ARLINGTON PUBLIC SCHOOLS

PURCHASING RESOLUTION

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ARLINGTON PUBLIC SCHOOLS
PURCHASING RESOLUTION

PREAMBLE

The purpose of this Purchasing Resolution is to enunciate the Arlington School Board policies pertaining to procurement from nongovernmental sources, to include procurement that may or may not result in monetary consideration for either party. This Purchasing Resolution shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Arlington School Board, the contractor, or some third party is providing the consideration.

In alignment with the Arlington Public Schools Strategic Plan, it is the intent of the Arlington School Board to obtain high quality goods services, professional services, construction and insurance at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to Arlington School Board business and that no bidder or offeror be arbitrarily or capriciously excluded, it is the intent of the Arlington School Board that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that the Arlington School Board enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the Arlington School Board rather than being drawn to favor a particular vendor, and that Arlington School Board and vendor freely exchange information concerning what is sought to be procured and what is offered. The Arlington School Board may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services unless otherwise provided in this Purchasing Resolution. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation. Therefore, the Arlington School Board

RESOLVES that the following policies and procedures for the conduct of purchasing by Arlington Public Schools shall take effect immediately.

ARTICLE 1 - GENERAL PROVISIONS

1-101 Application

This Purchasing Resolution applies to all contracts for goods, services, professional services, construction and insurance entered into by Arlington Public Schools. All schools and departments of Arlington Public Schools are required to comply with the provisions of this Purchasing Resolution and to purchase goods, services, professional services, construction and insurance through a centralized Purchasing Office established under this Purchasing Resolution.

When the procurement involves the expenditure of Federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation which is not reflected in this Purchasing Resolution.

1-102 Effective Date

This Purchasing Resolution became effective February 21, 1991, and has remained in effect as amended since that time. The provisions of this Purchasing Resolution shall not apply to those contracts entered into prior to passage which shall continue to be governed by the procurement policies and regulations of Arlington Public Schools and the Commonwealth of Virginia in effect at the time those contracts were executed. All amendments are effective as of the date of adoption.

1-103 Severability

If any provision of this Purchasing Resolution or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Purchasing Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Purchasing Resolution are declared to be severable.

1-104 Gender References

Whenever in this Purchasing Resolution words referring to a particular gender are used, they shall be deemed to include any gender or the neutral when applicable to Business entities unless the context otherwise clearly requires.

1-201 Definitions

(1) Best Value As predetermined in the solicitation, means the overall combination of quality, price and various elements of required services that in total are optimal relative to the needs of Arlington Public Schools. Best Value concepts apply when procuring goods and nonprofessional services but not construction or professional services unless otherwise provided in this Purchasing Resolution.

(2) Brand Name Specification A specification by manufacturers' names or catalogue numbers.

(3) Brand Name or Equal Specification A brand name specification to describe the standard of quality, performance, and other

characteristics needed to meet Arlington Public Schools requirements and which provides for the submission of equivalent products.

(4) Business Any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit/not for profit.

(5) Change Order A written agreement between Arlington Public Schools and a party with whom or with which it has a contract to provide goods, services, insurance, construction or intellectual property which is signed by both parties making a modification to the scope, price, duration, or any or all thereof and setting forth such change.

(6) Change order (Unilateral) A written order signed and unilaterally issued by the Purchasing Agent directing the contractor to make changes which the contract authorizes the Purchasing Agent to order without the consent of the contractor.

(7) Competitive Negotiations Is a method of contractor selection set forth in 4-102.

(8) Competitive Sealed Bidding Is a method of contractor selection set forth in 4-101.

(9) Confidential Information Any information which is available to an employee only because of the employee's status as an employee of Arlington Public Schools and is not a matter of public knowledge or available to the public on request.

(10) Construction Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

(11) Construction Management Contract A contract in which a party is retained by Arlington Public Schools to coordinate and administer contracts for construction services for the benefit of Arlington Public Schools, and may also include, if provided in the contract, the furnishing of construction services to Arlington Public Schools. A Construction Management at Risk Contract involves participation by the party in the pre-construction design phase, and if the parties are able to reach agreement on a guaranteed maximum price for the construction phase may extend into the construction phase, or may be awarded only for the construction phase if Arlington Public Schools and the pre-construction phase Construction Manager at Risk were unable to reach agreement on a guaranteed maximum price for the construction phase.

(12) Contract Amendment Any written alteration of a contract signed by the parties bound by the amendment. A Change Order is a form of Contract Amendment.

(13) Cost-Reimbursement Contract A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Purchasing Resolution, and a fixed fee or profit, if any.

(14) Day or Days Except as specifically provided in the context where used means calendar day. If an action is required to be taken within a

designated number of days from an event or occurrence, the day of the event or occurrence is not included in the number of days. If the deadline for taking an action expires on a Saturday, Sunday, legal holiday or on any day or part of a day on which Arlington Public Schools Education Center is closed, the act or action may be taken on the next day that is not a Saturday, Sunday, legal holiday or day on which the Arlington Public Schools Education Center is closed.

(15) Design-Build Contract A contract between Arlington Public Schools and another party in which the party contracting with Arlington Public Schools agrees to both design and build the structure, or other item specified in the contract.

(16) Goods All material, equipment, supplies, printing and automated data processing hardware and software.

(17) Governing Body The Arlington School Board.

(18) Informality A minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

(19) Intellectual Property All trademarks, trade names, domain names, corporate or business names or identifiers, patents, inventions, copyrights, computer software programs, applications, systems, source and object codes, including all registrations and recordings of such intellectual property and all legal interests and rights therein.

(20) Job Order Contracting A method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The contractor may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of Arlington Public Schools. A minimum amount of work may be specified in the contract. The contract term and the project amount shall not exceed the limitations specified in Articles 3-101 or 4-116 of this Purchasing Resolution.

Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in Articles 3.101 or 4-116 is prohibited.

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

Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel or overpass.

(21) Multiphase Professional Service Contracts A contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

(22) Nominal Value A fair market value of five ($5.00) dollars or less, except that consumable items under twenty five ($25.00) dollars in value offered to all participants or members at a professional association or organization meeting shall be considered as nominal.

(23) Nonprofessional Services Any services not specifically identified as professional services in Article 1-201 (25) of this Purchasing Resolution.

(24) Potential Bidder or Offeror For the purposes of Article 7-104 and Article 7-108 of this Purchasing Resolution means a person who, at the time Arlington Public Schools negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

(25) Professional Services Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, actuarial services, or professional engineering.

(26) Public Body Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board, any independent agency of the Commonwealth, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this Purchasing Resolution.

(27) Public Contract An agreement between Arlington Public Schools and a nongovernmental source that is enforceable in a court of law.

(28) Responsible Bidder or Offeror A bidder or offeror that has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

(29) Responsive Bidder or Offeror A bidder or offeror that has submitted a bid or offer which conforms in all material respects to the Invitation to Bid or Request for Proposal.

(30) Services Any work performed by an independent contractor, except for construction, which does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

(31) Sheltered Workshop A facility that provides work experience and related services for the purpose of assisting handicapped persons to progress toward normal living and a productive vocational status.

(32) Superintendent Unless otherwise prohibited by the Code of Virginia, or where the context clearly indicated otherwise, Superintendent shall mean the Superintendent of Arlington Public Schools or his or her designee or authorized agent or representative.

ARTICLE 2 - OFFICE OF THE PURCHASING AGENT

2-101 Establishment and Appointment

The purchasing system shall operate under the direction and supervision of the Purchasing Agent who shall be appointed by the Arlington School Board, and supervised and subject to the direction of the Superintendent, or his designee.

2-102 Authority and Duties of the Purchasing Agent

(1) Authority The Purchasing Agent shall serve as the principal public purchasing official for Arlington Public Schools and shall be responsible for the procurement of goods, services, professional services, construction and insurance in accordance with this Purchasing Resolution, as well as for the management of the disposal of surplus equipment.

(2) Delegation of Authority Any act or action required or permitted to be taken by the Arlington School Board under the Virginia Public Procurement Act, Va. Code Ann. Sec. 1.1-4300 through 4377, or other applicable law, hereby is delegated to the Superintendent and the Purchasing Agent unless specifically reserved to require action by the Arlington School Board. When an action is stated to be taken by the Purchasing Agent, that shall be deemed a delegation of the same authority to the Superintendent. When an action is stated to be taken by the Superintendent, that shall be deemed a delegation only to the Superintendent. The Superintendent is authorized to further delegate any authority delegated to the Superintendent by this Purchasing Resolution to any designee.

(3) Duties In accordance with this Purchasing Resolution, and subject to the supervision and direction of the Superintendent, or his designee, the Purchasing Agent shall:

A. Contract for all goods, services, professional services, construction and insurance needed by Arlington Public Schools;

B. Sell, trade or otherwise dispose of surplus goods belonging to Arlington Public Schools;

C. Establish and maintain programs for specification development, contract administration, inspection, and acceptance, in cooperation with the Arlington Public Schools school or department that has requested the goods, services, professional services, construction or insurance;

D. Prepare and update standard specifications;

E. Inspect or require the using school or department to inspect all deliveries of goods, services, professional services, construction or insurance procured through the Purchasing Agent to assure conformance with the contract specifications;

F. Procure for Arlington Public Schools the highest quality goods, services, professional services, construction, and insurance

property at the lowest cost and, when applicable, consistent with the best value concept when procuring goods and nonprofessional services, but not construction or professional services;

G. Endeavor to obtain maximum feasible competition for all procurements and sales;

H. Keep informed of current developments in the field of procurement, prices, market conditions and new products;

I. Secure for Arlington Public Schools the benefits of research done in the field of procurement by another Public Body, national societies, national trade associations, and private businesses and organizations;

J. Prepare and adopt standard purchase definitions and forms;

K. Prepare, adopt, and maintain a contract file containing descriptions of commodities, prices and discounts of goods and services available for procurement under term contracts either established by the Purchasing Agent, or by another Public Body which the Purchasing Agent has confirmed satisfies the provisions of Article 3 of this Purchasing Resolution;

L. Assure that sufficient money has been appropriated to cover the cost of all procurements or contracts;

M. Perform other functions and duties as required by this Purchasing Resolution or as the Superintendent, or his designee may assign; and

N. After review and approval as to legal form by the Arlington Public Schools Attorney, adopt and amend from time to time as may be required, a policy that provides for the inclusion of incentive contracting in those Arlington Public Schools construction projects where such inclusion is considered by the Purchasing Agent to be in the best interest of the Arlington Public Schools. The policy shall offer a contractor whose bid is accepted the opportunity to share in any cost savings realized by the Arlington Public Schools when project costs are reduced by such contractor, without affecting project quality, during construction of the project. Such policy shall provide that the fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

O. Notwithstanding any provision in the foregoing designation and delegation of authorities, any Contract for Construction or Professional or Non-Professional Services on a Capital Improvement Project with a contract price in excess of $500,000.00 shall require express prior approval of the Arlington School Board, and any amendment to a fixed-price contract which will increase the contract price by more than twenty-five percent (25%) of the amount of the contract or $50,000, whichever is greater, and any individual change order of $100,000 or greater on a Contract for Construction or Professional or Non-Professional Services on a Capital Improvement Project, shall

require the advance written approval of the Arlington School Board.

2-103 Delegation

With the written approval of the Superintendent or his designee, the Purchasing Agent may delegate authority to procure certain goods, services, professional services, construction or insurance to other Arlington Public Schools employees or public bodies, if such delegation is deemed necessary for the effective procurement of those items.

2-104 Revisory Authority

The Purchasing Agent shall have the authority to disapprove any procurement as to the selection of vendor, the quantity or quality of the commodity requested, and shall have the authority to change specifications. Decisions under this section may be appealed to the Superintendent.

2-105 Rules and Regulations

The Purchasing Agent shall prepare and maintain a purchasing manual containing detailed rules and regulations consistent with this Purchasing Resolution and the laws of the Commonwealth of Virginia governing the operation of the Arlington Public Schools purchasing system. Publication of this purchasing manual requires approval by the Superintendent as will all subsequent amendments and reissuance.

ARTICLE 3 – JOINT PROCUREMENT AND COOPERATIVE PROCUREMENT

3-101 Conditions for Use

(1) Arlington Public Schools may participate in, sponsor, conduct, or administer a joint procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services or construction.

(2) In addition, Arlington Public Schools may purchase from another Public Body's contract or from the contract of the Metropolitan Washington Council of Governments, even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies, except for:

A. Contracts for architectural or engineering services; or

B. Construction, except for the installation of artificial turf and track surfaces, including all associated and necessary construction, which shall not be subject to the limitation prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections 4-103 and 4-104 of this Purchasing Resolution.

(3) Arlington Public Schools may purchase from any authority, department, agency or institution of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in this Purchasing Resolution and the administrative policies and procedures established to implement this Purchasing Resolution shall be permitted, if approved by the Purchasing Agent.

(4) Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

Arlington Public Schools may purchase goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government to the extent permitted by applicable federal law or regulation.

ARTICLE 4 - CONTRACT FORMATION AND METHODS OF SOURCE SELECTION

4-101 Competitive Sealed Bidding

(1) Conditions for Use: All Arlington Public Schools contracts with non-governmental vendors or contractors for the purchase or lease of goods, or for the purchase of services, construction or insurance in excess of $100,000 shall be awarded after competitive sealed bidding, or by such other procedures required or authorized by this Purchasing Resolution. Competitive sealed bidding is a method of vendor or contractor selection, other than for professional services, which include the following elements:

A. Issuance of an Invitation to Bid

B. Public notice of the Invitation to Bid

C. Public opening and announcement of all bids received

D. Evaluation of bids

E. Award to the lowest responsive and responsible bidder

(2) Prequalification of Bidders and Offerors

A. The Purchasing Agent is authorized to prequalify prospective contractors for particular types of goods, services, professional services, construction or insurance and consideration of bids or proposals limited to prequalified contractors, prior to any solicitation of bids or proposals.

B. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. Such form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor shall be considered a trade secret or proprietary information pursuant to, and subject to the limitations of Article 4-110 of this Purchasing Resolution.

C. In all instances in which the Purchasing Agent requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

D. At least thirty (30) calendar days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Purchasing Agent shall advise in writing each contractor which submitted an

application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to such contractor shall state the reasons for such denial of prequalification and the factual basis of such reasons.

E. A decision by the Purchasing Agent denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in Article 7-101 of this Purchasing Resolution.

F. The Purchasing Agent may deny prequalification to any contractor only if the Purchasing Agent finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations (Circular 570, latest edition) in the amount and type required by Arlington Public Schools shall be sufficient to establish the financial ability of such contractor to perform the contract resulting from such procurement:

2. The contractor does not have appropriate experience to perform the construction project in question:

3. The contractor or any officer, director, or owner thereof has had judgments entered against it or him within the past ten (10) years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with Arlington Public Schools without good cause. If Arlington Public Schools has not contracted with a contractor in any prior construction contracts, the Purchasing Agent may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another Public Body without good cause. Arlington Public Schools may not utilize this provision to deny qualification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any owner, officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to a violation of Article 9 of this Purchasing Resolution, the Virginia Governmental Frauds Act (§ 18.2-498 et

seq.),Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any Public Body, agency of another state or agency of the federal government;

7. The contractor failed to provide to the Purchasing Agent in a timely manner any information requested by the Purchasing Agent relevant to subsections 1 through 6 of this section;

8. Prequalification of a bidder shall not constitute a conclusive determination that the bidder is responsible, and such bidder may be rejected as non-responsible on the basis of subsequently discovered information;

9. Failure of a bidder to prequalify with respect to a given procurement shall not bar the bidder from seeking prequalification as to future procurements, or from responding to procurements which do not require prequalification.

(3) Notice of Invitation to Bid Arlington Public Schools will make public the notice of the Invitation to Bid at least ten (10) calendar days prior to the date set for receipt of bids by posting on the Department of General Services electronic procurement Web site, eVA, as well as Arlington Public Schools Web site.

Arlington Public Schools also shall post notice of the Invitation to Bid on a public bulletin board in the Education Center.

Arlington Public Schools shall encourage the participation of Small and Disadvantaged Businesses by making its solicitations available in accordance with Article 8 of this Purchasing Resolution.

The Invitation to Bid shall establish a procedure whereby comments concerning specifications or other provisions in the Invitation to Bid can be received and considered prior to the time set for receipt of bids.

(4) Use of Brand Names Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer names; it conveys the general style, type, character, and quality of the articles desired, and any article which Arlington Public Schools in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

(5) Retainage for Other than Construction Contracts

A. Any Arlington Public Schools contract for goods, services and professional services which provides for progress payments in installments based upon an estimated percentage of completion,

the contractor shall be paid at least ninety-five percent (95%) of the earned sum when payment is due, with not more than five percent (5%) being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for an Arlington Public Schools project which provides for similar progress payments shall be subject to the provisions of this Article.

(6) Bonds for Other than Construction Contracts Arlington Public Schools may require bid, payment or performance bonds for contracts for goods, services and professional services if provided in the Invitation to Bid or Request for Proposal.

(7) Cancelation, Rejection of Bids, Waiver of Informalities

A. An Invitation for Bid, a Request for Proposal, or other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancelation or rejection shall be made part of the contract file. Arlington Public Schools shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this Article solely to avoid awarding a contract to a particular responsive bidder or offeror.

B. The Purchasing Agent may waive Informalities in the bids.

(8) Bid Opening All bids received under this Article must be opened and announced in public.

(9) Withdrawal of Bid Due to Error for Other than Construction Contracts

A. A bidder for an Arlington Public Schools contract for goods or services, excluding construction, may make a written request to the Purchasing Agent to withdraw a bid at any time prior to the date and time set for the bid opening. After the bid opening, a bidder may make a written request to the Purchasing Agent to withdraw a bid. The written request must be received by the Purchasing Agent no later than 5:00PM on the first full business day following the bid opening.

B. Bidders may request withdrawal of their bid from consideration if the price bid was substantially lower than the other bids due solely to a clerical or arithmetical mistake therein, as opposed to a judgment mistake, and 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 the bid, which can be clearly shown by objective evidence drawn from inspection of the bidder’s original work papers, documents and materials used in preparation of the bid. The bidder shall provide the original work papers, documents, and materials within the same time as required for the notice seeking withdrawal of the bid.

C. If the Purchasing Agent denies the written request to withdraw a bid, the bidder shall be notified in writing stating the reasons

for the decision. Award of the contract shall be made to the bidder at the bid price, provided the bidder is a responsible and responsive bidder.

D. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

E. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

F. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

(10) Bid Evaluation In determining "lowest responsible bidder", in addition to price, the Purchasing Agent shall consider:

A. The ability, capacity, skill and financial resources of the bidder to perform the contract or provide the service required;

B. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

C. Whether the bidder provides goods or services that are the best value for Arlington Public Schools, if applicable;

D. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

E. The quality of performance of previous contracts or services to Arlington Public Schools, or any other Public Body;

F. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

G. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

H. Whether the bidder is in arrears to Arlington Public Schools on a debt or contract or is a defaulter on surety or whether the bidder's taxes or assessments are delinquent;

I. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services;

J. Such other information as may be determined by the Purchasing Agent to have a bearing on the decision to award a contract

(11) Contract Award Contracts shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of the Invitation to

Bid provide that multiple awards may be made, awards may be made to more than one bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted except that if the bid from the lowest responsible bidder exceeds available funds, Arlington Public Schools may negotiate with the apparent low bidder to obtain a contract price within available funds in accordance with the procedures outlined in the Invitation to Bid.

When the award of contract is not given to the apparent lowest bidder, the Purchasing Agent shall so notify the bidder and a full and complete statement of the reasons for placing the contract elsewhere shall be prepared by the Purchasing Agent and filed with the other papers relating to the transaction.

(12) Tie Bids

A. In the case of a tie bid, preference will be given to goods, services, and construction produced in Arlington County or provided by persons, firms or corporations having principal places of business in Arlington County, if such a choice is available. Like preference shall be given to bidders domiciled in Virginia when tied with bidders not domiciled in Virginia.

B. Whenever any bidder is domiciled in any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder submitting a responsive bid domiciled in Virginia.

C. Notwithstanding the provisions of subsections A, and B, in the case of a tie bid in instances where goods are being offered, when the tie bid still exists after existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

D. In the event that none of the foregoing provisions of this section resolve the tie, the Purchasing Agent may decide the tie by lot.

(13) Multi-Step Sealed Bidding When it is considered impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(14) Contract Pricing Arrangement Except as prohibited by this Article, Arlington Public Schools Public Contracts may be awarded on a fixed price or cost reimbursement basis, or on any basis that is not prohibited. Except in case of emergency affecting the public health, safety or welfare, no Arlington Public Schools Public Contract shall be awarded on the basis of cost plus a percentage of cost. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's

administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section. Architect, Engineer and similar contracts which are based on a percentage of construction cost shall not be prohibited by this section, providing the construction contract is not awarded to that Architect, Engineer or similar contractor.

(15) Multi-Term Contracts

A. Specified Period Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interest of the Arlington Public Schools provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

(16) Withdrawal of Bid Due to Error on Construction Contracts

A. A bidder for an Arlington Public Schools public construction contract may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and 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 withdrawn. The procedure for bid withdrawal must be stated in the Invitation to Bid.

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; or

Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder’s request, be considered trade secrets or proprietary information subject to the conditions of Article 4-110 of this Purchasing Resolution.

B. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

C. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

D. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

E. If the Purchasing Agent denies the withdrawal of a bid under the provisions of this section, he shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid stating the reasons for his decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the Purchasing Agent shall return all work papers and copies thereof that have been submitted by the bidder.

(17) Retainage on Construction Contracts

A. In any Arlington Public Schools contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for an Arlington Public Schools project that provides for similar progress payments shall be subject to provisions of this Article.

(18) Bid Bonds on Construction Contracts Except in cases of emergency, all bids or proposals for construction contracts in excess of $500,000 shall be accompanied by a bid bond from a surety company selected by the bidder which is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid. For construction contracts in excess of $100,000 but less than $500,000, Arlington Public Schools may waive the bid bond requirements only if prospective contractors are be prequalified for the individual project in accordance with Article 4-101 (2) of this Purchasing Resolution. Nothing in this section shall preclude the Purchasing Agent from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than $500,000.

No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

(19) Performance and Payment Bonds on Construction Contracts

A. Upon the award of any (i) Arlington Public Schools construction contract exceeding $500,000 awarded to any prime contractor; (ii)

construction contract exceeding $500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by Arlington Public Schools; or (iii) construction contract exceeding $500,000 in which performance of labor or the furnishing of materials will be paid with public funds, the contractor shall furnish to Arlington Public Schools the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

2. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. For construction contracts in excess of $100,000 but less than $500,000, Arlington Public Schools may waive the bond requirements only if prospective contractors are prequalified for the individual project in accordance with Article 4-101 (2) of this Purchasing Resolution.

C. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are authorized to do business in Virginia and are listed on the United States Treasury Department’s latest Circular 570.

D. Bonds shall be made payable to Arlington Public Schools.

E. Each of the bonds shall be filed with Arlington Public Schools, or a designated office or official thereof.

F. Nothing in this section shall preclude the Purchasing Agent from requiring payment or performance bonds for construction contracts below $500,000.

G. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract. Such payment bond shall provide claimants no less protection than that available to one who qualifies as a claimant under the contractor’s payment bond.

(20) Action on Performance Bond No action against the surety on a performance bond shall be brought unless brought within one year after (i) final completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

(21) Actions on Payment Bonds

A. Any claimant who has a direct contractual relationship with the contractor and who has performed labor or furnished materials in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of ninety (90) calendar days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material, The obligee named in the bond need not be named a party to such action.

B. Any claimant who has a direct contractual relationship with any subcontractor, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within ninety (90) calendar days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainage with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under Article 4-101(19)(G) of this Purchasing Resolution, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor’s payment bond pursuant to the provisions thereof.

C. Any action on the contractor’s payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the contractor’s payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

(22) Alternative Forms of Security

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check or cash escrow in the face amount required for the bond.

B. If approved by the Arlington Public Schools Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to Arlington Public Schools equivalent to a corporate surety's bond.

4-102 Competitive Negotiation

(1) Competitive Negotiation for Goods or Services Other Than Professional Services

A. Conditions for Use:

Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Purchasing Agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to Arlington Public Schools, which writing shall document the basis for this determination:

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

2. for construction contracts awarded on a design-build or construction management contract in accordance with the requirements of §2.2-4308 of the Code of Virginia, and the procedures set forth in Article 4-102 (3) of this Purchasing Resolution.

B. Request for Proposal: The Purchasing Agent shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in the evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.

C. Public Notice: Arlington Public Schools will make public the notice of the Request for Proposal at least ten (10) calendar days prior to the date set for receipt of proposals by

publication in a newspaper of general circulation in the area in which the contract is to be performed, and by posting on the Department of General Services' central electronic Web site, eVA, and the Arlington Public Schools Web site. Arlington Public Schools shall encourage the participation of Small, Women-Owned, Minority-Owned, Service Disabled Veteran-Owned Businesses by making its solicitations available in accordance with Article 8.

Arlington Public Schools will also post notice of the request for proposal on a public bulletin board in the Arlington Public Schools Education Center.

D. Receipt of Proposals: Proposals shall not be public and no proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation.

E. Selection and Award: Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. In the case of a proposal for information technology, as defined in § 2.2-2006, Arlington Public Schools shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Failure of the offeror to submit written exceptions to any liability provisions at the beginning of negotiations shall be deemed acceptance of the liability provisions contained in the Requests for Proposal and no exceptions shall be considered. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, Arlington Public Schools shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should Arlington Public Schools determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

(2) Competitive Negotiation for Professional Services

A. Conditions for Use: Contracts for professional services, as defined in Article 1-201 (21) of this Purchasing Resolution, the cost of which, during a three (3) year period, is expected to exceed $60,000 in the aggregate or for the sum of all phases of a contract or project shall be entered into by use of the Competitive Negotiations for Professional Services method. Services estimated to cost $60,000 or less, during a three (3) year period, may be procured in accordance with the procedures for Competitive Sealed Bidding, Competitive Negotiation for Goods

and Services Other Than Professional Services, Competitive Negotiation for Professional Services or any other method that is authorized by this Purchasing Resolution, at the discretion of the Purchasing Agent.

1. A Contract for architectural or professional engineering services relating to multiple construction projects may be awarded by Arlington Public Schools, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

2. Such contracts may be renewable for four additional one-year terms at the option of Arlington Public Schools. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

3. The sum of all projects performed in a one-year contract term shall not exceed $500,000.

4. Competitive negotiations for such architectural or professional engineering contracts may result in awards to more than one offeror provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for individual projects based on price.

5. The fee for any single project shall not exceed $100,000

6. Any unused amounts from one contract term shall not be carried forward to any additional term, except as otherwise approved by the restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.)

7. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract

B. Request for Proposals: The Purchasing Agent shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal, indicating whether a numerical

scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required. The Request for Proposals shall establish procedures whereby comments concerning specifications or other provisions in the Request for Proposals can be received and considered prior to the time set for receipt of proposals.

In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals

C. Public Notice: Arlington Public Schools will make public the notice of the Request for Proposal at least ten (10) calendar days prior to the date set for receipt of proposals by publication in a newspaper of general circulation in the area in which the contract is to be performed, and by posting on the Department of General Services' central electronic Web site, eVA, and the Arlington County Public Schools Web site. . Arlington Public Schools shall encourage the participation of Small and Disadvantaged Businesses by making its solicitations available in accordance with Article 8.
Arlington Public Schools will also post notice of the request for proposal on a public bulletin board in the Arlington Public Schools Education Center.

D. Selection and Award: Arlington Public Schools shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial response and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by Arlington Public Schools in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, Arlington Public Schools may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, non-binding estimates of prices for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132, until after the qualified offerors are ranked for negotiations. Offerors providing a proposal which contains exceptions will be deemed nonresponsive. At the conclusion of discussion, outlined in this section above, on the basis of

evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, Arlington Public Schools shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed the most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to Arlington Public Schools can be negotiated at a price considered fair and reasonable, and pursuant to contractual terms and conditions acceptable to the public body, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request for proposal, Arlington Public Schools may award contracts to more than one offeror. Should Arlington Public Schools determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

(3) Competitive Negotiation for Acquisition of Construction on a Fixed Price or Not-to-exceed Price Design-Build or Construction Management Basis.

While the competitive sealed bid process remains the preferred method of construction procurement for Arlington Public Schools, Arlington Public Schools may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided, which term shall include construction management at risk, it complies with the requirements of this Section 4-102(3) and has implemented procedures consistent with the procedures adopted by the Secretary of Administration of the Commonwealth for utilizing design-build or construction Management contracts.

A. Prior to making a determination as to the use of design-build or construction management for a specific construction project, Arlington Public Schools shall have in its employ, or under contract a licensed architect or engineer with professional competence appropriate to the project to advise Arlington Public Schools regarding the use of design-build or construction management for that project and who shall assist Arlington Public Schools in the preparation of the Request for Qualifications (RFQ) and Request for Proposals (RFP) and the evaluation of such qualifications and proposals.

B. Upon approval of the Purchasing Agent of the use of design-build or construction management contract for a specific construction project, the Purchasing Agent shall appoint a Selection Advisory Committee of not less than three (3) members, one of whom shall be the architect or engineer employed by or under contract with the Arlington Public Schools pursuant to subsection A.

C. The Purchasing Agent shall issue a notice of Request for Qualifications (RFQ) from potential offerors by posting on a public bulletin board in the Arlington Public Schools Education Center and advertising in a

newspaper of general circulation in Arlington County at least ten (10) calendar days preceding the last day set for the receipt of qualifications and by posting on the Department of General Services' central electronic Web site, eVA, and the Arlington Public Schools Web site. Arlington Public Schools shall encourage the participation of Small, Minority-Owned, Women-Owned, and Service Disabled Owned Businesses by making its solicitations available in accordance with Article 8. The RFQ shall indicate in general terms that which is sought to be procured, specifying the criteria which will be used in evaluating the potential offerors' qualifications, indicating whether a numerical scoring system will be used in evaluation of the responses to the RFQ, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of offerors. In the event that a numerical scoring system will be used in the evaluation of responses to the RFQ, the point values assigned to each of the evaluation criteria shall be included in the RFQ or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving responses to the RFQ. The RFQ shall request of potential offerors only such information as is appropriate for an objective evaluation of all potential offerors pursuant to such criteria. The Purchasing Agent shall receive and consider comments concerning specifications or other provisions in the request for qualifications, prior to the time set for receipt of qualifications.

The Selection Advisory Committee shall evaluate each responding potential offeror's qualifications submittal and any other relevant information, and shall select a minimum of two (2) offerors deemed fully qualified and best suited on the basis of the criteria contained in the RFQ. An offeror may be denied prequalification only upon those grounds specified in Article 4-101(2)F of this Purchasing Resolution. Not being included in the minimum of two (2) offerors deemed fully qualified and best suited does not mean an offeror is not qualified. At least thirty (30) calendar days prior to the date established for the submission of proposals, the Purchasing Agent shall advise in writing each potential offeror whether that offeror has been selected. In the event that a potential offeror is not selected, the written notification to such potential offeror shall state the reasons therefor.

D. The Purchasing Agent shall issue a Request for Proposals (RFP) to the selected offerors at least ten (10) calendar days prior to the date set for receipt of proposals. The RFP shall include and define the requirements of the specific construction project in areas such as site plans, floor plans, exterior elevations, basic building envelope materials, fire protection information plans, structural, mechanical (HVAC) and electrical systems, and special telecommunications, and such other requirements as the Purchasing Agent deems appropriate for the construction project. In the case of a construction management contract, the RFP shall also define the pre-design, design phase, bid phase and/or construction phase services to be performed by the construction manager. The RFP shall also specify the criteria to be used by the Selection Advisory Committee to evaluate proposals, indicating whether a numerical scoring system will be used in evaluation of the proposals. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values

assigned to each of the evaluation criteria shall be included in the RFP or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. The Purchasing Agent shall receive and consider comments concerning specifications or other provisions in the Request for Proposals, prior to the time set for receipt of proposals.

For a Construction Manager at Risk procurement, Cost proposals for the pre-construction services phase shall include a pre-construction services fee, a general conditions fee, a CM fee and an insurance and taxes fee expressed as a percentage, consistent with the procedures established in the then current Commonwealth of Virginia Construction and Public Services Manual, Department of General Services, Division of Engineering & Buildings, Bureau of Capital Outlay Management, for all requested services.

The Selection Advisory Committee shall evaluate each proposal and select two (2) or more offerors deemed to be fully qualified and best suited among those submitting proposals based on the criteria set forth in the RFP for further consideration.

Negotiations shall then be conducted with each of the offerors so selected, exercising care to discuss the same owner information with each offeror. In addition, the Selection Advisory Committee shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to Article 4-110 of this Purchasing Resolution. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, Arlington Public Schools shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror.

Should Arlington Public Schools determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

In a Construction Manager at Risk procurement, if the parties are unable to agree on a guaranteed maximum price for the Construction Services Phase during the Pre-Constructions Services Phase, the Construction Services Phase shall be procured in accordance with the procedures set forth by the Secretary of Administration of the Commonwealth in the then current edition of the Construction and Professional Services Manual issued by the Department of General Services, Division of Engineering & Buildings, Bureau of Capital Outlay Management, or its successor, of the Commonwealth.

Any GMP construction management contract, shall include contract terms providing that 1) not more than 10% of the construction work (measured by cost of the work) shall be performed by the construction manager with its own forces and 2) that the remaining 90% of the construction work shall be performed by subcontractors of the construction manager which the construction manager shall procure by competitive sealed bidding or competitive negotiations.

E. The Purchasing Agent may promulgate such additional procedures, not inconsistent with the provisions of this Article, and consistent with the procedures for the procurement of nonprofessional services through competitive negotiation, as deemed necessary and appropriate to effect the selection and evaluation of offers and the award of design-build and construction management contracts.

(4) Purchase of Insurance.

Upon a written determination made in advance by the Purchasing Agent that competitive negotiation for the purchase of insurance is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker who shall be selected in the same manner provided for in Article 4-102 (1) of this Purchasing Resolution.

4-103 Sole Source Procurement

Upon a determination in writing by the Purchasing Agent that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. Arlington Public Schools shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Arlington Public Schools Web site.

4-104 Emergency Purchases

In case of emergency, a contract may be awarded without Competitive Sealed Bidding or Competitive Negotiation. If any emergency occurs during regular business hours of the Arlington Public Schools Purchasing Office, the using school or department shall immediately notify the Purchasing Agent who shall either purchase the required supplies or contractual services, authorize the school or department to do so, or disapprove the emergency purchase. A written explanation of the circumstances of the emergency shall be filed with the Purchasing Agent and posted on the Arlington Public Schools Website.

If an emergency occurs at times other than regular business hours of the Arlington Public Schools Purchasing Office, the concerned school or department may purchase directly the required goods or contractual services. The school or department, shall, however, whenever practicable, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder. The school or department shall also, as soon as practicable, submit to the Purchasing Agent a tabulation of bids received, if any, a copy of the delivery record and a written explanation of the circumstances of the emergency. A written explanation of the circumstances of the emergency shall be filed with the Purchasing Agent.

The Purchasing Agent shall, as promptly as practical, issue a written notice stating that the contract is being or has been awarded on an emergency basis, identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Arlington Public Schools Web site.

An emergency situation exists when the safety, health or welfare of the Arlington Public Schools students, employees, School Board or public is vitally affected by: (a) a breakdown in machinery and/or threatened termination of essential services, (including maintenance and repair of essential office equipment), or (b) the development of a dangerous condition, or (c) any other circumstance in which supplies are needed for immediate use.

4-105 Small Purchases

(1) Any single or term contract for (i) goods and services other than professional services and non-transportation related Construction, if the aggregate or sum of all phases, during a three (3) year period, is not expected to exceed $100,000 and Professional Services estimated to cost, during a three (3) year period, $60,000 or less and (ii) transportation-related construction, if the aggregate or sum of all phases is not expected to exceed $25,000,may be awarded, at the discretion of the Purchasing Agent, in accordance with small purchase procedures approved in this Article. However, such small purchase procedures shall provide for competition wherever practicable. Small purchases for Construction shall comply with the Uniform State Building Code

(2) Small purchase procedures include, but are not limited to, the following provisions:

A. Contract requirements shall not be artificially divided so as to constitute a small purchase.

B. Insofar as it is practical, only one business shall be solicited to submit a written quote for purchases where the anticipated cost, or the aggregate or the sum of all phases of that to be provided for the term of the award is not greater than $10,000; no less than three businesses shall be solicited to submit written quotations where the anticipated cost, or the aggregate or the sum of all phases of that to be provided for the term of the award is between $10,001 and $30,000; and no less than four businesses shall be solicited to submit written quotations for purchases where the anticipated cost, or the aggregate or the sum of all phases of that to be provided for the term of the award is between $30,001 and $100,000.

C. Award shall be made to the business offering the lowest acceptable responsive and responsible quotation.

D. The name of the businesses submitting quotations and the date and the amount of each quotation shall be recorded and maintained as a public record.

E. All quotations solicited shall be submitted in writing by the businesses.

F. Nothing in this section shall preclude the Purchasing Agent from requiring more stringent procedures for purchases made under the small purchase method or from waiving these small purchase procedures in whole or in part when, in the opinion of the Purchasing Agent, the best interests of Arlington Public Schools would be served by such waiver.

4-106 Interest in More Than One Bid and Collusion

(1) Where more than one bid or proposal is received in response to a single solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names, all bids or proposals from the individual, firm, partnership, corporation, affiliate, or association under the same or different names, will be rejected.

(2) Reasonable grounds for believing that a bidder or offeror is interested in more than one bid or proposal for a solicitation both as a bidder or offeror and as a subcontractor for another bidder or offeror, will result in rejection of all bids or proposals in which the bidder or offeror is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two or more bidders or offerors submitting a bid or proposal for the work.

(3) Any or all bids or proposals may be rejected if reasonable grounds exist for believing that collusion exists among any bidders or offerors.

(4) Bidders or offerors rejected under the above provisions shall be deemed to be not responsible and will have the right to reply to the Purchasing Agent’s determination as otherwise provided in this Purchasing Resolution. Bidders or offerors who are rejected under the above provisions after any reply has been considered will be rejected or disqualified if they respond to a re-solicitation for the same work.

(5) The Purchasing Agent may waive the provisions in section 2, above, prior to issuing a solicitation when the Purchasing Agent determines in writing that the circumstance does not in fact create a conflict of interest for the bidder or offeror and Arlington Public Schools' interest would be best served by such a waiver.

4-107 Capital Improvement Projects and Professional and Non-Professional Services Contracts

(1) No contract for a capital improvement project that exceeds $500,000 shall be awarded without the prior approval of the Arlington School Board.

(2) Capital improvement projects are defined as work on real property or its improvements other than normal maintenance in excess of $15,000, provided however that the work shall not be artificially divided to avoid classification as a capital improvement project under this section.

(3) No contract for Professional or Non-Professional Services, which contract is performed as part of a capital improvement project and which Professional or Non-Professional Services contract exceeds $500,000, shall be awarded without the approval of the Arlington School Board.

4-108 Amendment of a Capital Improvement Project or Professional or Non-Professional Services Contract

(1) An Arlington Public Schools contract for a capital improvement project or Professional or Non-Professional Services performed as part of a capital improvement project may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract or $50,000, whichever is greater, without the advance written approval of the Arlington School Board. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of a bidder or offeror from the consequences of an error in its bid or offer.

(2) Arlington Public Schools may extend the term of an existing Arlington Public Schools contract for Professional or Non-Professional Services to allow completion of any work undertaken but not completed during the original term of the contract.

(3) The provisions of this section shall not limit the amount a party to a contract with Arlington Public Schools may claim or recover against Arlington Public Schools pursuant to Article 7-107 or any other applicable statute or regulation. Modifications made by Arlington Public Schools that fail to comply with this section are voidable at the discretion of the Arlington School Board, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in Article 7-107.

(4) No amendment of a contract for capital improvement project or Professional or Non-Professional Services performed as part of a capital improvement project shall be made without a writing signed by the Purchasing Agent or the Purchasing Agent's designee.

(5) Any individual change orders in excess of $100,000 on contracts for a capital improvement project or Professional or Non-Professional Services performed as part on a capital improvement project requires prior approval by the Arlington School Board.

4-109 Amendment of a Contract for Goods, Services, Professional Services, Construction (Excluding Contracts for Construction or Professional or Non-Professional Services on a Capital Improvement Project) and Insurance.

(1) An Arlington Public Schools contract for goods, services, professional services, construction (excluding Contracts for Construction or Professional Services on a capital improvement project) and insurance, may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract or $50,000, whichever is greater, without the advance written approval of the Arlington School Board. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of a bidder or offeror from the consequences of an error in its bid or offer.

(2) Arlington Public Schools may extend the term of an existing Arlington Public Schools contract for Professional or Non-Professional Services

to allow completion of any work undertaken but not completed during the original term of the contract.

(3) The provisions of this section shall not limit the amount a party to a contract with Arlington Public Schools may claim or recover against Arlington Public Schools pursuant to Article 7-107 or any other applicable statute or regulation. Modifications made by Arlington Public Schools that fail to comply with this section are voidable at the discretion of the Arlington School Board, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in Article 7-107.

(4) No amendment of a Public Contract shall be made without a writing signed by the Purchasing Agent or the Purchasing Agent's designee.

(5) Any individual contract amendment having significant impact on the approved project budget requires prior approval by the Arlington School Board.

4-110 Work Commencing Without an Approved Purchase Order or Change Order

A contractor shall not commence work until an approved Purchase Order or Change Order has been issued by the Purchasing Agent, except where permitted either by this Purchasing Resolution or the underlying Public Contract to which the Purchase Order or Change Order is the approval to commence work or modify it. A Public Contract is not considered to be fully executed unless it has been signed by the APS Purchasing Agent, or his designee, and the contractor

In situations where work has commenced prior to a Purchase Order or Change Order being approved, and it is determined the commencement of work without a Purchase Order or Change Order is not permitted by this Purchasing Resolution or the underlying Public Contract, requests for payment received from the contractor for work performed prior to the date of a Purchase Order or Change Order being approved, may be rejected by the Purchasing Agent and considered an Unauthorized Purchase.

The contractor's sole recourse shall be as provided by the underlying contract and the applicable provisions of the Virginia Public Procurement Act.

4-111 Unauthorized Purchases

(1) Whenever any officer or employee of Arlington Public Schools purchases or contracts for any goods, services, professional services, construction and insurance contrary to the provisions of this Purchasing Resolution, such purchases or contract shall be void and shall not be considered to be an obligation of Arlington Public Schools.

(2) Any Arlington Public Schools officer or employee making or approving the original purchase contrary to the provisions of this Purchasing Resolution or of the Virginia Public Procurement Act, whether willfully or through gross negligence, may be personally liable for the costs of such purchases or contract. If already paid out of Arlington Public Schools funds, the amount thereof may in the name of Arlington Public

Schools, be recovered by deduction from that person's compensation in accordance with applicable law, or, an appropriate legal action instituted.

4-112 Competitive Bidding or Competitive Negotiation on State-aid Projects

No contract for the construction of any building or for an addition to or improvement of an existing building by Arlington Public Schools for which state funds of not more than $50,000 in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under Section 4-102 (1) A of this Purchasing Resolution. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to the Virginia Public Procurement Act, Sections 2.2-4300 et seq.

4-113 Public Access to Procurement Information

Except as provided in this Purchasing Resolution , all proceedings, records, contracts and other public records relating to Arlington Public Schools procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Cost estimates relating to a proposed transaction prepared by or for Arlington Public Schools shall not be open to public inspection.

Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids, but prior to award, except in the event that Arlington Public Schools decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed, but prior to award, except in the event that Arlington Public Schools decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to Article 4-101(2) of this Purchasing Resolution shall not be subject to the Virginia Freedom of Information Act 2.2-3700 et seq.); however, the bidder, offeror or contractor shall invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

4-114 Provisions to be Included in every Contract over $10,000

(1) Employment Discrimination by Contractor Prohibited

During the performance of this contract, the contractor agrees as follows:

A. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an Equal Opportunity Employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

D. The contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

E. The contractor will include the provisions of the foregoing sections in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

(2). Drug-Free Workplace to be Maintained by Contractor

During the performance of this contract, the contractor agrees to:

A. Provide a drug-free workplace for the contractor's employees;

B. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

C. State in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this Purchasing Resolution, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

(3) Smoking Prohibited

Any building or open area owned by Arlington Public Schools wherein or whereon a contractor is performing a contract is either an educational facility or a public place as defined by Va. Code Ann. §15.2-2820. There shall be no smoking as defined by Va. Code Ann. §15.2-2820 and including e-cigarettes or similar apparatus at any time in any educational facility, building or open area owned by Arlington Public Schools. All contracts shall provide that it is the responsibility of the contractor to enforce this prohibition.

4-115 Exemptions

Purchases exempted from competitive procurement include purchases of land and rights of way, sole source purchases as otherwise permitted, emergency purchases as otherwise permitted, printing and engraving of bonds, utility services, intergovernmental purchases, purchases from state government agencies which offer services or goods to Virginia political subdivisions, cooperative purchases as defined herein, purchases of goods or services produced or performed by nonprofit sheltered workshops serving the handicapped or which are produced or performed by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped or other nonprofit organizations which offer transitional or supported employment services serving the handicapped, legal services, provided that pertinent provisions of Chapter 11, (2.1-117 et seq.) of Title 2.1 of the Virginia Code remain applicable and expert witnesses and other services associated with litigation or regulatory proceedings.

Arlington Public Schools may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which Arlington Public Schools is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar Public Bodies, provided such association has procured the insurance by use of competitive principles and provided that the Purchasing Agent has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

Upon a determination made in advance by the Purchasing Agent and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interest of the public, such items may be purchased at the auction. The writing shall document the basis for this determination.

An Arlington Public Schools school or department may enter into contracts for caps and gowns, photographs, class rings, yearbooks and graduation announcements to be made available for purchase or rental by students,

parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this chapter; competitive sealed bidding is not necessarily required for such contracts.

Arlington Public Schools may, without competition enter into a single or term contract not to exceed, during a three (3) year period, $10,000 in the sum or aggregate. However, under the Small Purchase procedure competition shall be obtained whenever practicable.

The purchase of Virginia-grown food products for use by Arlington Public Schools where the annual cost of the product is not expected to exceed $100,000. This limitation applies to the product, not to the individual supplier.

4-116 Job Order Contracting

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

(2) Such contracts may be renewable for two additional one-year terms at the option of Arlington Public Schools. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed $5 million. Individual job orders shall not exceed $500,000.

(3) For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

(4) Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection 2 is prohibited.

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

ARTICLE 5 - DISPOSAL OF SURPLUS PROPERTY

5-101 Procedure

The Purchasing Agent shall sell, transfer, trade or otherwise dispose of personal property belonging to Arlington Public Schools which has become obsolete, unusable or surplus, or which is being transferred in order to be leased back by Arlington Public Schools under a lease purchase agreement. Any such sales, trades or exchanges shall be based on competitive bidding requirements wherever practicable. No Arlington Public Schools school or department shall permit any obsolete, surplus or damaged equipment, supplies or materials to be sold, transferred, traded, loaned or otherwise disposed of except as the Purchasing Agent shall specifically authorize.

Arlington Public Schools employees are not eligible to buy surplus Arlington Public Schools personal property that is disposed of in accordance with this section.

ARTICLE 6 – DEBARMENT AND SUSPENSION

6-101 Authority to Debar or Suspend

The Purchasing Agent shall have the authority to debar or suspend a person or business from consideration for award of contracts for the reasons stated below:

(1) Conviction for commission of a criminal offense relating to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;

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

(4) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

(5) Within a period of five (5)years from the date of the Invitation to Bid or Request for Proposal a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Arlington Public Schools contracts, or the contracts of any public body, agency of another state or agency of the federal government; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment or suspension;

(6) Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as an Arlington Public Schools contractor including debarment or suspension by another public body for any cause in this Purchasing Resolution; and for violation of the ethical standards set forth in this Purchasing Resolution.

6-102 Decision to Debar or Suspend

The Purchasing Agent shall issue a written decision to debar or suspend a person or business. The decision shall state the reasons for the action taken.

6-103 Notice of Decision

A copy of the decision required by 6-102 of this Purchasing Resolution shall be mailed or otherwise furnished immediately to the debarred or suspended person or business.

6-104 Period of Debarment or Suspension

(1) The Purchasing Agent may debar a person or business for cause from consideration for award of contracts for a period which shall not be for a period exceeding three (3) years.

(2) The Purchasing Agent may suspend a person or business from consideration for award of contracts if there is probable cause to believe that the person or business has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding six (6) months.

(3) When debarment or suspension occurs, such debarment or suspension shall be considered to be just cause for termination or cancellation of any existing contracts held by the person or business debarred or suspended.

6-105 Finality of Decision

A decision by the Purchasing Agent to debar or suspend a person or business under the provisions of this Article shall be final and conclusive unless the debarred or suspended person or business appeals the decision as provided in Article 7-101 of this Purchasing Resolution.

ARTICLE 7 - BIDDER, OFFEROR, CONTRACTOR REMEDIES

7-101 Ineligibility of Bidder, Offeror or Contractor

Any bidder, offeror or contractor refused permission to participate, or disqualified or debarred or suspended from participating in an Arlington Public Schools contract, shall be notified in writing by the Purchasing Agent. Such notice shall inform the bidder, offeror, contractor or person or business of the results of the evaluation, disclose the factual support for the determination, and allow the bidder, offeror, contractor, person or business an opportunity to inspect any documents that relate to the determination, if so requested by the bidder, offeror, contractor, person or business within five (5) business days after receipt of the notice.

Within ten (10) business days of the date of receipt of the notice from the Purchasing Agent, the bidder, offeror, contractor, person or business may submit rebuttal information challenging the evaluation. The Purchasing Agent shall issue a written determination of disqualification or ineligibility or debarment or suspension based on all information in the possession of the Purchasing Agent, including any rebuttal information, within five (5) business days of the date the Purchasing Agent received such rebuttal information.

If the evaluation reveals that the bidder, offeror, contractor, person or business should be allowed permission to participate in the Arlington Public Schools contract or should not have been debarred or suspended, the Purchasing Agent shall cancel the proposed disqualification or debarment or suspension action. If the evaluation reveals that the bidder, offeror, contractor, person or business should be refused permission to participate, or disqualified from participation, in the Arlington Public Schools contract, or should be debarred or suspended, the Purchasing Agent shall so notify the bidder, offeror, contractor, person or business in writing. The written notice shall state the basis for the determination, which shall be final unless the bidder, offeror, contractor, person or business appeals the decision within ten (10) calendar days of receipt of the written decision of the Purchasing Agent by instituting legal action as provided in Article 7-108 of this Purchasing Resolution.

7-102 Appeal of Denial of Withdrawal of Bid

A decision denying withdrawal of bid under the provisions of Article 4-101 (9 and 16) of this Purchasing Resolution shall be final and conclusive unless the bidder appeals the decision within ten (10) calendar days of the date of receipt of the written decision from the Purchasing Agent by instituting legal action as provided in Article 7-108 of this Purchasing Resolution.

If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of Article 4-101 (9 and 16) of this Purchasing Resolution, prior to appealing, shall deliver to the Purchasing Agent a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next lowest bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

7-103 Determination of Nonresponsibility

Following public opening and announcement of bids received on an Invitation to Bid, Arlington Public Schools shall evaluate the bids based upon the requirements set forth in the Invitation to Bid, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability. Provided, in the event element 4 of the process for competitive sealed bidding set forth in § 2.2-4302.1 is amended after the adoption of this Purchasing Resolution, such statutory amendment shall control the evaluation process. At the same time, the Purchasing Agent shall determine whether the apparent low bidder is responsible. If the Purchasing Agent so determines, then it may proceed with an award in accordance with Article 4-101 (11) of this Purchasing Resolution. If the Purchasing Agent determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility by the Purchasing Agent, the Purchasing Agent shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five (5) business days of the date of receipt of the written notice.

2. Within ten (10) business days after receipt of the written notice of the evaluation by the Purchasing Agent, the bidder may submit rebuttal information to the Purchasing Agent challenging the evaluation. The Purchasing Agent shall issue his written determination of responsibility based on all information in the possession of the Purchasing Agent, including any rebuttal information, within five (5) business days of the date the Purchasing Agent received the rebuttal information. If no rebuttal information is provided within ten (10) business days after the bidder's receipt of the written notice of the evaluation, the Purchasing Agent may proceed upon expiration of such period with issuance of his written determination of responsibility. At the same time, the Purchasing Agent shall notify, with return receipt requested, the bidder in writing of the determination.

3. Such written notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) calendar days of the date of the notice of the determination by the Purchasing Agent by invoking legal action as provided in Article 7-108 of this Purchasing Resolution.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of Article 7-104 of this Purchasing Resolution.

Nothing contained in this section shall be construed to require Arlington Public Schools, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

7-104 Protest of Award or Decision to Award

Any bidder or offeror who desires to protest the award or decision to award a contract shall submit the protest in writing to the Purchasing Agent, no later than ten (10) calendar days after the date of the award or the date of the announcement of the decision to award, whichever occurs first. Notice of the award or announcement of the decision to award shall be posted on the public bulletin board in the Arlington Public Schools Education Center and on the Arlington Public Schools Web site or as otherwise specified in the Invitation to Bid or Request for Proposal.

Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten (10) calendar days from the date of the posting or the date of the publication of the notice of such contract as provided in Article 4 of this Purchasing Resolution.

However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under Article 4-110, then the time within which the protest shall be submitted shall expire ten (10) calendar days after the date those records are available for inspection by such bidder or offeror under Article 4-110, or at such later time as provided in this section.

No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror.

The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) calendar days of the date the Purchasing Agent received the written protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) calendar days of receipt of the written decision by instituting legal action as provided in Article 7-108 of this Purchasing Resolution.

Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

If prior to an award it is determined that the decision to award is arbitrary or capricious then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined.

Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the public.

Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

When the Purchasing Agent determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 9 of this Purchasing Resolution, the Purchasing Agent may enjoin the award of the contract to a particular bidder and authorize either cancellation or re-bid.

7-105 Effect of Appeal upon Contract

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

7-106 Stay of Award during Protest

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, as provided in Article 7-104 of this Purchasing Resolution, or the filing of a timely legal action as provided in Article 7-108 of this Purchasing Resolution, no further action to award the contract will be taken unless there is a written determination by the Purchasing Agent that proceeding without delay is necessary to protect Arlington Public Schools interest or unless the bid or offer would expire.

7-107 Contractual Disputes

(1) Strict compliance with all claims submission requirements set forth herein shall be a condition precedent to the contractor's right to pursue any claim or to recover or prevail thereon. All time requirements set forth as claims submission requirements shall be deemed to be of the essence. Compliance with all claims submission requirements shall not, however, create any presumption of validity of any claim.

(2) Claims for Additional Compensation

a. In the event of any occurrence as a result of which contractor contends it is due additional compensation beyond the contract sum, the contractor shall give written notice of such claim to the Arlington Public Schools' Representative, to the Arlington Public Schools' Project Manager, all as defined by the particular contract, and to the Purchasing Agent at the time of the discovery of the occurrence of the event giving rise to the claim and before beginning any work on which the claim is based. Such notice shall identify itself as a notice of claim, and shall state the circumstances of the occurrence. The notice of claim shall specify the additional work contemplated as being required, shall state why such work is not already included within the scope of the contract documents, and to the extent reasonably foreseeable shall estimate the anticipated amount of the claim.

b. If Arlington Public Schools within five (5) business days following receipt of such notice of claim does not direct the contractor otherwise, the contractor shall proceed with the work which is the subject of the claim and within ten (10) calendar days after completion of the work for which additional compensation is claimed shall submit in writing to the Arlington Public Schools' Representative, to the Arlington Public Schools' Project Manager, all as defined by the particular contract, and to the Purchasing Agent a written itemization of the actual additional compensation claimed, with all supporting documentation.

(3) Claims for Extension of Time

a. In the event of any occurrence as a result of which the contractor contends it is entitled to an extension of time beyond the contract period or as to any interim or phase completion date, the contractor shall give written notice of such claim to the Arlington Public Schools' Representative, to the Arlington Public Schools' Project Manager, all as defined in the particular contract, and to the Purchasing Agent, within two (2) calendar days of the beginning of the delay or, if the resulting delay was not reasonably foreseeable at its commencement within seven (7)calendar days of the commencement thereof. Delays based on weather occurrences shall be submitted in accordance with the requirements of the contract general conditions or specifications, as applicable. The notice of claim for delay shall identify itself as a notice of claim for delay, state the circumstances of the occurrence, the justification for the delay and for the extension of time, and the estimated duration of the delay and of the extension requested.

b. Within twenty-one (21) calendar days after the delay has ceased, the contractor shall submit to the Arlington Public Schools' Representative, to the Arlington Public Schools' Project Manager, all as defined by the particular contract, and to the Purchasing Agent, a statement of the actual time extension requested as a result of the claimed delay, which shall include all documentation and supporting information for such claimed delay required by this Article and by any applicable contract general conditions or specifications.

(4) Final Decision by Arlington Public Schools.

The Purchasing Agent or his designee shall issue in writing the final decision of Arlington Public Schools on any claim within ninety (90) calendar days following receipt of the contractor's final submission in support of the claim, if submitted timely. Failure of the Purchasing Agent to act within such ninety (90) calendar days' time shall be deemed a final decision to deny the claim as of the ninetieth (90th) day. A final decision on behalf of Arlington Public Schools shall be a condition precedent to institution by the contractor of any judicial claim for relief on the claim. The contractor's right to seek judicial appeal of denial of a claim is barred if no suit is filed within six (6) months following the final decision by Arlington Public Schools. No consideration by Arlington Public Schools of any additional submissions by the contractor in support of any claim shall extend this six (6) month limitation.

(5) If additional compensation and/or extension of time is granted as to any claim, either by consent of Arlington Public Schools or by judicial decision, the contractor shall not be entitled to recover any interest on any amounts claimed to be due from Arlington Public Schools which are the subject of a good faith dispute by Arlington Public Schools which are paid within

thirty (30) days following final resolution of such dispute. Interest shall accrue on any claim not paid within such thirty (30) days at the agreed rate of six percent (6%) per annum simple interest commencing on the date of such final resolution.

(6) The contractor shall comply with all directions and decisions of the Arlington Public Schools' Representative, the Arlington Public Schools' Project manager, all as defined by the particular contract, or the Purchasing Agent and shall proceed diligently with the performance of the contract and with any disputed work pending final resolution of any claim or dispute, whether for additional compensation or extension of time. "Final resolution" shall include the exhaustion of all judicial proceedings.

(7) The contractor shall make no claim against any officer, agent, or employee of Arlington Public Schools for, or on account of, any act or omission to act in connection with the contract, and to the extent permitted by applicable law hereby waives any and all rights to make any such claims.

(8) Failure of Arlington Public Schools at any time to require compliance with any term of condition of the contract or of the claims submissions requirements shall not be deemed a waiver of such term or condition, or a waiver of the subsequent enforcement thereof.

(9) In the event the contractor makes a claim for additional compensation other than for damages related to delay which results in litigation, if Arlington Public Schools substantially prevails in such litigation the contractor shall indemnify and hold Arlington Public Schools harmless from any and all reasonable attorneys' fees, litigation costs of all types, and expert witness fees and costs, arising from or related to such claim and litigation. Any claim for delay damages shall be subject to the provisions of Va. Code Ann. §2.2-4335.

(10) Contractor consents to exclusive venue and jurisdiction for the resolution of any dispute arising under any contract with Arlington Public Schools in the Circuit Court of Arlington County, Virginia.

7-108 Legal Actions Related to Procurements

(1) Determinations of Ineligibility. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding on any competitive procurement, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action only in the Circuit Court of Arlington County, Virginia, and in no other court, challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations. The sole relief upon appeal shall be restoration of eligibility.

(2) Determinations of Nonresponsibility. If, upon appeal of a determination of nonresponsibility, the court finds that the decision of Arlington Public Schools was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award or both.

However, if award of the contract has been made and performance of the contract has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, Arlington Public schools may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void under these circumstances, the performing contractor shall be compensated for the cost of performance up to the time of such declaration, but in no event shall the performing contractor be entitled to lost profits.

(3) Denial of Withdrawal of a Bid. A bidder denied withdrawal of a bid under Article 7-102 of this Purchasing Resolution may bring an action only in the Circuit Court of Arlington County, and in no other Court, challenging that decision, which shall be reversed only if the bidder establishes that the decision of Arlington Public Schools was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid. The sole relief upon appeal shall be withdrawal of the bid.

(4) Appeal of Denial of Protest of Award. A bidder, offeror, potential bidder, or potential offeror on any contract awarded by Arlington Public Schools whose protest of an award or decision to award under Article 7-104 of this Purchasing Resolution is denied, may bring an action only in the Circuit Court of Arlington County, and in no other Court, challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, this Purchasing Resolution or the terms and conditions of the Invitation to Bid or Request for Proposal.

(A) If prior to an award the court determines that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. Arlington Public Schools shall cancel the proposed award or revise it to comply with the law.

(B) If, after an award, the court determines that an award of a contract was arbitrary or capricious:

(a). Where the award has been made but performance has not begun, the performance of the contract may be enjoined.

(b). Where the award has been made and performance has begun, Arlington Public Schools may declare the contract void upon a finding by Arlington Public Schools that this action is in the best interest of the public. Where a contract is declared void in these circumstances, the performing contractor shall be compensated for the cost of performance up to the time of such declaration, but in no event shall the performing contractor be entitled to lost profits.

(c). If injunctive relief is granted, Arlington Public Schools may request the Circuit Court of Arlington County to require the posting of reasonable security to protect the Arlington Public Schools.

7-109 Legal Actions by Arlington Public Schools

Nothing herein shall be construed to prevent or impair the right of Arlington Public Schools to institute legal action against a contractor for any reason.

ARTICLE 8 - ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES

8-101 Establishment of Programs to Expand Participation

It is the intention of the Arlington School Board to facilitate the participation of small businesses and businesses owned by women, minorities, service disabled veterans and employment services organizations, all as defined in Va. Code Ann. § 2.2-4310, in procurement transactions.

In doing so, the Purchasing Agent shall:

1. For any Arlington Public Schools requirement for goods, services, construction or insurance requiring Competitive Sealed Bidding or Competitive Negotiation, advertise the IFB or RFP on the Virginia Department of Small Business and Supplier Diversity Web-site;

2. Require contractors awarded a Public Contract, when seeking subcontractors, suppliers and vendors necessary to perform work, to encourage the participation of small businesses, women-owned businesses, minority-owned businesses, service disabled veteran-owned businesses and employment services organizations. At a minimum, for any portion of the work the contractor is not going to perform with its own forces, the contractor shall contact the Commonwealth of Virginia Department of Minority Business Enterprise to obtain a list of certified businesses in these categories available to perform such work or provide such materials or equipment. The contractor shall directly solicit bids from at least one certified business in each category to perform such work or provide such materials or equipment, but shall not be obligated to give any preference to any such business in the award of subcontracts or materials/equipment supply subcontracts. Identification and direct solicitation of other such businesses by other means is strongly encouraged;

3. Include language in its Purchase Orders Terms and Conditions requiring the vendor to assure that subcontracts are awarded to small businesses, minority-owned businesses, women-owned businesses, service-disabled veteran-owned businesses and employment services organizations.

8-102 Discrimination Prohibited

In the solicitation of awarding of contracts, Arlington Public Schools shall not discriminate because of race, religion, color, sex, or national origin of the bidder or offeror.

ARTICLE 9 - ETHICS IN PUBLIC CONTRACTING

9-101 Purpose

The provisions of this Article supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (sections 2.2-3100 et seq.), the Virginia Governmental Frauds Act (section 18.2-498.1 et seq.), and Articles 2 (section 18.2-438 et seq.) and 3 (section 18.2-446 et seq.) of Chapter 10 of Title 18.2 of the Code of Virginia as amended. The provisions of this Article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Governmental Conflict of Interests Act.

9-102 Definitions

The words defined in this section shall have the meanings set forth below throughout this Article.

(1) Immediate Family Shall mean a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

(3) Official Responsibility Shall mean administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

(4) Pecuniary Interest Arising from the Procurement Shall mean a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (section 2.2-3100 et seq.).

(5) Procurement Transaction Shall mean all functions that pertain to the obtaining of any goods, services, insurance, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(6) Arlington Public Schools Employee Shall mean any person employed by Arlington Public Schools , including elected officials of the Arlington School Board.

9-103 Proscribed Participation by Arlington Public Schools Employees in Procurement Transactions

Except as may be specifically allowed by subdivisions A. 2, 3 and 4 of Section 2.2-3112 et seq., no Arlington Public Schools Employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of Arlington Public Schools when the employee knows that:

(1). The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement transaction; or

(2). The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is

employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or

(3). The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

(4). The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

9-104 Solicitation or Acceptance of Gifts

No Arlington Public Schools Employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. Arlington Public Schools may recover the value of anything conveyed in violation of this section.

No bidder, offeror, contractor or subcontractor shall confer upon any Arlington Public Schools Employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged. Arlington Public Schools may debar the bidder, offeror and contractor and terminate any and all contracts it has with the bidder, offeror and contractor in violation of this section.

9-105 Disclosure of Subsequent Employment

No Arlington Public Schools employee or former Arlington Public Schools employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by Arlington Public Schools unless the employee or former employee, provides written notification to the Superintendent prior to commencement of employment by that bidder, offeror or contractor.

9-106 Kickbacks

No contractor or subcontractor shall demand or receive from any of his suppliers or subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on an Arlington Public Schools contract.

If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by Arlington Public Schools and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

9-107 Purchase of Building Materials, etc., from Architect or Engineer Prohibited

A. No building materials, supplies or equipment for any building or structure constructed by or for Arlington Public Schools shall be sold by or purchased from any person employed as an independent contractor by Arlington Public Schools to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association, or corporation in which such architect or engineer has a personal interest as defined in Virginia Code section 2.2-3101.

B. No building materials, supplies or equipment for any building or structure constructed by or for Arlington Public Schools shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by Arlington Public Schools to furnish architectural or engineering services in which such person has a personal interest as defined in Virginia Code section 2.2-3101.

C. The provisions of sub-Articles A and B shall not apply in case of an emergency.

9-108 Participation in Bid Preparation, Limitation on Submitting Bid for Same Procurement.

No person who, for compensation, prepares an Invitation to Bid or Request for Proposal for or on behalf of the Arlington Public Schools shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, the Purchasing Agent may permit such person to submit a bid or proposal for that procurement or any portion thereof if the Purchasing Agent determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of Arlington Public Schools.

9-109 Certification of Compliance Required; Penalty for False Statements.

A. Arlington Public Schools shall require those employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this Article 9.

B. Any Arlington Public School Employee required to submit a certification as provided in sub-section A who knowingly makes a false statement in the certification may be punished as provided in Section 9-110 of this Purchasing Resolution.

9-110 Penalty for Violation

Any Arlington Public Schools Employee convicted of a willful violation of any provision of this Article 9 shall be guilty of a Class 1 misdemeanor. Upon conviction, any Arlington Public Schools Employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.