

COMMISSION ADOPTED POLICY

Procurement Policy



Adopted: December 16, 2014

Revised: July 22, 2025

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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 (VPPA), 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 Director of Procurement is responsible for the purchase, rent, lease, or acquisition of goods, professional and non-professional services, and certain construction services. In addition, the Director of Procurement is responsible for control and disposal of surplus, excess, obsolete, and salvageable materials and equipment.

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

3. The Chief Engineer 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 Chief Engineer 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 is authorized to enter into any purchase agreement or contract except the Director of Procurement or the Chief Engineer or such other employee as may be designated by the General Manager/Chief Executive Officer.
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. A written understanding 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 compensate the first party for the performance rendered in accordance with the conditions of the agreement.

Fair Market Value. The price for a good or service 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 division shall provide a written determination supporting the use of sole source purchasing to the Director of Procurement for approval. The request for approval shall include the identity of the specific vendor, the description of the intended application of the product, and the location of the facility or building where it is intended to be used.

Where the cost of the resulting contract will be above \$200,000, the requesting division shall provide a written determination supporting the use of sole source purchasing to the Director of Procurement for approval. approval following the procedures above must first be given by the Director of Procurement, then the General Manager/Chief Executive Officer and finally the HRSD Commission must approve the use of sole source purchasing
 - 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 the General Manager/Chief Executive Officer. Such competition as is practicable under the circumstances should be sought even if

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typical procurement procedures cannot be fully followed. HRSD shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded.

- d. Real Property – Where purchase, lease or other form of acquisition is required in support of HRSD facilities.
2. In accordance with § 2.2-4303G., 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, though multiple quotes are preferred. Use of Small businesses and businesses owned by Women, Minorities, Military families, Service-Disabled Veterans, and Employment Services Organizations 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 division chief.
 - 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 § 2.2-4303G., 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 does not exceed \$200,000**. The following procedure shall be followed:
 - a. Purchases shall be initiated by the submission of a requisition to the Procurement Department or the Engineering Division.
 - b. An unsealed (informal) quote shall be solicited by the Procurement Department or the Engineering Division from three sources in response to an Invitation for Bid (IFB) or Request for Proposal (RFP).

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- 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.
4. In accordance with § 2.2-4303G., 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 the Procurement Department or the Engineering Division.
 - b. An unsealed (informal) quote shall be solicited by the Procurement Department or the Engineering Division 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 § 2.2-4310, HRSD promotes the use of Small businesses and businesses owned by Women, Minorities, Military families, Service-Disabled Veterans, and Employment Services Organizations, as such terms are defined in §2.2-4310(F), in procurement transactions in accordance with [Appendix A](#) of this policy.
6. In accordance with §§ 2.2-4311, -4311.1, -4311.2, and -4311.4, HRSD includes in every contract over \$10,000, provisions prohibiting the contractor from discrimination in employment, prohibiting the contractor from knowingly employing unauthorized aliens, requiring that the contractor be authorized to conduct business in Virginia, and prohibiting the contractor from using forced or indentured child labor in the performance of the contract. Further, HRSD requires the contractor to include the same provisions in any subcontracts that exceed \$10,000.
7. In accordance with § 2.2-4311.3, HRSD shall state in every contract that any term or provision that (i) makes the contract subject to, governed by, or interpreted under the laws of another state or country or (ii) requires or permits any litigation or other dispute resolution proceeding arising from the contract to be conducted in another state or country shall be void. Instead, the contract shall be deemed to provide for the application of the law of the Commonwealth of Virginia, without regard to the contract's choice of law provisions, and to provide for jurisdiction in the courts of the Commonwealth.

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8. 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.
9. In accordance with § 2.2-4318, if the bid from the lowest responsive, responsible bidder exceeds available funds, HRSD may enter into negotiations with the apparent low bidder to obtain a contract price within available funds in accordance with [Appendix B](#) of this policy.
10. 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 C](#) of this policy.
11. In accordance with § 2.2-4330C, bids may be withdrawn due to error for other than construction contracts in accordance with [Appendix D](#) of this policy.
12. In accordance with § 2.2-4343.1, HRSD does not discriminate against faith-based organizations and may enter into contracts with such organizations in accordance with [Appendix E](#) of this policy.
13. In accordance with § 2.2-4378, et seq., design-build contracts shall be procured in accordance with [Appendix F-1](#) of this policy and construction management contracts shall be procured in accordance with [Appendix F-2](#) of this policy.
14. In accordance with § 56-575.3:1, a project under the Public-Private Education Facilities and Infrastructure Act shall be procured in accordance with [Appendix G](#) of this policy.
15. The Chief Engineer or his/her designee has authority to expend funds up to \$50,000 to acquire easements (temporary or permanent).

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.** To enter into contracts or purchase orders where the total value is projected to exceed \$200,000.

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2. **Sole Source Procurement.** To proceed with a sole source procurement where the total value of the contract is expected to exceed **\$200,000**. The HRSD Commission approval must include the vendor's name, the item(s) to be procured, and the physical location of the HRSD facility or building (§ 2.2-4303 E).
3. **Modifications to Agreements (Task Orders).** To modify or amend an agreement where the total value of the contract following the modification or amendment is projected to exceed **\$200,000**.
4. **Cooperative Procurement.** To participate in a 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). To execute a change order that amends the original contract award so that the total value exceeds **25 percent** of the original contract award or increases the original contract award by **\$50,000**, whichever is greater.
6. **Rejection of all Bids.** To reject all bids in response to a solicitation where the total value of the resulting contract is projected to have been in excess of **\$200,000** (§ 2.2-4319).
7. **Design-Build or Construction Management Agreements.** To issue a procurement for construction using a design-build or construction management method of contracting (§ 2.2-4378, *et. seq.* and as required by the procedures at **Appendix F-1** or **Appendix F-2** of this policy, respectively).
8. **Design-Build Proposal Compensation.** Where the value of the compensation is projected to exceed \$200,000.
9. **PPEA Proposals.** To either (i) accept an unsolicited PPEA proposal and invite competing proposals where the total value of the resulting agreement(s) is projected to exceed **\$200,000**, or (ii) solicit PPEA proposals for a qualifying project, in accordance with the procedures at **Appendix G** of this policy.
10. **PPEA Interim Agreements and Comprehensive Agreements.** To enter into an Interim Agreement or Comprehensive Agreement negotiated in accordance with the procedures at **Appendix G** of this policy.
11. **Debarment.** (§ 2.2-4321).

12. **Determination of Non-responsibility.** (§ 2.2-4359). To issue a written determination of non-responsibility to the apparent low bidder to an ITB where the total value of the resulting contract is projected to have been in excess of **\$200,000** (§ 2.2-4319).
13. **Real Property.**
 - a. Acquisition by condemnation, following a public hearing.
 - 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 \$50,000
 - e. Vacation of existing easement(s)
12. **Intellectual Property.** To execute any Intellectual Property Rights Agreement and Royalty Distribution Agreement.
13. **Agreements with other Entities.** To execute an Agreement which includes 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. Provides use of assets valued at more than \$200,000
 - d. Provides a service or other benefit that spans multiple years and its value is greater than \$200,000
 - e. Obligates significant financial or personnel resources (\$200,000 or more)

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).

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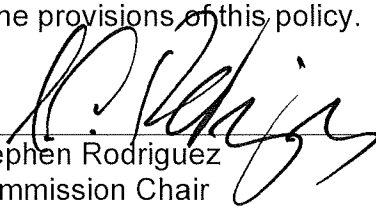
2. Ethics in Public Contracting (§ 2.2-4367).
3. Virginia Governmental Frauds Act (§ 18.2-498.1) and Articles 2 (§ 18.2-438) and 3 (§ 18.2-446) of Chapter 10 of Title 18.2.
4. State and Local Government Conflict of Interests Act (§ 2.2-3100).

7.0 Responsibility and Authority

The effective date of this policy is July 1, 2025. 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.

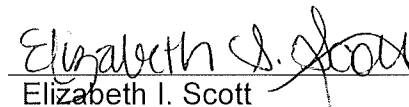
HRSD's General Manager/Chief Executive Officer and the Director of Procurement are the designated administrators of this policy. The Director of Procurement shall have the day-to-day responsibility and authority for implementing the provisions of this policy.

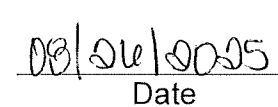
Approved:


Stephen Rodriguez
Commission Chair

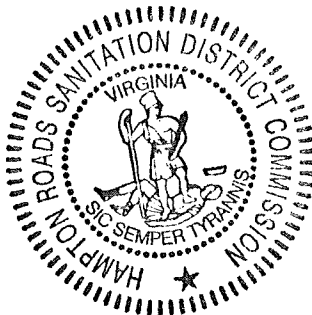

Date

Attest:


Elizabeth I. Scott
Commission Secretary


Date

Commission Seal



COMMISSION ADOPTED POLICY
Procurement Policy – Appendix A
Participation of SWaM



Adopted: December 16, 2014

Revised: July 22, 2025

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1.0 Purpose and Need

This policy is intended to comply with §2.2-4310 of the Virginia Code to facilitate the participation of Small businesses and businesses owned by Women, Minorities, Military families, Service-Disabled Veterans, and Employment Services Organizations, as such terms are defined in §2.2-4310(F), 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, Military Family-owned, Service-Disabled Veteran-owned, and Employment Services Organizations (hereinafter collectively referred to as "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, sexual orientation, gender identity, national origin, age, disability, status as a service-disabled veteran, status as a military family, or any other basis prohibited by state law relating to discrimination in employment. (Code of Virginia, § 2.2-4310(A)).

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 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.

In striving to achieve greater participation of qualified SWaM businesses to do business with HRSD, HRSD is not required to and shall not compromise its demands for quality with respect to contractors, suppliers, products, or services or the economic reasonableness of any business transaction.

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Procurement Policy – Appendix A
Participation of SWaM



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As an integral part of the company-wide culture, HRSD does not discriminate because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service-disabled veteran, status as a military family, or any other basis prohibited by law.

2.0 Procedures

The Procurement Department 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), 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 Department 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, Military Family –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.

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Procurement Policy – Appendix A
Participation of SWaM



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3.0 Responsibility and Authority

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

COMMISSION ADOPTED POLICY
Procurement Policy – Appendix B
Negotiation with Lowest Responsible Bidder



Adopted: December 16, 2014

Reviewed:
Revised:

July 22, 2025
June 25, 2024

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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 division for the contract prior to the issuance of the written Invitation for Bids. The procurement record in the Procurement Department 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 Chief Financial Officer, the Director of Procurement, as well as the Chief Engineer, shall be responsible for overall development, management and implementation of this policy.

COMMISSION ADOPTED POLICY
Procurement Policy – Appendix C
Debarment



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

2.1 Debarment for Unsatisfactory Performance

If a determination is made that a prospective contractor should not be eligible, the Director of Procurement or Chief Engineer shall submit a written report notifying the contractor of the proposed debarment and specified period of time. The report shall recite the factual support for the determination that the contractor performed unsatisfactorily and/or other reasons for the proposed debarment. The report shall also present the recommended action to be taken with respect to the contractor. HRSD shall allow the contractor to inspect any documents relating to the proposed debarment within five (5) business days after receipt of notification. Additionally, the contractor may submit rebuttal information within ten (10) business days after receipt of notification.

The Director of Procurement or Chief Engineer shall revise the report if and as appropriate within five (5) business days after receipt of rebuttal information. The revised report shall be submitted to the contractor and the General Manager/Chief Executive Officer.

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

2.2 Debarment for failure to use E-Verify.

"E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

Any contractor with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with HRSD to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract.

Any such contractor who fails to comply with the requirements to participate in E-Verify shall be debarred from contracting with HRSD for a period of up to one year, or until the contractor registers and participates in the E-Verify program whichever occurs first.

After ascertaining that a contractor has not registered for nor is participating in the E-Verify program, the Director of Procurement or Chief Engineer shall notify the contractor that it is debarred and the reasons for its debarment. HRSD shall allow the contractor to submit rebuttal information within ten (10) business days after receipt of notification. Upon HRSD's receipt from contractor of reliable evidence to substantiate its registration and participation in E-Verify, the contractor shall no longer be disbarred.

3.0 Responsibility and Authority

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

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Procurement Policy – Appendix D
Withdrawal of Bids



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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 made a clerical mistake as opposed to a judgment mistake, and the clerical mistake was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdraw. 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 Director of Procurement or the Chief Engineer 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 Chief Financial Officer, the Director of Procurement, as well as the Chief Engineer, shall be responsible for overall development, management and implementation of this policy.

COMMISSION ADOPTED POLICY
Procurement Policy – Appendix F-1
Design-Build Contracting



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1.0 Purpose and Need

A design-bid-build project delivery method utilizing competitive sealed bidding is the preferred and the default method of procurement for HRSD construction contracts. However, competitive sealed bidding is not always practicable nor fiscally advantageous for complex construction projects. Design-Build contracts, formed with a firm that provides both professional design and construction services, are intended to minimize the project risk and to reduce the delivery schedule by overlapping the design phase and construction phase of a project.

Pursuant to the Virginia Public Procurement Act, Virginia Code §§ 2.2–4300, *et seq.* (VPPA) and Virginia Code Title 2.2 Chapter 43.1 (§§ 2.2-4378, *et seq.*) (Chapter 43.1) and consistent with the guidance adopted by the Virginia Secretary of Administration, the Commission, an authorized public body as defined by Virginia Code § 2.2-4301, has, by resolution, adopted the following procedures (Procedures) for utilizing, when appropriate, design-build contracts for projects. The provisions of the VPPA shall remain applicable. In the event of any conflict between Chapter 43.1 and the VPPA, Chapter 43.1 shall control.

2.0 Definitions

- 2.1. "Complex project" means a construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes the design-bid-build project delivery method not practical.
- 2.2. "Design-bid-build" means a project delivery method in which a public body sequentially awards two separate contracts, the first for professional services to design the project and the second utilizing competitive sealed bidding for construction of the project according to the design.
- 2.3. "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.

3.0 Procedure for Design-Build Contracts

3.1. Criteria for Use of Design-Build as a Construction Delivery Method.

- 3.1.1. **General.** Design-build procurement shall include a two-step competitive negotiation process consistent with Chapter 43.1 and the Design-Build

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Design-Build Contracting



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Construction Procedures As Adopted by the Secretary of Administration (effective December 17, 2024) for state public bodies. Design-build contracts may be utilized on projects where the project (i) is a complex project; and (ii) the project procurement method is approved by the Commission. Contracts shall be awarded on a fixed price or not-to-exceed price basis.

- 3.1.2. **Virginia Licensed Engineer.** Public bodies using design-build procurement must have Virginia-licensed engineers or architects in their employ or under their control. HRSD has in its employ, has under its control or will retain as necessary such Virginia-licensed engineers with the necessary professional competence to advise HRSD regarding use of design-build for a specified construction project. These Virginia-licensed engineers will assist HRSD with preparation of the Request for Qualifications (RFQ), Request for Proposal (RFP), and evaluation of proposals received in response to the RFQ and RFP.
- 3.1.3. **Written Recommendation to Use Design-Build.** In advance of initiating a design-build procurement, the Chief Engineer, or his or her designee, shall prepare a written report explaining the basis for the Chief Engineer's recommendation to utilize design-build for the specific project. The report shall include a determination of the project's complexity, and explain why, for the specific project, (i) a design-build contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to HRSD by using a design-build contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous. This report shall be submitted to the General Manager/Chief Executive Officer for approval. If the General Manager/Chief Executive Officer approves the recommendation, it shall be submitted to the Commission for determination.
- 3.1.4. **Commission Determination.** If the Commission accepts the recommendation to pursue a design-build procurement model, it shall adopt the Chief Engineer's report or draft its own written determination stating that the design-bid-build project delivery method is not practicable or fiscally advantageous and documenting the basis for the determination to utilize design-build, including the determination of the project's complexity. The determination shall be included in the RFQ and be maintained in the procurement file.
- 3.1.5. **Proprietary Information.** Proposers shall be allowed to clearly designate portions of their submissions as trade secrets or proprietary information pursuant to Virginia Code § 2.2-4342. HRSD will take reasonable measures to safeguard from unauthorized disclosure such information properly designated as such, to the extent permitted by law.

3.2. Selection of Qualified Proposers (Step 1).

- 3.2.1. **Pre-qualification.** HRSD shall conduct a prequalification process to determine which design-build firms are qualified to receive the Request for Proposals. The list of firms shall include Small businesses and businesses owned by Women, Minorities, Military families, Service-Disabled Veterans, and Employment Services Organizations, as such terms are defined in § 2.2-4310(F). All proposers shall have a licensed Class “A” contractor registered in Virginia and an Architect or Engineer registered in Virginia as part of the project team
- 3.2.2. **Content of RFQ.** HRSD shall prepare an RFQ that states the time and place for receipt of qualifications, the contractual terms and conditions, the Commission’s facility requirements, the criteria and goals of the project, the building and site criteria, the site and survey data (if applicable), any unique capabilities or qualifications required of the design-builder, any project specific requirements for the particular project, the criteria to be used to evaluate RFQ responses, and other relevant information.
- 3.2.3 The RFQ must be approved by the Chief Engineer and shall normally consist of the following sections, unless modified by the Chief Engineer:
Cover Sheet
I. Introduction and/or Background
II. Instructions to Proposers
III. Scope of Work
IV. Tentative Procurement Schedule
V. Attachments
- 3.2.3. **Form of Responses.** HRSD will include in the RFQ if responses may be submitted electronically and/or via paper response.
- 3.2.4. **Evaluation Committee.** The Chief Engineer shall appoint an Evaluation Committee (“Committee”) which shall consist of at least three staff members of the HRSD, including a licensed professional engineer or architect. If possible, the Committee shall include a licensed design professional. The members of the Committee shall have experience relevant to the project, with background in such areas as design, construction, contracts, project management operations, and maintenance. HRSD shall consult with its attorney to determine whether legal counsel should be involved.
- 3.2.5. **Public Notice.** At least 30 days prior to the date set for receipt of qualification proposals, public notice of the RFQ (“Public Notice”) will be posted on the HRSD website and/or the Virginia Department of General Services central

electronic procurement website, known as eVA ("eVA"). HRSD shall send the Public Notice directly to firms that have requested to be notified of work and to organizations promoting Small businesses and businesses owned by Women, Minorities, Military families, Service-Disabled Veterans, and Employment Services Organizations, as such terms are defined in § 2.2-4310(F) and to similar businesses that have requested to be notified and/or are believed to be qualified to perform the work. HRSD may send Public Notice to those firms believed to be qualified to perform the work. An affidavit shall be placed in the project file certifying the advertising date and method.

- 3.2.6. **Contacts by Proposers.** The RFQ shall provide notice to prospective proposers that they may submit comments and questions regarding the RFQ, in writing, to the contact person identified in the RFQ. Responses to the comments and questions which are relevant to the work will be documented and addenda will be posted in the same place and manner as the Public Notice. Comments and questions submitted to any individual at HRSD that is not the identified contact person shall not receive a response.
- 3.2.7. **Pre-Proposal Conference.** A pre-proposal conference may be held 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, HRSD will not consider Statements of Qualification (SOQ) from firms that did not attend the pre-proposal conference and/or did not meet the RFQ requirements related to the pre-proposal conference.
- 3.2.8. **Opening of Statement of Qualifications.** The Chief Engineer or his/her designee shall document receipt of the SOQs at the specified time and place. Any firm desiring consideration must submit an SOQ no later than the time and date the RFQ states is the deadline for submittal. SOQs not received at the specified time will not be considered.
- 3.2.9. **Changes to the RFQ.** The 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.
- 3.2.10. **Evaluation of Statement of Qualifications.** The Committee shall evaluate the SOQs. The 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 design-build experience or previous experience with HRSD shall not be considered as

a prerequisite or factor for prequalification of a contract. However, the Committee shall evaluate a proposer's experience for a period of ten prior years to determine whether the offeror has constructed, by any method of project delivery, at least three projects similar in program and size.

3.2.11. **Reference Check and Other Information.** The Committee either individually or as a group at any point in the evaluation may contact some or all references recommended by the proposer. The Committee may use the information gained during the reference checks in the evaluation. The Committee may ask questions or request additional information from any proposer.

3.2.12. **Short-List.** The Committee shall determine those deemed fully qualified and suitable with respect to the criteria established for the project. The Committee shall then select (short list) three to five proposers to receive the RFP. The short list may have less than three proposers to receive the RFP if there are less than three responses to the RFQ.

3.2.13. **Basis for Denial of Prequalification.** A proposer may be denied prequalification only as specified under Virginia Code § 2.2-4317, but the short list shall also be based upon the RFQ criteria.

3.2.14. **Notice of Prequalification Status.** At least 30 days prior to the date established for the submission of proposals, HRSD shall advise in writing each proposer which sought prequalification whether that proposer has been prequalified. Prequalified proposers that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that a proposer is denied prequalification, the written notification to such proposer shall state the reasons for such denial of prequalification and the factual basis of such reasons.

3.3. **Selection of a Design-Builder (Step 2).**

3.3.1. **Request for Proposals.** HRSD shall prepare an RFP and send to the firms on the short list and request submission of formal proposals. The RFP must be approved by the Chief Engineer. In selecting the design builder, HRSD may consider the experience of each design-builder on comparable design-build projects. The criteria for award shall be included in the RFP. The RFP shall provide further details not described in the RFQ and shall include the factors to be used in evaluating each proposal. The RFP shall also include details regarding the project quality and performance requirements, conceptual design documents and information regarding the proposer's Contract Cost Limit (CCL)

to determine the best value in response to the RFP. The RFP shall also advise whether responses may be submitted electronically and/or via paper response.

- 3.3.2. **Contacts from Proposers.** The RFP shall provide notice to prospective proposers that they may submit comments and questions regarding the RFP, including specifications, in writing, to the contact person identified in the RFP. Responses to the comments and questions which are relevant to the work will be documented and addenda will be issued to all proposers who have received the RFP. Comments and questions submitted to any individual at HRSD that is not the identified contact person shall not receive a response.
- 3.3.3. **Bifurcated Proposal Evaluation.** The RFP process shall include a separate technical proposal evaluation stage and a cost proposal evaluation stage requiring that the proposals consist of two parts - a Technical Proposal and a Cost Proposal. Both the Technical and Cost Proposals shall be concurrently submitted but separately sealed. The Cost 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. The Committee may waive minor informalities in a both the Technical Proposal and the Cost Proposal but shall eliminate from further consideration any Proposer determined to be non-responsive or deemed not fully qualified, responsible, or suitable. Proposer shall submit its Proposal no later than the time and date the RFP states is the deadline for submittal. Failure to submit a Proposal prior to the due date and time will be cause for rejection by HRSD.
- 3.3.1. **Receipt of Technical Proposals.** Sealed Technical Proposals shall be submitted to the Committee. The Chief Engineer or his/her designee shall receive and document the receipt of the technical proposals at the specified time and place.
- 3.3.2. **Receipt of Cost Proposals.** Sealed Cost Proposals shall be submitted to the HRSD Contract Specialist who shall document the receipt of the Cost Proposal at the specified time and place and who shall secure and keep the Cost Proposal sealed until evaluation of the Technical Proposals and the design adjustments are completed.
- 3.3.3. **Preliminary Evaluation of Technical Proposals.** The Committee shall review each Technical Proposal to first determine whether the proposals are responsive to the requirements of the RFP. The 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 Committee shall keep confidential a preliminary ranking of the Technical Proposals. The Committee

may cancel or reject any and all Technical Proposals. The Chief Engineer shall prepare a report documenting the reasons for the cancellation or rejection. The Committee may waive informalities in the technical proposal.

- 3.3.4. **Conferences During Preliminary Evaluation.** The 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.
- 3.3.5. **Changes to RFP.** Based upon a review of the Technical Proposal and discussions with each short-listed proposer, the 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 Committee, proposers will be given an opportunity to revise their Technical Proposals.
- 3.3.6. **Final Evaluation of Technical Proposals.** At the conclusion of the Technical Proposal evaluation stage, the Committee shall evaluate (and rank if technical rankings are to be considered as a criterion for award) the technical proposals. The Committee will meet to discuss each Technical Proposal based upon the criteria contained in the RFP. After the discussion, each team member will be given an opportunity to adjust their score. The Committee shall document and keep confidential a final ranking of the Technical Proposals. Should the Committee determine, in writing and at its sole discretion, that only one proposer is fully qualified or that one proposer is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that proposer after approval by the Commission. This documentation shall occur before any Cost Proposals are reviewed by HRSD. Otherwise, the Committee shall evaluate the Cost Proposals.
- 3.3.7. **Evaluation of Cost Proposals.** The HRSD Contract Specialist shall provide the Cost Proposals to the Chief Engineer. The Committee shall open the Cost Proposals, review the Cost Proposals, and apply the criteria for award as specified in the RFP and any addenda. 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 design-builder shall

be a significant portion of the weighted score. The Committee shall document and keep confidential the results of each Cost Proposal.

- 3.3.8. **Final Evaluation and Recommendation to Award a Contract.** The contract shall be awarded to the proposer who is fully qualified and has been determined to have provided the best value in response to the RFP. The Committee Chair shall tabulate the Technical and Cost proposal scores as listed in the RFP to determine the recommended firm. The Committee shall prepare a report documenting the process, summarizing the results and making its recommendation on the selection of a design-builder to the Chief Engineer based on its evaluations of the Technical and Cost Proposals and all amendments thereto.
- 3.3.9. **Contract Negotiation.** Upon concurrence with the recommendation of the Committee, the Chief Engineer or his/her designee shall negotiate a contract with the recommended firm. Otherwise, the Chief Engineer 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 Chief Engineer shall inform the General Manager/Chief Executive Officer of the results of the negotiation. The General Manager/Chief Executive Officer shall receive Commission approval of award to the recommended firm. The Commission may cancel or reject any and all proposals.
- 3.3.10. **Award of Design-Build Contract.** Upon approval by the Commission, the Chief Engineer 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 Chief Engineer and reviewed by the HRSD attorney.
- 3.3.11. **Notification of Award.** HRSD will notify all proposers who submitted proposals which proposer was selected for the project. In the alternative, HRSD may notify all proposers who submitted proposals of HRSD's intent to award the contract to a particular proposer at any time after the Commission has approved the award to 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 proposer.
- 3.3.12. **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. Upon

request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.

3.4. Procedures After the Award.

3.4.1. Notification of Subcontractor Bid Package Advertisement. HRSD may post on eVA or HRSD's website when and where the design-builder plans to advertise bid packages for subcontracting opportunities when appropriate.

3.4.2. Freedom of Information Act and Access to Documents. As required by Chapter 43.1, HRSD shall post all documents open to public inspection pursuant to Virginia Code § 2.2-4342 that are issued or received by the HRSD on HRSD's website or eVA.

3.4.3. Proposal Compensation. Proposal Compensation on designated design-build procurement efforts will be provided to short-listed firms that are not selected but have fully complied with all aspects of the RFQ and RFP may be provided proposal compensation (stipend) under certain conditions. The value of the proposal compensation will be determined on a case-by-case basis. Commission approval shall be required when the recommended amount exceeds \$200,000 for any single payment.

3.4.4. Procedure for Changes to Design-Build 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 Chief Engineer 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 Chief Engineer 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.

3.4.5. 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 Chief Engineer. 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.

3.4.6. 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 Chief Engineer.

4.0 Emergency Procurement.

A contract for design-build services may be negotiated and awarded without competitive negotiation if the General Manager/Chief Executive Officer determines there is an emergency. The procurement of these services will be made using as much competition as practical under the circumstances. The Chief Engineer shall submit a report documenting the basis of the emergency and the selection of the particular firm. The Chief Engineer 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.

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Procurement Policy – Appendix F-1
Design-Build Contracting



Adopted: December 16, 2014

Revised: July 22, 2025

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5.0 Reporting requirements.

- 5.1. HRSD shall report no later than November 1 of each year to the Director of the Commonwealth's Department of General Services on all completed capital projects in excess of \$2 million.
- 5.2. The report shall include at a minimum (i) the procurement method utilized, (ii) the project budget, (iii) the actual project cost, (iv) the expected timeline, (v) the actual completion time, (vi) if such project was a construction management or design-build project, the qualifications that made the project complex, and (vii) any post-project issues.

6.0 Exceptions to this Policy.

The request for any exception to the procedures outlined in this Policy shall be reviewed by HRSD's attorney prior to submission to the Commission.

7.0 Responsibility and Authority.

The Chief Engineer shall be responsible for overall development, management and implementation of this policy.

Legislative References: Code of Virginia §§ 2.2-4300-2.2-4383; Design-Build Procedures Adopted by the Secretary of Administration (effective December 17, 2024), attached as Exhibit to A-1.

COMMISSION ADOPTED POLICY
Procurement Policy – Appendix F-2
Construction Management Contracting



Adopted: December 16, 2014

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1.0 Purpose and Need.

A design-bid-build project delivery method utilizing competitive sealed bidding is the preferred and the default method of procurement for HRSD construction contracts. However, competitive sealed bidding is not always practicable nor fiscally advantageous for complex construction projects. In these cases, the construction management contracting method may better meet the needs of HRSD because it permits the early selection of a construction manager or because value engineering and/or constructability analysis is desired.

Pursuant to the Virginia Public Procurement Act, Virginia Code §§ 2.2–4300, *et seq.* (VPPA) and Virginia Code Title 2.2 Chapter 43.1 (§§ 2.2-4378, *et seq.*) (Chapter 43.1) and consistent with the guidance adopted by the Virginia Secretary of Administration, the Commission, an authorized public body as defined by Virginia Code § 2.2-4301, has, by resolution, adopted the following procedures (Procedures) for utilizing, when appropriate, construction management contracts for projects. The provisions of the VPPA shall remain applicable. In the event of any conflict between Chapter 43.1 and the VPPA, Chapter 43.1 shall control.

2.0 Definitions.

- 2.1. “Complex project” means a construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes the design-bid-build project delivery method not practical.
- 2.2. “Construction management contract” means a contract in which a firm is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner and may also include, if provided in the contract, the furnishing of construction services to the owner.
- 2.3. "Design-bid-build" means a project delivery method in which a public body sequentially awards two separate contracts, the first for professional services to design the project and the second utilizing competitive sealed bidding for construction of the project according to the design.

3.0 Procedure for Construction Management Contracts.

3.1 Criteria for Use of Construction Management as a Construction Delivery Method.

- 3.1.1. General.** Construction management procurement shall include a two-step competitive negotiation process consistent with Chapter 43.1 and the Construction Management Procedures As Adopted by the Secretary of Administration (effective December 17, 2024) for state public bodies. Construction management contracts may be utilized on projects where the project (i) is a complex project; and (ii) the project procurement method is approved by the Commission. Construction management contracts shall be awarded on a fixed price or not-to-exceed price basis.
- 3.1.2. Virginia Licensed Engineer.** Public bodies using construction management procurement must have Virginia-licensed engineers or architects in their employ or under their control. HRSD has in its employ or under its control or will retain as necessary such Virginia-licensed engineers with the professional competence to advise HRSD regarding use of construction management for a specified construction project. These Virginia-licensed engineers will assist HRSD with preparation of the Request for Qualifications (RFQ), Request for Proposal (RFP), and evaluation of proposals received in response to the RFQ and RFP.
- 3.1.3. Written Recommendation to Use Construction Management.** In advance of initiating a construction management procurement, the Chief Engineer, or his or her designee, shall prepare a written report explaining the basis for the Chief Engineer's recommendation to utilize construction management for a specific project. The report shall include a determination of the project's complexity, and explain why, for the specific project, (i) a construction management contract is more advantageous than a design-bid-build construction contract; (ii) there is a benefit to HRSD by using a construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous. This report shall be submitted to the General Manager/Chief Executive Officer for approval. If the General Manager/Chief Executive Officer approves the recommendation, it shall be submitted to the Commission.
- 3.1.4. Commission Determination.** If the Commission accepts the recommendation to pursue a construction management procurement model, it shall adopt the Chief Engineer's report or draft its own written determination stating that the design-bid-build project delivery method is not practicable or fiscally advantageous and documenting the basis for the determination to utilize

construction management, including the determination of the project's complexity. The determination shall be included in the RFQ and be maintained in the procurement file.

- 3.1.5. **Proprietary Information.** Proposers shall be allowed to clearly designate portions of their submissions as trade secrets or proprietary information pursuant to Virginia Code § 2.2-4342. HRSD will take reasonable measures to safeguard from unauthorized disclosure such information properly designated as such, to the extent permitted by law.

3.2. Selection of Qualified Proposers. (Step 1)

- 3.2.1. **Pre-qualification.** HRSD shall conduct a prequalification process to determine which construction management firms are qualified to receive the Request for Proposals. The list of firms shall include Small businesses and businesses owned by Women, Minorities, Military families, Service-Disabled Veterans, and Employment Services Organizations, as such terms are defined in § 2.2-4310(F). All proposers shall have a licensed Class "A" contractor registered in Virginia as part of the project team.

- 3.2.2. **Content of RFQ.** HRSD shall prepare an RFQ that states the time and place for receipt of qualifications, the contractual terms and conditions, the criteria and goals of the project, the Commission's facility requirements, the building and site criteria, site and survey data (if applicable), any unique capabilities or qualifications required of the contractor, any project specific requirements for the particular project, the criteria to be used to evaluate RFQ responses, and other relevant information.

- 3.2.3. The RFQ must be approved by the Chief Engineer and shall normally consist of the following sections unless modified by the Chief Engineer:

Cover Sheet

- I. Introduction and/or Background
- II. Instructions to Proposers
- III. Scope of Work
- IV. Tentative Procurement Schedule
- V. Attachments

- 3.2.4. **Method of Submission of Responses.** HRSD will include in the RFQ if responses may be submitted electronically and/or via paper response.

- 3.2.5. **Evaluation Committee.** The Chief Engineer shall appoint an Evaluation Committee ("Committee") which shall consist of at least three staff members of

the HRSD, including a licensed professional engineer or architect. If possible, the Committee shall include a licensed design professional. The members of the Committee shall have experience relevant to the project, with backgrounds in such areas as design, construction, contracts, project management operations, and maintenance. HRSD shall consult with its attorney to determine whether legal counsel should be involved.

- 3.2.6. **Public Notice.** At least 30 days prior to the date set for receipt of qualification proposals, public notice of the RFQ ("Public Notice") shall be posted on the HRSD website and/or the Virginia Department of General Services central electronic procurement website ("eVA"). HRSD shall send the Public Notice directly to firms that have requested to be notified of work and to organizations promoting Small businesses and businesses owned by Women, Minorities, Military families, Service-Disabled Veterans, and Employment Services Organizations, as such terms are defined in § 2.2-4310(F) and to similar businesses that have requested to be notified and/or are believed to be qualified to perform the work. HRSD may send Public Notice to those firms believed to be qualified to perform the work. An affidavit shall be placed in the project file certifying the advertising date and method.
- 3.2.7. **Contacts by Proposers.** The RFQ shall provide notice to prospective proposers that they may submit comments and questions regarding the RFQ, in writing, to the contact person identified in the RFQ. Responses to the comments and questions which are relevant to the work will be documented and addenda will be posted in the same place and manner as the Public Notice. Comments and questions submitted to any individual at HRSD that is not the identified contact person shall not receive a response.
- 3.2.8. **Pre-Proposal Conference.** A pre-proposal conference may be held 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, HRSD will not consider Statements of Qualification (SOQ) from firms that did not attend the pre-proposal conference and/or did not meet the RFQ requirements related to the pre-proposal conference.
- 3.2.9. **Opening of Statement of Qualifications.** The Chief Engineer or his/her designee shall document receipt of the SOQs at the specified time and place. Any firm desiring consideration must submit an SOQ no later than the time and date the RFQ states is the deadline for submittal. SOQs not received at the specified time will not be considered.

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- 3.2.10. **Changes to the RFQ.** The 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.
- 3.2.11. **Evaluation of Statement of Qualifications.** The Committee shall evaluate the SOQs. The 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 experience or previous experience with HRSD shall not be considered as a prerequisite or factor for prequalification of a contract. However, the Committee shall evaluate a proposer's experience for a period of ten prior years to determine whether the offeror has constructed, by any method of project delivery, at least three projects similar in program and size.
- 3.2.12. **Reference Check and Other Information.** The Committee either individually or as a group at any point in the evaluation may contact some or all references recommended by the proposer. The Committee may use the information gained during the reference checks in the evaluation. The Committee may ask questions or request additional information from any proposer.
- 3.2.13. **Short List.** The Committee shall determine those deemed fully qualified and suitable with respect to the criteria established for the project. The Committee shall then select (short list) three to five proposers to receive the RFP. The short list may have less than three proposers if there are less than three responses to the RFQ.
- 3.2.14. **Basis for Denial of Prequalification.** A proposer may be denied prequalification only as specified under Virginia Code § 2.2-4317, but the short list shall also be based upon the RFQ criteria.
- 3.2.15. **Reference Check and Other Information.** The Committee either individually or as a group at any point in the evaluation may contact some or all references recommended by the proposer. The Committee may use the information gained during the reference checks in the evaluation. The Committee may ask questions or request additional information from any proposer.
- 3.2.16. **Notice of Prequalification Status.** At least 30 days prior to the date established for the submission of proposals, HRSD shall advise in writing each proposer which sought prequalification whether that proposer has been prequalified. Prequalified proposers that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that a proposer

is denied prequalification, the written notification to such proposer shall state the reasons for such denial of prequalification and the factual basis of such reasons.

3.3. Selection of a Construction Manager. (Step 2)

- 3.3.1. **Request for Proposals.** HRSD shall prepare an RFP and approved by the Chief Engineer. The RFP shall be sent the RFP to the firms on the short list. The RFP shall provide further details not described in the RFQ and shall include the factors to be used in evaluating each proposal. The RFP shall describe details regarding the proposer's CCL and define the pre-design, design, bid and construction phase services required. The RFP shall define the allowable level of direct construction involvement by the proposer. In the case of a non-infrastructure project, the allowable level of direct construction involvement by the proposer shall be defined as no more than 10% of the construction work as measured by the cost of work with the remaining 90% to be performed by the construction manager's subcontractors. In all construction management contracts, the construction manager will procure the subcontractors' services by publicly advertised 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.
- 3.3.2. **Method of Submission of Proposals.** The RFP shall also advise whether responses may be submitted electronically and/or via paper response.
- 3.3.3. **Contacts from Proposers.** The RFP shall provide notice to prospective proposers that they may submit comments and questions regarding the RFP, including specifications, in writing, to the contact person identified in the RFP. Responses to the comments and questions which are relevant to the work will be documented and addenda will be issued to all proposers who have received the RFP. Comments and questions submitted to any individual at HRSD that is not the identified contact person shall not receive a response.
- 3.3.4. **Bifurcated Proposal Evaluation.** The RFP process shall include a separate Technical Proposal evaluation stage and a Cost Proposal evaluation stage requiring that the proposals consist of two parts - a Technical Proposal and a Cost Proposal. Both the Technical and Cost Proposals shall be concurrently submitted but separately sealed. The Cost 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. The Committee may waive minor informalities in both the Technical Proposal and the Cost Proposal but shall eliminate from further consideration any proposer determined to be non-

responsive or deemed not fully qualified, responsible, or suitable. Proposer shall submit its proposals no later than the time and date the RFP states is the deadline for submittal. Failure to submit proposals prior to the due date and time will be cause for rejection by HRSD.

- 3.3.5. **Receipt of Technical Proposals.** Sealed Technical Proposals shall be submitted to the Committee. The Chief Engineer or his or her designee shall receive and document the receipt of the Technical Proposals at the specified time and place.
- 3.3.6. **Receipt of Cost Proposals.** Sealed Cost Proposals shall be submitted to the HRSD Contract Specialist who shall document the receipt of the Cost Proposal at the specified time and place and who shall secure and keep the Cost Proposal sealed until evaluation of the Technical Proposals and the design adjustments are completed.
- 3.3.7. **Preliminary Evaluation of Technical Proposals.** The Committee shall review each Technical Proposal to first determine whether the proposals are responsive to the requirements of the RFP. The 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 Committee shall keep confidential a preliminary ranking of the Technical Proposals. The Committee may cancel or reject any and all Technical Proposals. The Chief Engineer shall prepare a report documenting the reasons for the cancellation or rejection. The Committee may waive informalities in the Technical Proposal.
- 3.3.8. **Conferences During Preliminary Evaluation.** The 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.
- 3.3.9. **Changes to RFP.** Based upon a review of the Technical Proposal and discussions with each short-listed proposer, the 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 Committee, proposers will be given an opportunity to revise their Technical Proposals.

- 3.3.10. **Final Evaluation of Technical Proposals.** At the conclusion of the Technical Proposal evaluation stage, the Committee shall evaluate (and rank if technical rankings are to be considered as a criterion for award) the Technical Proposals. The Committee will meet to discuss each Technical Proposal based upon the criteria contained in the RFP. After the discussion, each team member will be given an opportunity to adjust their score. The Committee shall document and keep confidential a final ranking of the Technical Proposals. Should the Committee determine, in writing and at its sole discretion, that only one proposer is fully qualified or that one proposer is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that proposer after approval by the Commission. This documentation shall occur before any Cost Proposals are reviewed by HRSD. Otherwise, the Committee shall evaluate the Cost Proposals.
- 3.3.11. **Evaluation of Cost Proposals.** The HRSD Contract Specialist shall provide the Cost Proposals to the Chief Engineer. The Committee shall open the Cost Proposals, review the Cost Proposals, and apply the criteria for award as specified in the RFP and any addenda. 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 contractor shall be a significant portion of the weighted score. The Committee shall document and keep confidential the results of each Cost Proposal.
- 3.3.12. **Final Evaluation and Recommendation to Award a Contract.** The contract shall be awarded to the proposer who is fully qualified and has been determined to have provided the best value in response to the RFP. In selecting the contractor, HRSD may consider the experience of each contractor on comparable construction management projects. The Committee Chair shall tabulate the Technical and Cost Proposal scores as listed in the RFP to determine the recommended firm. The Committee shall prepare a report documenting the process, summarizing the results and making its recommendation on the selection of a contractor to the Chief Engineer based on its evaluations of the Technical and Cost Proposals and all amendments thereto.
- 3.3.13. **Contract Negotiation.** Upon concurrence with the recommendation of the Committee, the Chief Engineer or his/her designee shall negotiate a contract with the recommended firm. Otherwise, the Chief Engineer 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 Chief Engineer shall inform the General Manager/Chief Executive Officer of the results of the negotiation. The General

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Procurement Policy – Appendix F-2
Construction Management Contracting



Adopted: December 16, 2014

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Manager/Chief Executive Officer shall receive Commission approval of award to the recommended firm. The Commission may cancel or reject any and all proposals.

- 3.3.14. **Award of Construction Management Contract.** Upon approval by the Commission, the Chief Engineer 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 Chief Engineer and reviewed by the HRSD attorney. The contract shall be entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions.
- 3.3.15. **Notification of Award.** HRSD will notify all proposers who submitted proposals which proposer was selected for the project. In the alternative, HRSD may notify all proposers who submitted proposals of HRSD's intent to award the contract to a particular proposer at any time after the Commission has approved the award to the contractor. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one proposer.
- 3.3.16. **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. Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.
- 3.4. **Procedures After the Award.**
- 3.4.1. **Notification of Subcontractor Bid Package Advertisement.** HRSD may post on eVA or HRSD's website when and where the construction manager plans to advertise bid packages for subcontracting opportunities when appropriate.
- 3.4.2. **Freedom of Information Act and Access to Documents.** As required by Chapter 43.1, HRSD shall post all documents open to public inspection pursuant to Virginia Code § 2.2-4342 that are issued or received by the HRSD on HRSD's website or eVA.
- 3.4.4. **Procedure for Changes to 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 Chief Engineer 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 Chief Engineer 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.

- 3.4.5. **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 Chief Engineer. 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.

- 3.4.6. **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 Chief Engineer.

4.0 Emergency Procurement.

A contract for construction management services may be negotiated and awarded without competitive negotiation if the General Manager/Chief Executive Officer determines there is an emergency. The procurement of these services will be made using as much competition as practical under the circumstances. The Chief Engineer shall submit a report documenting the basis of the emergency and the selection of the particular firm. The Chief Engineer 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.

5.0 Reporting requirements.

- 5.1. HRSD shall report no later than November 1 of each year to the Director of the Commonwealth's Department of General Services on all completed capital projects in excess of \$2 million.
- 5.2. The report shall include at a minimum (i) the procurement method utilized, (ii) the project budget, (iii) the actual project cost, (iv) the expected timeline, (v) the actual completion time, (vi) if such project was a construction management or design-build project, the qualifications that made the project complex, and (vii) any post-project issues.

6.0 Exceptions to this Policy.

The request for any exception to the procedures outlined in this Policy shall be reviewed by HRSD's attorney prior to submission to the Commission.

7.0 Responsibility and Authority.

The Chief Engineer shall be responsible for overall development, management and implementation of this policy.

Leg Refs: Code of Virginia §§ 2.2-4300-2.2-4383; Construction Management Procedures Adopted by the Secretary of Administration (effective December 17, 2024), attached as Exhibit to F-2.

COMMISSION ADOPTED POLICY
Procurement Policy – Appendix G
PPEA



Adopted: December 15, 2014

Revised: July 22, 2025

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1.0 Purpose and Need

This policy is adopted to encourage competition and guide HRSD's procurement and selection of projects under Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code § 56-575.1 *et seq.*, as amended (the "PPEA"). The provisions of the PPEA, as amended, are incorporated into this policy by reference, as if set forth herein verbatim. A copy of the current PPEA enacted by the Virginia General Assembly can be accessed at:

<https://law.lis.virginia.gov/vacodefull/title56/chapter22.1/>.

The Commission adopts this policy, and the procedures and guidelines contained herein, to comply with the requirements of the PPEA. In the event of a conflict between this policy and any provision of PPEA, the PPEA provision shall govern, and the policy shall be interpreted and applied in a manner that will conform to the requirements of the PPEA.

The Virginia Public Procurement Act, Va. Code § 2.2-4300 *et seq.* ("VPPA") does not apply to proposals and agreements under the PPEA. *However*, the PPEA requires that Proposals be evaluated in a manner consistent with certain competitive selection procedures referenced within VPPA. See Virginia Code § 56-575.16. This policy has incorporated the PPEA's requirements for implementation of competitive selection procedures.

2.0 Definitions

As used in this policy, unless otherwise defined herein, all terms shall have the meanings as defined in the PPEA.

- 2.1 "Enabling Act" means 1960 Acts of Assembly, c. 66, as amended
- 2.2 "HRSD Commission" means the Hampton Roads Sanitation District Commission as established by the Enabling Act, being the appropriating body for HRSD.
- 2.3 "Proposal" means either an unsolicited proposal, a competing proposal, or a solicited proposal submitted to HRSD under the PPEA and this policy, as the context requires.
- 2.4 "VFOIA" means the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.*

3.0 Procedures

3.1. Unsolicited proposals.

A private entity may initiate a PPEA process by submitting an unsolicited proposal for a qualifying project to HRSD for consideration.

The General Manager/CEO is hereby designated as the HRSD official to whom PPEA inquiries and unsolicited proposals must be directed.

3.1.1. Application, Review, and Evaluation Fees.

Every unsolicited proposal shall be accompanied by an application fee in the amount of One Thousand Dollars (\$1,000.00).

If an unsolicited proposal is not rejected at the application stage and will be reviewed for possible acceptance, the proposer shall remit a review fee in an amount determined to be reasonable by HRSD to cover the costs associated with review by staff, attorneys, and other qualified professionals to (i) determine whether the proposal is a qualifying project under the PPEA, (ii) determine whether the proposal meets all other requirements for further consideration under the PPEA and this policy, and (iii) assess the merits of the proposal as being in the best interest of HRSD and its ratepayers. During the initial review, HRSD may require additional fees to adequately review the proposal based on the scope and complexity of the proposal and its related qualifying project(s), as well as the need for Commission approval in accordance with the Procurement Policy.

Upon HRSD's decision to accept an unsolicited proposal for competition, the proposer and any competing proposer selected for further evaluation shall be required to pay an evaluation fee calculated at the rate of one percent (1.0%) of the reasonably anticipated total cost of the proposed project, or other amount stipulated by HRSD, but not more than \$50,000. The evaluation fee shall be paid by the proposer at the time of the submittal of the subsequent phase of the proposal detail consistent with the protocols established for the procurement under Sec. 3.1.5 of this policy.

Additional fees may be imposed on and paid by the proposers throughout the processing, review, and evaluation of the unsolicited and competing proposals if and as HRSD reasonably anticipates incurring costs in excess of the collected fees.

In the event the total fees paid by a proposer exceed the HRSD's total costs incurred in processing, reviewing, and evaluating the proposal, HRSD will reimburse the difference.

3.1.2. Contents; format.

Every unsolicited proposal shall be accompanied by the materials and information required by PPEA § 56-575.4(A)(1) through (9), unless specifically waived by HRSD as unnecessary for consideration of whether to accept the unsolicited proposal for initial evaluation or additional consideration. The private entity shall also provide such additional material and information as HRSD may reasonably request related to the qualifying project.

3.1.3. Acceptance or Rejection.

Upon receipt by HRSD of an unsolicited proposal, HRSD will determine whether or not to accept the proposal for further consideration. HRSD will consider only those unsolicited proposals which: (i) comply with requirements of the PPEA and this policy, (ii) contain sufficient information for a meaningful evaluation of the public need for the qualifying project and public benefits, financial and non-financial, and (iii) are provided in an appropriate format.

HRSD may reject any unsolicited proposal at any time. If HRSD rejects an unsolicited proposal that purports to develop specific cost savings, it will specify the basis for the rejection. An unsolicited proposal rejected by HRSD prior to posting of public notice shall be returned to the private entity together with all fees and accompanying documentation.

Following the initial review stage, if an unsolicited proposal is accepted by HRSD for additional evaluation and competition, public notice of the proposal and a request for competing proposals shall be given as provided below. Approval of the Commission is required prior to accepting an unsolicited proposal and inviting competing proposals where the total value of the resulting agreement(s) is projected to exceed \$200,000.

3.1.4. Public Notice of an Unsolicited Proposal.

3.1.4.1. *Notice of Receipt*

Within ten (10) working days after acceptance of an unsolicited proposal for additional evaluation and competition, HRSD will post a copy of the unsolicited proposal so that it is available for public inspection in accordance

with the posting requirements of PPEA § 56-575.17(A), which shall include, without limitation, posting on the Commonwealth of Virginia's electronic procurement website. Records and information exempt from VFOIA requirements shall not be required to be posted or otherwise made available for public inspection.

3.1.4.2. *Solicitation of Competing Proposals*

Contemporaneous with an accepted unsolicited proposal being posted for public inspection, HRSD will also post notice, in a manner consistent with PPEA § 56-575.17(A), that HRSD will receive competing proposals. The period of time during which competing proposals may be submitted will be specified in the notice and established, in HRSD's sole discretion, to encourage competition and public-private partnerships in accordance with the goals of the PPEA. The period of time for submission of competing proposals will be no fewer than 45 days from the date of posting the solicitation.

The solicitation notice shall set forth a description of the unsolicited proposal in sufficient detail to encourage the submission of competitive proposals and identify how interested proposers may view or obtain a copy of the unsolicited proposal and other information relevant to the submission of competing proposals and the evaluation protocols established under Section 3.1.5 of this policy.

3.1.5. *Evaluation Process: Unsolicited and Competing Proposals.*

HRSD will evaluate an accepted unsolicited proposal, and any competing proposals, for approval using one of the following evaluation procedures:

3.1.5.1. *Competitive negotiation process*

HRSD may utilize the competitive negotiation process described in this policy to evaluate the proposals upon a written determination that such process would be advantageous to HRSD and the public based on (i) the probable scope, complexity, or priority of the project; (ii) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available.

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If HRSD proceeds with competitive negotiations, the process shall be consistent with the procurement of “nonprofessional services” by competitive negotiation as set forth in VPPA § 2.2-4302.2 and § 2.2-4310(B). The written protocol shall include elements and evaluation factors best suited to the type of project that is the subject of the accepted unsolicited proposal.

When using the process described in this subsection, HRSD shall not be required to select the proposal with the lowest price offer but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience, and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under the HRSD’s guidelines; (v) local citizen, ratepayer, and government comments; (vi) benefits to the public, localities, and ratepayers; (vii) the private entity’s compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity’s plans to employ local contractors and residents; and (ix) other criteria that HRSD deems appropriate.

Prior to the posting of public notices as referenced above, above, a written protocol for evaluating proposals received must be approved by the Director of Procurement, Chief Engineer, and Legal Counsel as being consistent with the statutory provisions referenced in this subsection.

3.1.5.2. *Competitive sealed bidding*

Unless proceeding pursuant to a competitive negotiation process, HRSD will utilize a competitive bidding process, consistent with the procedures for competitive sealed bidding, as set forth in Virginia Code § 2.2-4302.1 and § 2.2-4310(B). Prior to the posting of public notices as referenced above, a written protocol for the competitive bid process shall be established, including such elements and evaluation factors as may be best suited for the type of project that is the subject of the unsolicited proposal and must be approved by the Director of Procurement, Chief Engineer, and Legal Counsel as being consistent with the statutory provisions referenced in this subsection.

3.2. Solicited Proposals

Following approval by the Commission in accordance with the Procurement Policy, HRSD may initiate a PPEA process by requesting proposals or inviting bids from private entities for the development or operation of qualifying projects. Within its solicitation, HRSD shall specify reasonable selection criteria established consistent with Section 3.3 and the evaluation and selection protocol established under Section 3.2.1.

3.2.1. Evaluation Process: Solicited Proposals.

When soliciting and evaluating proposals, HRSD may utilize procurement protocols that are consistent with the procedures in Section 3.1.5 of this policy and informed by the procedures implemented in Procurement Policy Appendices F-1 and F-2. Unless proceeding under a protocol as described in Section 3.1.5(b), HRSD shall make a written determination that such other process would be advantageous to HRSD and the public based on (i) the probable scope, complexity, or priority of the project; (ii) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available. Prior to the posting of public notice of the solicitation as referenced below, a written protocol for evaluating proposals received must be approved by the Director of Procurement, Chief Engineer, and Legal Counsel as being consistent with this policy and the PPEA.

3.2.2. Notice of Solicitation.

HRSD will post notice of its PPEA solicitation in a manner consistent with PPEA § 56-575.17(A). HRSD may provide any additional notice that it deems appropriate to encourage competition and the purposes of the PPEA.

3.3. Evaluation and Approval of Proposals.

3.3.1. Evaluation.

The HRSD Commission finds that analysis of proposals, including the specifics, advantages, disadvantages, and the long- and short-term costs of such proposals shall be performed by employees of HRSD. To the extent deemed necessary or beneficial by the General Manager, or designee, HRSD is authorized to engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise

employed by HRSD, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of proposals.

Any protocol established in accordance with Section 3.1.5 or 3.2.1 of this policy shall include reasonable project-specific criteria for choosing among competing proposals. Project-specific criteria shall be appropriate to the framework selected by HRSD for evaluation of proposals (competitive negotiation or competitive bidding).

HRSD may reject any proposal or cancel a PPEA solicitation at any time.

Timelines for evaluation, selection, and approval of proposals will depend on many factors, including complexity of the qualifying project, the number of proposals received, staff workload, and HRSD Commission meeting schedules.

Following the required public hearing, and upon completion of the Committee's review and evaluation of the proposals consistent with the protocol established under this policy, the Director of Procurement or Chief Engineer shall prepare final recommendations on selection and approval for the General Manager's consideration.

3.3.2. Approval.

HRSD will approve one or more proposals if it determines that:

- a. There is a public need for, and benefit derived from, the qualifying project.
- b. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and
- c. The private entity's plans will result in the timely development or operation of the qualifying project

3.3.3. Selection.

HRSD shall select the private entity which, in its opinion, has made the best proposal and provides the best value, and shall begin negotiation of an interim or comprehensive agreement with that private entity. Upon approval of a proposal, HRSD shall establish a date for the commencement of activities related to the qualifying project which may be extended from time to time.

Approval of any proposal shall be subject to the private entity entering into an interim agreement (if appropriate) and a comprehensive agreement with HRSD pursuant to the PPEA and this policy.

3.4. Interim and Comprehensive Agreements.

3.4.1 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.

3.4.2. 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.

3.4.3. 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.

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

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- 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. The terms and conditions under which the qualifying project may be developed or operated in phases or segments;
14. Other requirements of the PPEA or other applicable law; and
15. Such other terms and conditions as HRSD determines serve the public purpose of the PPEA.

3.5. Notice and Posting Requirements.

3.5.1. Notice to Affected Jurisdictions.

If a private entity requests approval from, or submits a proposal to, HRSD under the authority in PPEA § 56-575.4 and this policy, then the private entity must provide each affected jurisdiction with a copy of its request or proposal. If HRSD has requested proposals or invited bids for qualifying projects pursuant to PPEA § 56-575.4(B) and policy Section 3.2, then HRSD may elect to provide each affected jurisdiction with copies of the submitted proposals on behalf of private entities, which election shall be identified in the solicitation. Each affected jurisdiction will have 60 days from the receipt of the proposal to submit written comments to HRSD and to indicate whether the proposed qualifying project is compatible with (i) its Comprehensive Plan, (ii) its infrastructure development plans, or (iii) its capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given

consideration by HRSD; however, no negative inference shall be drawn from the absence of comment by an affected jurisdiction.

3.5.2. Notice to Stakeholders.

In its sole discretion, HRSD may require proposers to provide notice, or a copy, of its request or proposal to stakeholders that HRSD believes may have an interest in or be affected by the proposed qualifying project. Such requirement, and the relevant stakeholders, will be identified by HRSD in the solicitation for proposals or competing proposals.

3.5.3. Posting of Conceptual Proposals.

If accepted by HRSD, conceptual proposals submitted in accordance with this policy and subsection A or B of PPEA § 56-575.4 shall be posted on HRSD's website or on the Virginia Department of General Services' central electronic procurement website within 10 working days after acceptance. At least one copy of accepted proposals shall be made available for public inspection by HRSD. Nothing in this policy shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by HRSD so as to provide maximum notice to the public of the opportunity to inspect the proposals.

3.5.4. Notice of Public Hearing on Proposals.

In addition to the posting requirements of PPEA § 56-575.17(A)(2), if HRSD determines that any proposals received warrant further consideration, HRSD shall advertise for a public hearing to discuss proposals it has received during the proposal review process. Such hearing shall be held at least 30 days prior to entering into an interim or comprehensive agreement and may occur at a regularly scheduled meeting of the HRSD Commission. Such notice shall be advertised at least 7 calendar 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.

3.5.5. Notice of Proposed Agreement.

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 prior to the execution of the agreement.
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 Virginia Code § 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 prior to the execution of an interim or comprehensive agreement.

3.5.6. Availability of Procurement Records.

Once an interim agreement or a comprehensive agreement has been entered into, 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 (Virginia Code § 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.

4.0 Responsibility and Authority.

The General Manager/CEO is authorized to act as the HRSD Commission's agent for administration and interpretation of this policy. If the policy does not expressly require an action to be taken by the HRSD Commission, then any action specified to be taken by HRSD may be taken by the General Manager or any person(s) to whom that officer delegates responsibility for such action in writing.

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Under the direction of the Chief Financial Officer, the Director of Procurement, and the Chief Engineer, shall be responsible for overall development, management, and implementation of this policy on behalf of the HRSD Commission and HRSD.

The General Manager/CEO is authorized to establish a standing working group of HRSD employees, to be responsible for evaluating proposals, negotiating terms and conditions for any interim or comprehensive agreement, and for making recommendations to the General Manager/CEO on those matters.

The HRSD Commission retains the sole authority to (i) accept unsolicited PPEA proposal and invite competing proposals where the total value of the resulting agreement(s) is projected to exceed \$200,000, (ii) approve the solicitation of PPEA proposals for a qualifying project, and (iii) review and approve any proposed interim agreement or comprehensive agreement, and amendments thereto, prior to execution.