and requirements for each method.
11. Ensure any prequalified lists include enough firms to ensure maximum open and free competition. (**2 CFR § 200.319 e**).



12. Take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible (**2 CFR § 200.321**).
13. Ensure adherence to domestic preferences for procurements per **2 CFR § 200.322**, as applicable according to the grant requirements.
14. Ensure adherence to procurement of recovered materials (**2 CFR § 200.323**).
15. Assist Departments in performing a cost or price analysis for every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications (**2 CFR § 200.324**).
16. Make Procurement documents available for review upon request of the Federal awarding agency or pass-through entity (**2 CFR § 200.325**).
17. Ensure that construction or facility improvement contracts exceeding the Federal Simplified Acquisition Threshold meet bonding requirements specified in **2 CFR § 200.326**.
18. In addition to any other provisions required by the Federal awarding agency, or pass-through entity, or the City; ensure pursuant to **2 CFR § 200.327** that contracts funded by federal grants contain the applicable provisions described in **Appendix II to 2 CFR Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards** as summarized in the table below and detailed in the subsequent corresponding lettered paragraphs.

### **3.0 METHODS OF FEDERAL PROCUREMENT UNDER UNIFORM GUIDANCE**

City departments should follow all documented City procurement and grant policies and procedures to guide the use of federal grant funding. The City is committed to always ensuring full, fair and open competition for every procurement transaction wherever practicable. See **Annex 1** for allowable procurement methodology, limitations and documentation required.

The City's Public Transportation Department maintains their own federal procurement policy manual.

#### **3.1 Professional Services**

"Professional Services" as defined in the Brooks Act, or Public Law 92-582, is defined to only include the fields of engineering and architecture. In the case of Professional Services solicitations, a qualifications-based selection process shall be utilized, including the firm's qualifications, experience and competency.

#### **3.2 Solicitation of Vendors**

The City shall directly solicit vendors to respond to sealed procurements by using the Virginia e-Procurement website, eVA. Posting in a newspaper of circulation may be elected in addition to directly soliciting vendors.

#### **3.3 Payment Discounts**

If payment discounts are to be considered in the case of a contract award, the City shall apply the discounts before taking into consideration this as part of the contract award.

#### **3.4 Contract Renewals Included in Solicitation**

If the original solicitation allowed for contract renewals and the renewal was tied to a specific index or process for price increase, then the City shall not be required to complete an additional Cost or Price Analysis at the time of renewal.

#### **3.5 Ethics & Conflicts of Interest (2 CFR § 200.318 c 1)**

The City's procurement manual contains written standards of conduct covering conflicts of interest and governing the actions of employees engaged in the selection, award & administration of contracts as well as associated disciplinary actions to be applied for violations.

#### **3.6 Determination of Responsibility (2 CFR § 200.318 h)**

Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids and shall determine whether the apparently low bidder is responsible.

The City shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Some examples of documents to request from a vendor to determine responsibility may include, but are not limited to, financial statements, qualifications and experience, professional competency certifications, etc.

In the instance an apparently low bidder is deemed non-responsible, the process in Virginia Code 2.2-4359 shall be followed.

### **3.7 Competition Exceptions (2 CFR § 200.319 b)**

Any vendor that helps develop or draft specifications, requirements, statements of work or solicitations must be excluded from competing for the procurement.

### **3.8 Procedures for Evaluation of Proposals (2 CFR § 200.320 b. 2.)**

The City shall maintain written guidelines and instructions for the evaluation of proposals which shall be provided to all proposal evaluators.

### **3.9 Price Analysis & Cost Analysis (2 CFR § 200.324 a)**

A Price Analysis requires the City to utilize market comparisons to analyze a vendor's proposed price.

A Cost Analysis requires the City to analyze and examine the cost elements of a vendor's proposal. A Cost Analysis provides for fair and reasonable price determination.

Some examples to utilize may include, but are not limited to:

- Use of previous year's price
- Consumer Price Index (CPI)
- Another locality's recent opening/bid tab
- Online vendor pricing
- City's opening/bid tab (only if 2+ bids/proposals received received)
- Hire independent estimator for construction projects
- Commercially available pricing

### **3.10 Independent Cost Estimate (2 CFR § 200.324 a)**

An independent cost estimate is required for all small purchases and sealed procurements before receiving bids or proposals. Independent cost estimates shall be documented in the procurement file before proceeding with the procurement. If a significant disparity between costs received in any bid or proposal and the documented independent cost estimates, the City shall review the documents to determine the cause of the discrepancy (i.e. significant increase in CPI pricing).

An independent cost estimate refers specifically to a separate, unbiased assessment of what a project should cost, usually done by a third party to verify the reasonableness of a vendor's price.

### **3.11 Negotiation of Profit (2 CFR § 200.324 b)**

For each contract in which there is no price competition and, in all cases where cost analysis is performed, the City shall negotiate profit as a separate element of the price for each contract. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

### **3.12 Cost Plus Percentage of Cost (2 CFR § 200.324 d)**

No contract shall be awarded on a cost-plus percentage of cost and/or percentage of construction cost method of contracting.

### **3.13 Federal Awarding Agency or Pass-Through Entity Review (2 CFR § 200.325)**

Prior to soliciting vendors, the City shall make available to the Federal awarding agency for review all technical specifications and procurement documents (where applicable). Other situations where a pre-procurement review may be required are further defined in 2 CFR § 200.325 b.

The Federal awarding agency may determine the City's procurement systems comply with the standards of 2 CFR § 200.325 and may elect to waive the pre-procurement review. The City may request its procurement system be reviewed by the Federal awarding agency to determine whether its system meets these standards in order for its system to be certified. The City may self-certify its procurement system.

### **3.14 Bonding requirements (2 CFR § 200.326)**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency may accept City bonding policy & requirements. At a minimum, the City must require bid guarantee equivalent of 5% of the bid price and performance and payment bonds in the amount of 100% of contract price.

The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **3.15 Additional Contract Provisions (2 CFR § 200.327)**

All City contracts utilizing federal funds shall include the applicable contract provisions described in [Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards](#).

## ANNEX 1. METHODS OF FEDERAL PROCUREMENT UNDER UNIFORM GUIDANCE

Method	\$ Value	Documented Cost/Price Analysis Required?	Procedures Required & Additional Notes
<b>Micro Purchase</b> 2 CFR § 200.320 a	≤ \$10k	No	<ul style="list-style-type: none"> <li>• Single quote required</li> <li>• Show equitable distribution of purchases if making multiple repetitive purchases</li> </ul>
<b>Small Purchase Procedures</b> 2 CFR § 200.320 a	>10k - \$100k OR >10k - \$80k	No	<ul style="list-style-type: none"> <li>• 3 written quotes on company letterhead</li> </ul>
<b>Sealed Bid/ Proposal Non-Professional Services &amp; Goods</b> 2 CFR § 200.320 b <i>Simplified Acquisition Threshold</i>	>\$100k	Yes	<ul style="list-style-type: none"> <li>• Public advertising, public bid opening, award of contract, and identification of evaluation factors (if applicable) per City procurement policy &amp; procedures</li> <li>• Sealed bid must be firm fixed price contract based on lump sum or unit price</li> <li>• Must solicit from an adequate number of Offerors for RFPs</li> <li>• Independent cost estimate required</li> <li>• Must perform a cost or price analysis, including contract modifications</li> </ul>
<b>Sealed Bid/ Proposal Professional Services</b> 2 CFR § 200.320 b <i>Simplified Acquisition Threshold</i>	>\$80k	Yes	<ul style="list-style-type: none"> <li>• Public advertising, public bid opening, award of contract, and identification of evaluation factors (if applicable) per City procurement policy &amp; procedures</li> <li>• Sealed bid must be firm fixed price contract based on lump sum or unit price</li> <li>• Must solicit from an adequate number of Offerors for RFPs</li> <li>• Independent cost estimate required</li> <li>• Must perform a cost or price analysis, including contract modifications</li> </ul>
<b>Sole Source / Non-Competitive Procurement</b> <i>Sole provider (no competition) or emergency (only if it does not fall under any other method)</i> 2 CFR § 200.320 b	Any	Yes	<ul style="list-style-type: none"> <li>• Only allowed under one of the following circumstances:                             <ul style="list-style-type: none"> <li>○ Purchase value does not exceed the dollar value for Micro Purchase threshold</li> <li>○ Item is available only from a single source</li> <li>○ The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation</li> <li>○ The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity</li> </ul> </li> </ul>

			<ul style="list-style-type: none"> <li>○ After solicitations of a number of sources, competition is determined inadequate</li> <li>● Includes non-competitive change orders (i.e. add module to software purchase that was not in original RFP scope)</li> <li>● Must negotiate profit as a separate element of the price for each contract</li> </ul>
<b>Government to Government</b>	Any	No	<ul style="list-style-type: none"> <li>● In the event of procurement with a federal agency then <i>Federal Acquisition Regulations</i> (FAR) may take precedence.</li> </ul>
<b>Time &amp; Materials</b> 200.318(J)	Any		<ul style="list-style-type: none"> <li>● Before use, must include written determination that no other contract type is suitable</li> <li>● Considered risky; no incentive; discouraged use</li> <li>● Must include max. ceiling price (no indefinite delivery or indefinite quantity contracts)</li> </ul>
<b>Joint Procurement</b> with 1+ Other Government Agency	Any	<i>Depends on Method of Procurement Used</i>	<i>Depends on Method of Procurement Used</i>
<b>Cooperative Procurement</b>	N/A	N/A	<i>Not an authorized method of procurement under Uniform Guidance</i>