

COMMISSION ADOPTED POLICY
Procurement Policy



Adopted: December 16, 2014

Revised: June 26, 2018
Effective: July 1, 2018

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1.0 Purpose and Need

All procurement shall be in accordance with the Code of Virginia §2.2-4300, the Virginia Public Procurement Act, as supplemented herein.

2.0 Guiding Principles

1. HRSD is committed to competitive procurement practices that are accountable to our ratepayers and the public, ethical, impartial, professional, transparent and fully in accordance with applicable law.
2. The Chief of Procurement is responsible for the purchase, rent, lease, or otherwise acquiring goods, professional and non-professional services, and certain construction services. In addition, the Chief of Procurement is responsible for control and disposal of excess, obsolete, and salvageable materials and equipment.

The Chief of Procurement shall establish procedures consistent with this policy and may designate other HRSD staff to act on his/her behalf.

3. The Director of Engineering is responsible for procurement of professional and non-professional services related to the study, design, construction, real estate and property acquisition associated with capital improvement projects or facility projects.

The Director of Engineering shall establish procedures consistent with this policy and may designate other HRSD staff to act on his/her behalf.

4. Except for small purchases (less than \$10,000) and certain easement acquisitions, no employee has the authority to enter into any purchase agreement or contract except the Chief of Procurement or the Director of Engineering or such other employee as may be designated by the General Manager.
5. Fair market value shall be the basis of all real estate acquisitions with appropriate compensation for related restoration and/or inconvenience. Additional costs, in accordance with applicable state law, shall be included as required in procurement through eminent domain procedures.

3.0 Definitions

Agreement/Contract. An understanding, in writing, between two or more competent parties, under which one party agrees to certain performance as defined in the agreement and the second party agrees to compensation for the performance rendered in accordance with the conditions of the agreement.

Fair Market Value. The price for an item upon which purchaser and supplier agree in an open market when both are fully acquainted with market conditions.

Total Value. Cost of all related procurement actions, even across fiscal years, that are known at the time of the procurement action including delivery, assembly, start-up, warranty, etc. Each procurement action must be able to meet the business objective individually, without the need for additional procurement actions.

4.0 Procedures

1. Generally competition shall be sought for all procurement with the following exceptions:
 - a. Purchase of goods or services other than professional services where the Total Value will not exceed \$10,000. Related purchases shall not be divided into separate actions to meet this threshold.
 - b. Sole Source – Purchase of goods or services where there is only one source practicably available. The requesting department shall provide a written determination supporting the sole source to the Chief of Procurement. The HRSD Commission must approve all sole sources above \$10,000 for specific vendor and specific application.
 - c. Emergency – Where emergency actions are required to protect public safety, public health, HRSD employees or property or the environment, a contract can be awarded without competition upon a written emergency declaration, approved by General Manager. Competition should be sought if possible with emergency contracts even if typical procurement procedures cannot be fully followed.

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- d. Real Property – Where acquisition or lease is required in support of HRSD facilities.
2. In accordance with § 2.2-4303 G. competitive sealed bids or competitive negotiation is not required for purchase of goods and services other than professional services where the **total value of the procurement will not exceed \$10,000**. The following procedure shall be followed:
 - a. A minimum of one quote is required. When possible, multiple quotes should be obtained. Use of small businesses and businesses owned by women, minorities, and service disabled veterans is encouraged for all procurement actions whenever possible.
 - b. Purchase is normally made using an HRSD ProCard.
 - c. Purchase may be made by any HRSD employee granted purchasing authority by their department director.
 - d. Basis of award shall be a determination that the stated need will be met and the price is fair and reasonable.
3. In accordance with § 2.2-4303 G. competitive sealed bids or competitive negotiation is not required for purchase of goods and services other than professional services where **the total value of the procurement will be greater than \$10,000 and not to exceed \$100,000**. The following procedure shall be followed:
 - a. Purchases shall be initiated by the submission of a requisition to Procurement or Engineering.
 - b. An unsealed (informal) quote shall be solicited by Procurement or Engineering from three sources in response to an Invitation for Bid (IFB) or Request for Proposal (RFP).
 - c. Basis of award shall be lowest responsive and responsible bidder, offeror or best value as determined by criteria included in the IFB or RFP.

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4. In accordance with § 2.2-4303 G, competitive negotiation is not required for purchase of **professional services where the total value of the procurement will not exceed \$80,000**. The following procedure shall be followed:
 - a. Purchases shall be initiated by the submission of a requisition to Procurement or Engineering.
 - b. An unsealed (informal) quote shall be solicited by Procurement or Engineering from three sources in response to an IFB or RFP.
 - c. Basis of award shall be lowest responsive and responsible offeror or best value as determined by criteria included in the IFB or RFP.
5. In accordance with §2.2-4308, design-build or construction management contracts shall be in accordance with [Appendix A](#) of this policy.
6. In accordance with §2.2-4310 B, HRSD promotes the use of small businesses and businesses owned by women, minorities, and service disabled veterans in procurement transactions in accordance with [Appendix B](#) of this policy.
7. In accordance with §2.2-4316, comments concerning specifications or other provisions in IFB or RFP must be submitted and received in accordance with the procedures specified in the IFB or RFP for comment submittal.
8. In accordance with §2.2-4318, if the bid from the lowest responsive, responsible bidder exceeds available funds, negotiations may be entered with the apparent low bidder to obtain a contract price within available funds in accordance with [Appendix C](#) of this policy.
9. In accordance with §2.2-4321, contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time in accordance with [Appendix D](#) of this policy.
10. In accordance with §2.2-4330 C, bids may be withdrawn due to error for other than construction contracts in accordance with [Appendix E](#) of this policy.

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11. In accordance with §56-575.3:1, a project under the Public-Private Education Facilities and Infrastructure Act shall be in accordance with [Appendix F](#) of this policy.
12. Acquisition of easements (temporary or permanent) may be made by the Director of Engineering (or his/her designee) up to \$25,000.

5.0 **Approvals**

The following actions specifically require the approval of the HRSD Commission before executing unless executed under an approved emergency declaration:

1. **Agreements.** Contracts or purchase orders where the total value is projected to exceed \$200,000.
2. **Sole Source Procurement.** Initial sole source determination for specific vendor, items(s) and location(s) where the Total Value is projected to exceed \$10,000 (§2.2-4303E).
3. **Modifications to Agreements (Task Orders).** Where the Total Value is projected to exceed **\$200,000**.
4. **Cooperative Procurement.** Where the Total Value of HRSD's participation is projected to exceed **\$200,000** (§2.2-4304).
5. **Change Orders (§2.2-4309).** Where the Total Value exceeds **25 percent** of the original contract award or **\$50,000** whichever is greater.
6. **Rejection of all Bids.** Where the Total Value is projected to exceed **\$200,000** (§2.2-4319).
7. **Design-Build or Construction Management Agreements.** (§2.2-4306).
8. **Debarment.** (§2.2-4321).
9. **Determination of Non-responsibility.** (§2.2-4359).

10. **Real Property**

- a. Acquisition by condemnation in accordance with the Code of Virginia §15.2
- b. Acquisitions by purchase, lease, grant or conveyance
- c. Sale, lease or permanent encumbrance of HRSD property
- d. Easements or Right of Entry Agreements (temporary or permanent) with value in excess of \$25,000

11. **Intellectual Property.** All Intellectual Property Rights Agreements and Royalty Distribution Agreements.

12. **Agreements with other Entities.** Agreements which include any of the following criteria:

- a. Design or construction of infrastructure with a constructed value in excess of \$50,000
- b. Provides use of real property for temporary (greater than one year) or permanent use
- c. Provide use of personal property valued at more than \$50,000 for temporary (greater than one year) or permanent use
- d. Provides a service or other benefit that spans multiple years
- e. Obligates significant financial resources (\$200,000 or more)
- f. Obligates significant personnel resources (one full time employee or more)
- g. Is or has the potential to be politically significant

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6.0 **Ethics**

HRSD employees involved in the procurement process are expected to maintain high ethical standards. In addition to HRSD's Standards of Conduct and HRSD's Ethics Policy, the following State laws apply:

1. Virginia Public Procurement Act (VPPA); (§2.2-4300)
2. Ethics in Public Contracting (§2.2-4367)
3. Virginia Governmental Frauds Act (§18.2-498.1) and Articles 2 (§18.2-438) and 3 (§18.2-446) of Chapter 10 of Title 18.2.
4. State and Local Government Conflict of Interests Act (§ 2.2-3100)

7.0 **Responsibility and Authority**

This policy was developed in accordance with HRSD's Enabling Act and the Code of Virginia. Any changes this policy shall be made in writing and approved by the HRSD Commission.

HRSD's General Manager and the Chief of Procurement are the designated administrators of this policy. The Chief of Procurement shall have the day-to-day responsibility and authority for implementing the provisions of this policy.

Approved:

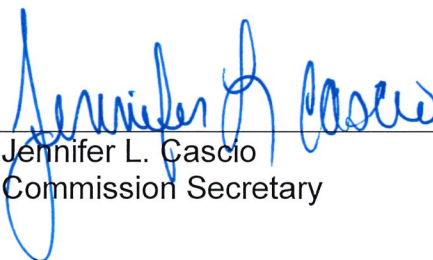


Frédéric N. Elofson
Commission Chair



Date

Attest:



Jennifer L. Cascio
Commission Secretary



Date

COMMISSION ADOPTED POLICY
Procurement Policy – Appendix A
Design-Build and Construction Management Contracting



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1.0 **Purpose and Need**

Design-build and construction management contracting methods provide opportunity for HRSD to contract for specific projects where traditional design-bid-build may not be in the best interest of HRSD. These non-traditional procurement methods shall only be used in accordance with this policy.

2.0 **Procedures**

While the competitive sealed bid process remains the preferred method of construction procurement for HRSD, a contract for construction on a design-build fixed price or on a construction management basis may be used, provided a written determination made in advance is approved by the Commission which sets forth that competitive sealed bidding is either not practicable or not fiscally advantageous.

Criteria for Use of Design-Build Contracts – Design-Build contracts are intended to minimize the project risk and to reduce the delivery schedule by overlapping the design phase and construction phase of a project.

Criteria for Use of Construction Management Contracts – Construction Management contracts may be approved for use on projects where fast tracking of construction is needed to meet program requirements or value engineering and/or constructability analyses concurrent with design are required. The use of Construction Management shall be limited to projects with a construction value that is in excess of \$10,000,000. With proper justification for small complex projects, the Commission may grant a waiver of this requirement and the written approval maintained in the procurement file.

2.1. **Procedure for Design-Build or Construction Management Contracts**

2.1.1. **General.** The Director of Engineering shall prepare a report documenting in writing that for a specific construction project; (i) a Design-Build or Construction Management contract is more advantageous than a competitive sealed bid construction contract; (ii) why there is a benefit to HRSD by using a Design-Build or Construction Management contract; and (iii) why competitive sealed bidding is not practical or fiscally advantageous; and (iv) these justifications shall be stated in the Request for Qualifications. This report shall be submitted to the General Manager for approval.

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- 2.1.2. Design-Build construction projects involve retaining a party that provides both professional design and construction services. Construction Management projects involve retaining a firm to coordinate and administer contracts for construction services and may also include, if provided in the contract, the direct furnishing of construction services. Design-Build services shall be procured using a two-step competitive negotiation process which shall consider both technical capabilities and price for the services required for the project. Construction Management services shall be awarded and initiated no later than the completion of the Schematic Phase of design.
- 2.1.3. **Design-Build and Construction Management Firms.** The Director of Engineering shall obtain qualified Design-Build and Construction Management firms to provide needed services. A list of firms shall be accumulated through solicitation and other methods. The list of firms shall include small, women-owned, minority-owned or service disabled veteran-owned businesses
- 2.1.4. **Request for Qualification (RFQ).** A RFQ shall be prepared for each project and approved by the Director of Engineering. The RFQ shall state the criteria and goals of the project, the time and place for receipt of qualifications, the factors to be used in evaluating qualifications, the contractual terms and conditions, any unique capabilities or qualifications required of the proposer and any project specific requirements for the particular project. The RFQ shall normally consist of the following sections unless modified by the Director of Engineering:
- Cover Sheet
 - I. Introduction and/or Background
 - II. Instructions to Proposers
 - III. Scope of Work
 - IV. Tentative Procurement Schedule
 - V. Attachments
- 2.1.5. **Public Notice.** A Public Notice of the RFQ shall be posted, at least ten (10) business days prior to receipt of proposals for design-build or construction management services, , in a newspaper or newspapers of general circulation in the area in which the contract is to be performed and on the HRSD Internet website. For Construction management services, the Public Notice shall also be published on the Commonwealth of Virginia’s central electronic procurement website, known as eVA, at least thirty (30) days prior to the date set for receipt of qualification proposals. The Public Notice shall be sent directly to firms that have requested to be notified of work and may be sent to

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those firms believed to be qualified to perform the work. The Public Notice shall also be sent directly to organizations promoting small, women-owned, minority-owned and service disabled veteran-owned businesses and to similar businesses that have requested to be notified and/or are believed to be qualified to perform the work. An affidavit shall be placed in the project file certifying the advertising date and method.

- 2.1.6. **Contacts by Proposers.** Proposers may contact only the HRSD representative designated in the RFQ related to questions pertaining to the project. Responses to these questions which are relevant to the work will be documented and addenda will be issued to all proposers who have requested a copy of the RFQ.
- 2.1.7. **Selection Committee.** A Selection Committee shall evaluate the Statements of Qualifications (SOQ) and short-list proposers for further consideration. The Selection Committee shall consist of at least three (3) qualified HRSD staff members appointed by the Director of Engineering. The members of the Selection Committee shall have experience relevant to the project, with backgrounds in such areas as design, construction, contracts, project management and operations/maintenance.
- 2.1.8. **Statements of Qualifications.** The Selection Committee shall request a SOQ from any firm desiring consideration. The SOQ shall provide the information requested in the RFQ. Firms submitting a SOQ shall provide the electronic document by the date and time listed in the RFQ.
- 2.1.9. **Pre-Proposal Conference.** A pre-proposal conference may be held for complex or large projects to ensure clarity, review potential problems with the Scope of Work and answer questions related to the project. Attendance at the pre-proposal conference may be optional or mandatory as specified in the RFQ. If attendance is mandatory, SOQ's shall be considered only from those firms who attended the conference and met the requirements listed in the RFQ related to the pre-proposal conference.
- 2.1.10. **Opening of Statement of Qualifications.** The Director of Engineering or his/her designee shall document receipt of the SOQ's at the specified time and place. SOQ's not received at the specified time will not be considered.
- 2.1.11. **Changes to the RFQ.** The Selection Committee shall determine whether any changes to the RFQ should be made to clarify errors, omissions or ambiguities or to incorporate project improvements or additional details. If such changes are required, an addendum shall be issued.

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- 2.1.12. **Evaluation of Statement of Qualifications (Short-List Step).** The Selection Committee shall evaluate each SOQ. The Selection Committee may waive minor informalities in a SOQ but shall eliminate from further consideration any proposer determined to be non-responsive or deemed not fully qualified, responsible or suitable. Prior construction management or design-build experience shall not be required as a prerequisite for consideration or award of a contract. However, in the selection of a contractor, the selection committee may consider the experience of each contractor on comparable projects. The Selection Committee shall then select (short-list) two (2) or more responsive proposers based on the SOQ submitted in response to the RFQ. The Selection Committee either individually or as a group at any point in the evaluation may contact some or all references recommended by the proposer. The Selection Committee may use the information gained during the reference checks in the evaluation. The Selection Committee may ask questions or request additional information from any proposer.
- 2.1.13. **Request for Proposals (RFP).** A RFP shall be prepared for each project and approved by the Director of Engineering. The RFP shall provide further details not described in the RFQ and shall include the factors to be used in evaluating each proposal. For Design-Build contracts, the RFP shall include details regarding the project quality and performance requirements, conceptual design documents and information regarding the proposer's Construction Cost Limit (CCL) to determine the best value in response to the RFP. For Construction Management contracts, the RFP shall define the allowable level of direct construction involvement by the proposer, describe details regarding the proposer's CCL and define the pre-design, design, bid and construction phase services required. No more than ten (10) percent of the construction work, as measured by the cost of the work, shall be performed by the construction manager with its own forces. The Construction Management firm will procure the subcontractors services by publicly advertising and competitive sealed bidding to the maximum extent practicable. Documentation shall be placed in the file detailing the reasons any work is not procured by publicly advertised competitive sealed bidding. The RFP process shall include a separate technical proposal evaluation stage and a price proposal evaluation stage.
- 2.1.14. **Technical Proposals.** The Selection Committee shall initially request a technical proposal from those firms that were short-listed. The technical proposals shall provide the information requested in the RFP. Firms

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submitting a technical proposal shall provide the electronic document by the date and time listed in the RFP.

- 2.1.15. **Opening of Technical Proposals.** The Director of Engineering or his/her designee shall document receipt of the technical proposals at the specified time and place. Technical proposals not received at the specified time will not be considered.
- 2.1.16. **Preliminary Evaluation of Technical Proposals.** The Selection Committee shall review each technical proposal to first determine whether the proposals are responsive to the requirements of the RFP. The Selection Committee shall then evaluate and document (score) the technical proposal from the short-listed proposers based on an evaluation plan specified in the RFP. The Selection Committee shall keep confidential a preliminary ranking of the technical proposals. The Selection Committee may cancel or reject any and all technical proposals. The Director of Engineering shall prepare a report documenting the reasons for the cancellation or rejection. The Selection Committee may waive informalities in the technical proposals.
- 2.1.17. **Conferences During Preliminary Evaluation.** The Selection Committee may hold a question and answer conference with any or all proposers to clarify or verify the contents of a technical proposal. The conference may be in person or by telephone. Each proposer shall be allotted the same fixed amount of time for any conference held as part of the selection. Proposers shall be encouraged to elaborate on their qualifications, proposed services, relevant experience and details of the technical proposal for the project. Proprietary information from competing proposers shall not be disclosed to the public or to competitors.
- 2.1.18. **Changes to the RFP.** Based upon a review of the technical proposal and discussions with each short-listed proposer, the Selection Committee shall determine whether any changes to the RFP should be made to clarify errors, omissions or ambiguities or to incorporate project improvements or additional details. If such changes are required, an addendum shall be provided to each proposer. If addenda are issued by the Selection Committee, proposers will be given an opportunity to revise their technical proposals.
- 2.1.19. **Final Evaluation of Technical Proposals.** At the conclusion of the technical proposal evaluation stage, the Selection Committee will meet to discuss each proposer. After the discussion is completed, each team member will be given an opportunity to adjust their score. The Selection Committee shall document and keep confidential a final ranking of the

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technical proposals. This documentation shall occur before any price proposals are received by HRSD.

- 2.1.20. **Price Proposals.** The Selection Committee shall request a price proposal from those firms short-listed during the price proposal evaluation stage. The price proposal shall provide the information requested in the RFP including any and all addendum. The price proposal will include a CCL based on the project scope of work and other information provided in the RFP and any subsequent changes to the RFP. Firms submitting a price proposal shall provide the requested information by the date and time listed in the RFP. For Construction Management contracts, price shall be a critical basis for award of the contract. Unless approved by the commission in advance of issuance of the Public Notice, the price component for selection of a Construction Management firm shall be at least fifty (50) percent of the weighted score.
- 2.1.21. **Opening of Price Proposals.** The Director of Engineering or his/her designee shall open and document receipt of the price proposals at the specified time and place. Price proposals not received at the specified time will not be considered.
- 2.1.22. **Evaluation of Price Proposals.** The Selection Committee shall review each price proposal to determine whether the proposals are responsive to the requirements of the RFP and any and all addenda. The Selection Committee shall document and keep confidential the results of each price proposal.
- 2.1.23. **Final Evaluation and Recommendation to Award a Contract.** The Selection Committee shall tabulate the technical and price proposal scores as listed in the RFP to determine the recommended firm. The Selection Committee shall prepare a report documenting the process, summarizing the results and recommending the design-build or construction management firm for award to the Director of Engineering. Upon concurrence with the recommendation of the Selection Committee, the Director of Engineering or his/her designee shall negotiate a contract with the recommended firm. Otherwise, the Director of Engineering or his/her designee shall formally terminate negotiations with the proposer ranked first and shall negotiate with the proposer ranked second, and so on, until a satisfactory agreement can be negotiated. The Director of Engineering shall inform the General Manager of the results of the negotiation. The General Manager shall receive Commission approval of award to the recommended firm. The Commission may cancel or reject any and all proposals.

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2.1.24. **Award of Design-Build or Construction Management Contract.** Upon approval by the Commission, the Director of Engineering shall forward all contract, bond and insurance forms to the selected firm for signature. The contract shall be prepared using the standard HRSD format approved by the Director of Engineering and reviewed by the HRSD attorney.

2.1.25. **Inspection of Proposals.** Any proposer may inspect the proposal documents after opening of the price proposals but prior to award of the contract. All records, subject to public disclosure under the Virginia Freedom of Information Act, shall be open to public inspection only after award of the contract.

2.1.26. **Emergency Procurement.** A contract for design-build or construction management services may be negotiated and awarded without competitive negotiation if the General Manager determines there is an emergency. The procurement of these services will be made using as much competition as practical under the circumstances. The Director of Engineering shall submit a report documenting the basis of the emergency and the selection of the particular firm. The Director of Engineering shall prepare a notice stating the contract is being awarded on an emergency basis and identifying what is being procured, the firm selected and the date the contract was or will be awarded. The notice shall be placed on the HRSD Internet website on the day HRSD awards or announces its decision to award, whichever comes first or as soon thereafter as practical.

2.2. **Procedure for Changes to Design-Build or Construction Management Contracts**

All changes to the Contract shall be by a formal Change Order as mutually agreed to by the firm and HRSD. The method of making such changes and any limits shall be in accordance with the Contract Documents. Change Orders shall be negotiated by HRSD staff and such actions reported to the Director of Engineering with recommendations for approval. Change Orders exceeding \$50,000 or 25% of the original contract amount, whichever is greater, shall be submitted to the Commission for approval prior to authorization. All Change Orders shall be executed by the firm and the Director of Engineering or his/her designee.

Extra work by the firm may be authorized by a written Work Change Directive within limits of authorization provided above with later inclusion in the Contract by formal Change Order.

In case of disputes as to the value of extra work, HRSD, within the limits of authorization provided above, may issue a directive in accordance with the Contract Documents to proceed with the work so as to not impede the progress and cause unnecessary delay and expense to the parties involved. The directive shall acknowledge the dispute by the firm, and the dispute shall be resolved at a later date.

2.3. Procedure for Progress Payments

Progress payments shall be paid in accordance with the Contract Documents. Requests for progress payments shall be prepared by the firm and approved by HRSD staff and the Director of Engineering. Requests for progress payments shall generally be submitted to HRSD on a monthly basis with payments by HRSD to the firm within the period of time specified in the Contract Documents.

Progress payments shall be based on unit prices, schedules of values, and other agreed-upon specified basis. Each progress payment shall represent the amount of completed work and materials on site to be incorporated into the work as accepted and approved, less the specified retainage and less previous payments. Payment for materials on site shall be in accordance with the Contract Documents.

Progress payments may be reduced or withheld in accordance with the Contract Documents. Retainage may be reduced or increased in accordance with the Contract Documents.

2.4. Procedure for Final Payments

Final acceptance, payment, and release of claims shall be in accordance with the Contract Documents. Requests for final payments shall be prepared by the firm, certified and approved by HRSD staff and approved by the Director of Engineering.

3.0 Responsibility and Authority

Under the direction of the Director of Engineering, shall be responsible for overall development, management and implementation of this policy.

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Participation of SWaM



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1.0 Purpose and Need

This policy is in accordance with §2.2-4310 B to facilitate the participation of small businesses and businesses owned by women, minorities and service disabled veterans in HRSD procurement transactions.

HRSD is committed to ensuring fair consideration of all contractors and suppliers in its day-to-day purchase or lease of goods and services. HRSD recognizes that working with a wide range of contractors and suppliers provides an open, competitive and diverse business environment.

HRSD recognizes its responsibilities to the communities that it serves and the society in which it conducts business. The inclusion of small, women-owned, minority-owned and service disabled veteran-owned (SWaM) businesses must be a function of our normal, day-to-day purchasing activities. No potential contractor or supplier will be precluded from consideration on the basis of race, religion, color, sex, national origin, age, or disability (Code of Virginia, § 2.2-4310A).

Therefore, HRSD's policy is to actively solicit and encourage SWaM businesses to participate in procurement opportunities through equally fair and open competition for all contracts. Every employee who is involved in procurement decisions for the purchase of goods or services is charged with making giving every consideration to using qualified SWaM businesses in a manner that is consistent with state and federal laws and regulations. Further, each of HRSD's contractors and suppliers are encouraged to provide for the participation of SWaM businesses through partnerships, joint ventures, subcontracts and other contractual opportunities.

HRSD shall not accept a bad business deal or a lower quality contractor, supplier, product or service in order to achieve greater participation of SWaM businesses in HRSD procurement.

As an integral part of the company-wide culture, HRSD does not discriminate because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by law. Additionally, in procuring goods or services or in making disbursements, HRSD shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except, in accord with Virginia Code §2.2-4343.1(F), that no funds shall be expended on contracts for sectarian worship, instruction, or proselytizing, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

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2.0 Procedures

The Procurement Division shall:

1. Ensure SWaM businesses have the maximum practicable opportunity in procurement and contractual activities
2. Apprise potential SWaM businesses of HRSD's procurement activities
3. Identify SWaM businesses for HRSD solicitations
4. Promote the use of SWaM contractors through formal and informal training classes
5. Maintain diversity procurement data of contracts and subcontracts awarded to SWaM businesses
6. Monitor, evaluate, and report on the utilization of SWaM contractors at least annually to the HRSD Commission
7. Include qualified businesses selected from the HRSD centralized contractor/supplier database, the Virginia Department of Small Business and Supplier Diversity (Code of Virginia, § 2.2-4310), and/or the Carolinas-Virginia Minority Supplier Development Council consistent with this policy whenever soliciting quotes or qualifications

All employees with purchasing responsibility or who are involved in procurement decisions for goods and services shall give every consideration to using qualified SWaM contractors/suppliers and consult with the Procurement Division as required to identify SWaM contractors/suppliers.

Certified Minority Business Enterprise (MBE). No contractor/supplier shall be considered a Small Business Enterprise, a Minority-Owned Business Enterprise, a Women-Owned Business Enterprise or a Service Disabled Veteran-Owned Business Enterprise unless certified as such by the Virginia Department of Small Business and Supplier Diversity or Carolinas-Virginia Minority Supplier Development Council.

3.0 Responsibility and Authority

Under the direction of the Director of Finance, the Chief of Procurement, as well as the Director of Engineering, shall be responsible for overall development, management and implementation of this policy.

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Procurement Policy – Appendix C
Negotiation with Lowest Responsible Bidder



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1.0 **Purpose and Need**

If the bid from the lowest responsive, responsible bidder exceeds available funds, HRSD may negotiate with the apparent low bidder to obtain a contract price within available funds in accordance with this policy.

2.0 **Procedures**

Unless all bids are cancelled or rejected, HRSD reserves the right to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available. The term “available funds” shall mean those funds which were budgeted by the requested HRSD department for the contract prior to the issuance of the written Invitation for Bids. The procurement record in the Procurement Division shall include documentation of the “available funds” prior to the issuance of the IFB.

Negotiations with the lowest responsive, responsible bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed.

HRSD shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that HRSD wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by HRSD and the lowest responsive, responsible bidder.

If a mutually acceptable price cannot be negotiated, all bids shall be rejected. A new IFB cannot be issued without HRSD modifying the scope or specification to match the available funds. Shopping for bids shall not be permitted.

3.0 **Responsibility and Authority**

Under the direction of the Director of Finance, the Chief of Procurement, as well as the Director of Engineering, shall be responsible for overall development, management and implementation of this policy.

1.0 Purpose and Need

To ensure HRSD receives the best value with all procurement actions, contractors that fail to meet HRSD standards may be debarred and prevented from being awarded work from HRSD for a specified period of time. Debarment is a serious action and shall only be pursued when continued use of a particular contractor threatens HRSD's ability to meet regulatory requirements, requires inordinate levels of inspection, administration or supervision, poses a legal, financial or reputational risk to HRSD or a locality partner or the contractor has previously demonstrated the inability to meet HRSD schedules or quality requirements, provides poor references or is in active litigation related to HRSD work or similar projects.

2.0 Procedures

The Chief of Procurement or Director of Engineering shall regularly evaluate prospective contractors to determine eligibility for contracting for particular types of supplies, services, insurance or construction.

If a determination is made that a prospective contractor should not be eligible, the Chief of Procurement or Director of Engineering shall submit a written report notifying the contractor of the proposed debarment and specified period of time, disclosing factual support for the contractor's unsatisfactory performance and/or other reasons for the proposed debarment, and allowing the contractor an opportunity to inspect any documents relating to the proposed debarment within five (5) business days after receipt of notification and to submit rebuttal information within ten (10) business days after receipt of notification.

The Chief of Procurement or Director of Engineering shall revise the report as appropriate within five (5) business days after receipt of rebuttal information and submit the revised report to the contractor and the General Manager.

The General Manager shall submit the revised report and recommended action to the HRSD attorney for review and to the Commission for action. The Chief of Procurement or Director of Engineering shall notify the contractor of the Commission's final determination including, if debarred, the basis of the debarment and the term of the debarment.

3.0 Responsibility and Authority

Under the direction of the Director of Finance, the Chief of Procurement, as well as the Director of Engineering, shall be responsible for overall development, management and implementation of this policy.

COMMISSION ADOPTED POLICY
Procurement Policy – Appendix E
Withdrawal of Bids



Adopted: December 16, 2014

Revised: N/A

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1.0 **Purpose and Need**

Occasionally a bidder requests to withdraw a bid due to a mistake. It is not in HRSD's best interest to force a bidder to perform if the bidder actually made an error in their bid preparation. However, in a competitive bid environment, bidders cannot be allowed to withdraw bids without just cause as this practice can undermine the integrity of the bidding process. HRSD shall follow these procedures to protect the integrity of the bidding process when considering a request to withdraw a bid.

2.0 **Procedures**

For bids on construction projects, withdrawal procedures shall be in accordance with §2.2-4330 where the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

For bids other than construction bids, the same withdrawal procedures shall be followed.

The Chief of Procurement or the Director of Engineering will review the request to withdraw and make a determination based on the evidence provided in accordance with §2.2-4330.

3.0 **Responsibility and Authority**

Under the direction of the Director of Finance, the Chief of Procurement, as well as the Director of Engineering, shall be responsible for overall development, management and implementation of this policy.

1.0 Purpose and Need

This policy is intended to encourage competition and guide the procurement of projects under Public-Private Education Facilities and Infrastructure Act.

2.0 Procedures

General. Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with HRSD. Prior to entering a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. Any interim or comprehensive agreement shall define the rights and obligations of HRSD and the private entity with regard to the project. The interim and comprehensive agreements and any amendments thereto must be approved by the HRSD Commission.

Interim Agreement Terms. Prior to or in connection with the negotiation of the comprehensive agreement, HRSD may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. The scope of an interim agreement may include, but is not limited to:

1. Project planning and development;
2. Design and engineering;
3. Environmental analysis and mitigation;
4. Survey;
5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis;
6. Establishing a process and timing of the negotiation of the comprehensive agreement; and
7. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate prior to the execution of a comprehensive agreement.

Comprehensive Agreement Terms. Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with HRSD. The comprehensive agreement shall define the rights and obligations of HRSD and the private entity with regard to the project.

COMMISSION ADOPTED POLICY
Procurement Policy – Appendix F
PPEA



Adopted: December 15, 2014

Revised: N/A

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As provided by the PPEA, the terms of the comprehensive agreement shall include, but not be limited to:

1. The delivery of maintenance, performance, and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project, in the forms and amounts satisfactory to HRSD and in compliance with § 2.2-4337 for those components of the qualifying project that involve construction;
2. The review and approval of plans and specifications for the qualifying project by HRSD;
3. The rights of HRSD to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the private entity by HRSD to ensure proper maintenance, safety, use, and management of the qualifying project;
6. The terms under which the private entity will reimburse HRSD for services provided;
7. The policy and procedures that will govern the rights and responsibilities of HRSD and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity including the conditions governing assumption of the duties and responsibilities of the private entity by HRSD and the transfer or purchase of property or other interests of the private entity by HRSD;
8. The terms under which the private entity will file appropriate financial statements on a periodic basis;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be the same for persons using the

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Procurement Policy – Appendix F
PPEA



Adopted: December 15, 2014

Revised: N/A

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facility under like conditions and that will not materially discourage use of the qualifying project;

- a. A copy of any service contract shall be filed with HRSD;
 - b. A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request;
 - c. Classifications according to reasonable categories for assessment of user fees may be made.
10. The terms and conditions under which HRSD will contribute financial resources, if any, for the qualifying project;
 11. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
 12. The terms and conditions under which HRSD will be required to pay money to the private entity and the amount of any such payments for the project;
 13. Other requirements of the PPEA or other applicable law; and
 14. Such other terms and conditions as HRSD determines serve the public purpose of the PPEA.

Notice and Posting requirements. In addition to the posting requirements of Section IV, HRSD shall advertise for a public hearing to discuss proposals it has received or the negotiated interim or comprehensive agreements. Such hearing may occur at a regularly scheduled meeting of the Board. Such notice shall be at least 30 days prior to the public hearing. Public comments may be submitted to HRSD at any time during the notice period and prior to the public hearing. After the public hearing and the end of the public comment period, no additional posting shall be required based on any public comment received.

Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made, the proposed agreement shall be posted in the following manner:

1. On the HRSD website for 30 days prior to the execution of the agreement.

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Procurement Policy – Appendix F
PPEA



Adopted: December 15, 2014

Revised: N/A

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2. In addition to the posting requirements, a 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 HRSD and the private entity.
3. Any studies and analyses considered by HRSD in its review of a proposal shall be disclosed at some point prior to the execution of an interim or comprehensive agreement.

Once an interim agreement or a comprehensive agreement has been entered into, the HRSD shall make procurement records available for public inspection, upon request.

1. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have an adverse effect on the financial interest or bargaining position of HRSD or the private entity in accordance.
2. Such procurement records shall not include:
 - a. trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or
 - b. financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

Actual timelines will depend on many factors, including complexity of the project, number of proposals received, staff workload, and Commission meeting schedules.

3.0 Responsibility and Authority

Under the direction of the Director of Finance, the Chief of Procurement, as well as the Director of Engineering, shall be responsible for overall development, management and implementation of this policy.