ARLINGTON PUBLIC SCHOOLS

PROCUREMENT RESOLUTION

ADOPTED:	FEBRUARY 21, 1991
AMENDED:	JULY 1, 1991
AMENDED:	JULY 1, 1994
AMENDED:	NOVEMBER 1, 1995
AMENDED:	FEBRUARY 1, 1999
AMENDED:	JULY 1, 2003
AMENDED:	FEBRUARY 1, 2014
AMENDED:	FEBRUARY 17, 2015
AMENDED:	JULY 1, 2015
AMENDED:	JULY 1, 2016
AMENDED:	APRIL 20, 2017
AMENDED:	JULY 5, 2017
AMENDED:	JULY 2, 2018
AMENDED:	JULY 1, 2019
AMENDED:	JULY 1, 2020
AMENDED:	JULY 1, 2021
AMENDED:	JULY 1, 2022
AMENDED:	JULY 6, 2023

ARLINGTON PUBLIC SCHOOLS PROCUREMENT RESOLUTION

TABLE OF CONTENTS

PREAMBLE 5

ARTICLE 1 - GENERAL PROVISIONS 6

1-101 Application 6

1-102 Effective Date 6

1-103 Severability 6

1-104 Gender References 6

1-105 Definitions 7

ARTICLE 2 - OFFICE OF THE PROCUREMENT AGENT 12

2-101 Establishment and Appointment 12

2-102 Authority and Duties of the Procurement Agent 12

2-103 Delegation 14

2-104 Revisory Authority 14

2-105 Rules and Regulations 14

ARTICLE 3 – JOINT PROCUREMENT AND COOPERATIVE PROCUREMENT 15

3-101 Conditions for Use 15

ARTICLE 4 - CONTRACT FORMATION AND METHODS OF SOURCE SELECTION 17

4-101 Competitive Sealed Bidding 17

4-102 Competitive Negotiation 27

4-103 Sole Source Procurement 40

4-104 Emergency Purchases 40

4-105 Small Purchases. 41

4-106 Interest in More Than One Bid and Collusion 43

4-107 Capital Improvement Projects and Professional Services Contracts 43

4-108 Amendment of a Contract for Construction or Professional or Non-Professional Services on a Capital Improvement Project 44

4-109 Amendment of a Contract for Goods, Services,Construcion(Excluding Contracts for Construction or Professional or Non-Professional Services on a Capital Improvement Project) and Insurance 44

4-110 Work Commencing Without an Approved Purchase Order or Change Order... 45

4-111 Unauthorized Purchases 45

4-112 Competitive Bidding or Competitive Negotiation on State-aid Projects . 46

4-113 Public Access to Procurement Information 46

4-114 Provisions to be Included in Every Contract over $10,000.00 47

4-115 Exemptions 53

4-116 Job Order Contracting 54

4-117 Guidelines for the Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002, as Amended 55
4-118 Purchase of Flags of the United States and the Commonwealth 55
4-119 Prohibition on the use of Certain Products and Services 55
4-120 Requirement for Superintendent's Approval of Plans 55
4-121 Preference in the Procurement of Energy and Water Efficient Goods 56
4-122 Energy Performance -Based Facility Improvements 56

ARTICLE 5 - DISPOSAL OF SURPLUS PROPERTY 61
5-101 General 61
5-102 Real Property 61
5-103 Donations of Obsolete Educational Technology Hardware and Software ... 61
5-104 Disposal of Surplus Personal Property 61

ARTICLE 6 – DEBARMENT AND SUSPENSION 62
6-101 Authority to Debar or Suspend 62
6-102 Decision to Debar or Suspend 62
6-103 Notice of Decision 62
6-104 Period of Debarment or Suspension 64
6-105 Finality of Decision 65

ARTICLE 7 - BIDDER, OFFEROR, CONTRACTOR REMEDIES. 66
7-101 Ineligibility of Bidder, Offeror or Contractor 66
7-102 Appeal of Denial of Withdrawal of Bid 66
7-103 Determination of Non-responsibility 66
7-104 Protest of Award or Decision to Award 68
7-105 Effect of Appeal upon Contract 69
7-106 Stay of Award during Protest 69
7-107 Contractual Disputes 69
7-108 Legal Actions Related to Procurements 71
7-109 Legal Actions by Arlington Public Schools 73

ARTICLE 8 - ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES 74
8-101 Establishment of Programs to Expand Participation 74
8-102 Discrimination Prohibited 74

ARTICLE 9 - ETHICS IN PUBLIC CONTRACTING 77
9-101 Purpose 77
9-102 Definitions 77
9-103 Proscribed Participation by Arlington Public Schools Employees in Procurement Transactions 77

9-104 Solicitation or Acceptance of Gifts 78

9-105 Disclosure of Subsequent Employment 78

9-106 Kickbacks 78

9-107 Purchase of Building Materials, etc., from Architect or Engineer Prohibited 79

9-108 Participation in Bid Preparation, Limitation on Submitting Bid for Same Procurement 79

9-109 Certification of Compliance Required; Penalty for False Statements ... 79

9-110 Penalty for Violation 79

Attachment A – Contractor Certification Regarding Criminal Convictions 81

Appendix A – Guidelines for the Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002, as Amended

ARLINGTON PUBLIC SCHOOLS
PROCUREMENT RESOLUTION

PREAMBLE

The purpose of this Arlington Public Schools Procurement Resolution, formerly known as the Arlington Public Schools 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 Procurement 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, that no Bidder or Offeror be arbitrarily or capriciously excluded, 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 Non-Professional Services, but not Construction or Professional Services unless otherwise provided in this Procurement 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 procurement by Arlington Public Schools shall take effect as of July 6, 2023.

ARTICLE 1 - GENERAL PROVISIONS

1-101 Application

This Procurement Resolution applies to all procurement activities by Arlington Public Schools. All schools and departments of Arlington Public Schools are required to comply with the provisions of this Procurement Resolution and to conduct all procurement activities through a centralized Procurement Office established under this Procurement 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 Procurement Resolution.

All procurement activities and contracting may be conducted on behalf of the Arlington School Board operating as Arlington Public Schools. Arlington School Board and Arlington Public Schools also has been known respectively as Arlington County School Board and Arlington County Public Schools, and from time to time either or both may be identified by these names in the future. All procurement activities and contracting at any time, whether past, present or future, conducted in the name Arlington County Public Schools hereby is ratified as having been authorized and approved at the time of actions were taken. The terms Arlington School Board and Arlington County Public Schools when used in this Procurement Resolution shall mean Arlington School Board and Arlington Public Schools unless the context clearly indicates otherwise.

1-102 Effective Date

This Procurement Resolution became effective February 21, 1991 and has remained in effect as amended since that time. The title was changed from "Purchasing Resolution" to "Procurement Resolution" as a part of the 2019 amendments. Except as expressly stated herein, the provisions of this Procurement 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 by the Arlington School Board unless otherwise provided.

1-103 Severability

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

1-104 Gender References

Whenever in this Procurement 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.

1-105 Definitions. See Sec. 4-122 for additional definitions applicable to Energy and Operational Efficiency Performance-Based Contracting.

(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 Non-Professional Services but not Construction or Professional Services unless otherwise provided in this Procurement Resolution.

(2) Bid: A bid submitted to APS by a person or Business in response to an Invitation to Bid for a procurement being conducted through Competitive Sealed Bidding.

(3) Bidder: A person or Business submitting a Bid in response to an ITB.

(4) Board: See Governing Body.

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

(6) 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.

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

(8) Change Order: A written agreement between Arlington Public Schools and a Contractor which is signed by both parties making a Contract Amendment to the scope, price, or duration of an existing Contract, or any or all thereof, and setting forth such change.

(9) Competitive Negotiations: Is a method of Contractor selection set forth in Article 4, Section 4-102 of this Procurement Resolution.

(10) Competitive Sealed Bidding: Is a method of Contractor selection set forth in Article 4, Section 4-101 of this Procurement Resolution.

(11) 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.

(12) Construction: Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property. For the definition of a Construction Contract for purposes of mandatory provisions regarding payment of Contractors and Subcontractors, see Section 4-114(6).

(13) Construction Management Contract: A method of Contractor selection set forth in Article 4, Section 4-102 of this Procurement Resolution in which a Contractor 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 ("CMR") Contract as provided in Article 4, Section 4-102 of this Procurement Resolution involves participation by the Contractor 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 to a different party 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.

(14) Contract: A written agreement between Arlington Public Schools and a person or Business to provide Construction, Services, Professional Services, Goods, or insurance, whether being received or provided by Arlington Public Schools. A Contract which provides for renewal or extension at the discretion or option of Arlington Public Schools may be renewed or extended according to its terms by unilateral Contract Amendment issued by the office of the Procurement Agent.

(15) Contract Amendment: Any written alteration of a Contract signed by the parties bound by the amendment or by unilateral action by APS as provided herein or by applicable law. A Change Order or a Unilateral Change Order are forms of Contract Amendments.

(16) Contractor: Any person or Business with whom or with which Arlington Public Schools enters into a Contract to provide Goods, Services, Professional Services, insurance, or Construction.

(17) 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 Procurement Resolution, and a fixed fee or profit, if any.

(18) 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 Syphax Education Center (Syphax 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 Syphax Education Center is closed.

(19) Design-Build Contract: A Contract between Arlington Public Schools and a Contractor in which the Contractor agrees to both design and build the structure, or other item specified in the Contract. Arlington Public Schools does not currently employ the design-build method of procurement other than for projects procured pursuant to the Energy and Operational Efficiency Performance-Based Contracting Act, Title 45.2, Chapter 17 of the Virginia Code and Section 4-122 of this Procurement Resolution, but may expand use of the design-build method of procurement in the future.

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

(21) Governing Body: The Arlington School Board.

(22) Indefinite Delivery or Quantity Contract: A Contract that only requires performance of contractual obligations upon the request of Arlington Public Schools and which establishes an annual cap for the total work that may be authorized for such Contract.

(23) 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, Professional Services, Construction or insurance being procured.

(24) 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.

(25) Invitation to Bid or ITB: The initiation of a public procurement by APS when the means of procurement is by competitive sealed bidding as provided in the VPPA and this Procurement Resolution.

(26) Job Order Contracting: A method of procuring Construction by establishing a book of unit prices and then obtaining a Contractor or multiple Contractors to perform work as needed using the prices, quantities, and specifications in the book as the basis of pricing for the particular task. The Contractor(s) 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, but need not, be specified in the Contract. The Contract term and the project amount shall not exceed the limitations specified in section 4-116 of this Procurement Resolution.

Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in Article 4, Section 4-116 of this Procurement Resolution 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 twenty-five thousand dollars ($25,000.00) per job order, and (iii) do not exceed seventy-five thousand dollars ($75,000.00) per Contract term.

Job Order Contracting shall not be used for Construction, maintenance, or asset management services for a highway, bridge, tunnel or overpass.

(27) 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.

(28) 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.

(29) Non-Professional Services: Any services not specifically identified as Professional Services in section 1-201 of this Procurement Resolution.

(30) Offeror: A person or Business submitting a Proposal in response to a RFP.

(31) Potential Bidder or Offeror: For the purposes of Article 7, Sections 7-104 and 7-108 of this Procurement Resolution means a person or Business who or which, 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 provision of Services, Professional 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.

(32) Procurement Agent: Also referred to as the Procurement Director/Director of Procurement. Prior to July 1, 2019 was referred to as the Purchasing Agent. See Article 2.

(33) Procurement Resolution: The Arlington Public Schools Procurement Resolution as in effect at the time of any procurement initiated by APS.

(34) Professional Services: Work performed by a Contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering.

(35) Proposal: A written proposal submitted to APS by a person or Business in response to a Request for Proposals.

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

(37) Public Contract: See "Contract."

(38) Request for Qualifications or RFQ: See Article 4, subsection 4-101(2).

(39) Request for Proposal or RFP: The initiation of a public procurement by APS when the means of procurement is by Competitive Negotiation as provided in the VPPA and the Procurement Resolution.

(40) 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.

(41) 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.

(42) Services: Any work performed by a Contractor, except for Construction and Professional Services, which does not consist primarily of acquisition

of equipment or materials, or the rental of equipment, materials and supplies.

(43) 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.

(44) Subcontractor: Any person or Business performing or providing any portion of the Goods, Services, Professional Services, Construction, or insurance required of the Contractor by the Contract under a subcontract with the Contractor. A person or Business performing or providing any portion of the Goods, Services, Professional Services, Construction or insurance required of the Subcontractor by its subcontract with the Contractor shall be deemed to be a lower tier subcontractor, regardless of tier.

(45) 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.

(46) Unilateral Change Order: A written order signed and unilaterally issued by the Procurement Agent directing the Contractor to make changes to an existing Contract which the Contract authorizes the Procurement Agent to order without the prior written consent of the Contractor.

(47) Value Engineering: A systematic and creative analysis of each Contract item or task to ensure that its essential function is provided at the overall lower cost.

(48) VPPA: The Virginia Public Procurement Act, VA. CODE ANN. §§ 2.2-4300, *et seq*.

Additional definitions may appear within the context of individual provisions of this Procurement Resolution, and in such event the definition so provided shall apply throughout this Procurement Resolution.

References to particular provisions of the Virginia Code shall mean as that provision may be amended from time to time.

ARTICLE 2 - OFFICE OF THE PROCUREMENT AGENT

2-101 Establishment and Appointment

The procurement system shall operate under the direction and supervision of the Procurement 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 Procurement Agent

(1) Authority: The Procurement Agent shall serve as the principal public Procurement official for Arlington Public Schools and shall be responsible for the procurement of Goods, Services, Professional Services, Construction and insurance, and all other procurement needs of Arlington Public Schools in accordance with this Procurement Resolution, as well as for the management of the disposal of surplus property.

(2) Delegation of Authority: Any act or action related to procurement 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 4383, or other applicable law, hereby is delegated to the Superintendent and the Procurement Agent unless specifically reserved by applicable law or Arlington School Board resolution to require action by the Arlington School Board. When an action is stated to be taken by the Procurement 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 Procurement Resolution to any designee.

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

A. Contract for all Goods, Services, Professional Services, Construction and insurance and all other procurements needed by Arlington Public Schools;

B. Procure and enter into all leases necessary to carry out the duties of the Procurement Agent as described herein;

C. Sell, trade or otherwise dispose of surplus property belonging to Arlington Public Schools;

D. 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;

E. Prepare and update standard specifications;

F. Inspect or require the using school or department to inspect all deliveries of Goods, Services, Professional Services, Construction or insurance procured through the Procurement Agent to assure conformance with the Contract specifications;

G. Procure for Arlington Public Schools the highest quality Goods, Services, Professional Services, Construction, and insurance at the lowest cost and, when applicable, consistent with Best Value concepts to the extent permitted by applicable law when procuring Goods and Services, but not Construction or Professional Services;

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

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

J. 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;

K. Prepare and adopt standard purchase definitions and forms;

L. Prepare, adopt, and maintain a contract file containing descriptions of commodities, prices and discounts of Goods, Services, and non-transportation related Construction available for procurement under term Contracts either established by the Procurement Agent, or by another Public Body which the Procurement Agent has confirmed satisfies the provisions of Article 3 of this Procurement Resolution;

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

N. Perform other functions and duties as required by this Procurement Resolution or as the Superintendent or his designee may assign; and

O. 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 Procurement Agent to be in the best interest of the Arlington Public Schools. The policy may offer a Contractor whose Bid or Proposal as applicable 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.

P. 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 five hundred thousand dollars ($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 original Contract price or fifty thousand dollars ($50,000.00), whichever is greater, and any individual change order of one hundred thousand dollars

($100,000.00) 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 Procurement Agent may delegate authority to procure certain Goods, Services, Professional Services, Construction or insurance or other needs of Arlington Public Schools 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 Procurement 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 Procurement Agent shall prepare and maintain a purchasing manual containing detailed rules and regulations consistent with this Procurement Resolution and the laws of the Commonwealth of Virginia governing the operation of the Arlington Public Schools procurement 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 or of the Virginia Sheriff's Association, 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 except as authorized for Energy and Operational Performance-Based Contracting pursuant to Va. Code Ann. Title 45.2, Chapter 17, and Sec. 4-122 of this Procurement Resolution; or

B. Construction, whether as defined in Section 1-105 or as defined in Section 4-114(6), except as authorized for Energy and Operational Performance-Based Contracting pursuant to Va. Code Ann. Title 45.2, Chapter 17, and Sec. 4-122 of this Procurement Resolution. This subsection shall not be construed to prohibit sole source or emergency procurements awarded pursuant to Article 4, Sections 4-103 and 4-104 of this Procurement Resolution.

Article 3, subsection 3-101(2)B shall not apply to (i) the installation of artificial turf and track surfaces; (ii) stream restoration, (iii) stormwater management practices, of (iv) the installation of playground equipment, including all associated and necessary Construction and maintenance.

(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 Procurement Resolution and the administrative policies and procedures established to implement this Procurement Resolution shall be permitted, if approved by the Procurement 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 Non-Professional 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 two hundred thousand dollars ($200,000.00) shall be awarded after Competitive Sealed Bidding, or by such other procedures required or authorized by this Procurement Resolution. At the discretion of the Procurement Agent, Competitive Sealed Bidding may be, but is not required to be, used for any procurement in an amount not anticipated to exceed () two hundred thousand dollars ($200,000.00). 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 Procurement Agent is authorized to prequalify prospective Bidders or Offerors for particular types of Goods, Services, Professional Services, Construction or insurance and limit consideration of Bids or Proposals to prequalified prospective Bidders or Offerors, 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 Bidders or Offerors will be evaluated. The application form shall request of prospective Bidders or Offerors only such information as is appropriate for an objective evaluation of all prospective Bidders or Offerors pursuant to such criteria. Such form shall allow the prospective Contractor seeking prequalification to request that information voluntarily submitted by the prospective Bidder or Offeror shall be considered a trade secret or proprietary information pursuant to, and subject to the provisions of Article 4, Section 4-113 of this Procurement Resolution.

C. In all instances in which the Procurement Agent requires prequalification of potential Bidders or Offerors 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 or Proposals 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 to which the prequalification applies, the Procurement

Agent shall advise in writing each potential Bidder or Offeror which submitted an application whether that potential Bidder or Offeror has been prequalified. In the event that a potential Bidder or Offeror is denied prequalification, the written notification to such potential Bidder or Offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.

E. A decision by the Procurement Agent denying prequalification under the provisions of this subsection shall be final and conclusive unless the potential Bidder or Offeror appeals the decision as provided in Article 7, Section 7-101 of this Procurement Resolution.

F. The Procurement Agent may deny prequalification to any potential Bidder or Offeror only if the Procurement Agent finds one of the following:

1. The potential Bidder or Offeror 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, competent evidence that the potential Bidder or Offeror 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 potential Bidder or Offeror to perform the Contract resulting from such procurement:

2. The potential Bidder or Offeror does not have appropriate experience to perform the Construction project in question:

3. The potential Bidder or Offeror 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 potential Bidder or Offeror 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 potential Bidder or Offeror in any prior Construction Contracts, the Procurement Agent may deny prequalification if the potential Bidder or Offeror 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 potential Bidder or Offeror at that time, with the opportunity to respond;

5. The potential Bidder or Offeror 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 Procurement 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 potential Bidder or Offeror 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 potential Bidder or Offeror failed to provide to the Procurement Agent in a timely manner any information requested by the Procurement Agent relevant to subsections 1 through 6 of this Section;

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

9. Failure of a potential Bidder or Offeror to prequalify with respect to a given procurement shall not bar the potential Bidder or Offeror 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 Syphax 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 Procurement 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. The burden shall be upon the Bidder or Offeror proposing the alternative item to satisfy Arlington Public Schools that the proposed alternative item is equal, as more specifically set forth in the Invitation to Bid or Request for Proposals.

(5) Retainage for Other than Construction Contracts:

A. In any Arlington Public Schools Contract for Goods, Services or 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 as retainage may be included in the final payment.

B. Any subcontract for an Arlington Public Schools project which provides for similar progress payments shall contain payment provisions consistent with the provisions of this Section.

(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 to Bid, or any and all Bids 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, Bid pursuant to this Section solely to avoid awarding a Contract to a particular Responsive and Responsible Bidder.

B. The Procurement Agent may waive Informalities in the Bids.

(8) Bid Closing and Bid Opening: Bid Closing is the date and time specified in the Invitation to Bid by which Bids must be received in the manner stated in the Invitation to Bid in order to be considered. Bid Opening is the date, time and location specified in the Invitation to Bid when Bids are to be opened. All Bids received under this Section must be received prior to Bid Closing and opened and announced in public at the Bid Opening.

(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 Procurement 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 Procurement Agent to withdraw a Bid. The written request must be received by the Procurement 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 Procurement 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 responsive Bid from a Responsible Bidder 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 or to which 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 Procurement Agent shall consider:

A. The ability, capacity, skill and financial resources of the Bidder to perform the Contract;

B. Whether the Bidder can perform the Contract 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 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;

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;

J. Such other information as may be determined by the Procurement 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 responsive 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. The procedure for negotiations in such event shall be outlined in the Invitation to Bid.

When the award of Contract is not given to the apparent lowest Responsive and Responsible Bidder, the Procurement Agent shall so notify the apparent low Bidder and a full and complete statement of the reasons for placing the Contract elsewhere shall be prepared by the Procurement 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 Procurement 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 Section, 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 and Price Limits. Unless otherwise provided by law, a Contract for Goods, Services or insurance, or for non-transportation related Construction, if the aggregate or the sum of all phases is not expected to exceed two hundred thousand dollars ($200,000.00), and for transportation related Construction if the aggregate or sum of all phases is not expected to exceed twenty-five thousand dollars ($25,000.00), 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 Construction Contract may withdraw its 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 the 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 its claim of right to withdraw its Bid within two (2) business days after the conclusion of the Bid opening procedure and shall submit original work papers with such notice.

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, Section 4-113 of this Procurement 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 (5%).

C. If a Bid is withdrawn under the authority of this Section, the lowest remaining responsive Bid from a Responsible Bidder 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 Procurement Agent denies the withdrawal of a Bid under the provisions of this Section, he shall notify the Bidder in writing within five (5) business days of his 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 Procurement 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 (95%) of the earned sum when payment is due, with not more than five percent (5%) being retained to ensure faithful performance of the Contract. All amounts withheld as retainage may be included in the final payment.

B. Any subcontract for an Arlington Public Schools project that provides for similar progress payments shall contain payment provisions consistent with the provisions of this Section.

(18) Bid Bonds on Construction Contracts: Except in cases of emergency, all Bids or Proposals for Construction Contracts in excess of five hundred thousand dollars ($500,000.00) shall be accompanied by a bid bond from a surety company selected by the Bidder, subject to such requirements as may be set forth in the Invitation to Bid, which is authorized to do business in Virginia, as a guarantee that if the Contract is awarded to the Bidder, the Bidder will enter into the Contract for the work mentioned in the Bid. The amount of the bid bond shall not exceed five percent (5%) of the amount Bid. Nothing in this Section shall preclude the Procurement Agent from requiring bid bonds to accompany Bids or Proposals for Construction Contracts anticipated to be less than five hundred thousand ($500,000.00).

No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the Bid price for which the bond was written and the next low Bid from a Responsive and Responsible Bidder, 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 five hundred thousand dollars ($500,000.00) awarded to any Contractor 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. The performance bond shall be on a form approved by Arlington Public Schools. If the Contract is an Indefinite Delivery or Indefinite Quantity Contract, the principal amount of a performance bond shall be as set forth in Section 4-101(19.G) below.

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 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. The payment bond shall be on a form approved by Arlington Public Schools. If the Contract is an Indefinite Delivery or Indefinite Quantity Contract, the principal amount of a payment bond shall be as set forth in Section 4-101(19.G) below.

B. For Construction Contracts less than five hundred thousand dollars ($500,000.00), Arlington Public Schools may require either a performance bond or a payment bond, or both, when in the discretion of the Procurement Agent it is in the best interests of Arlington Public Schools to do so.

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 the office of the Procurement Agent, or a designated office or official thereof.

F. 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 subcontract 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.

G. For an Indefinite Delivery or Indefinite Quantity Contract, the performance bond and payment bond each shall be in a principal

amount equal to the dollar amount of the individual tasks awarded pursuant to the underlying Contract.

(20) Action on Performance Bond: No action against the surety on a performance bond shall be brought unless brought within five (5) years after completion of the Contract. For the purposes of this Section, "completion of the Contract" is the final payment to the Contractor pursuant to the terms of the Contract. However, if a final certificate of occupancy, or written final acceptance of the project, is issued prior to final payment, the five (5) year period to bring an action shall commence no later than 12 months from the date of the certificate of occupancy or written, final acceptance of the project.

(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. Arlington Public Schools 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 the claimant 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 or Business for whom or for which 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 subsection 4-101(19)(G) of this Procurement 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 (1) year after the day on which the person or Business 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 or Business whose right is waived, and executed

after such person or Business 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 Procurement 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 fixed price Construction Management Contract in accordance with the requirements and the procedures set forth in Article 4, subsection 4-102 (3) of this Procurement Resolution.

3. Competitive Negotiation also may be used for the procurement of an Energy Performance-Based Contract on a Design-Build basis pursuant to the provisions of Section 4-122 without the necessity for a prior determination that Competitive Sealed Bidding is either not practicable or not fiscally advantageous to Arlington Public Schools.

B. Request for Proposal: The Procurement Agent shall issue a written Request for Proposals indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the Proposals, indicating whether a numerical scoring system will be used in the evaluation of the Proposals, 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. Arlington Public Schools may provide in the Request for Proposals that (i) any exception to any provisions, terms or conditions included in the Request for Proposals or in any document incorporated into the Request for Proposals shall be included in the Proposal and any exception not included in the Proposal shall be deemed to have been accepted without objection and shall not be considered; or (ii) that no exceptions to any provisions, terms or conditions included in the Request for Proposals or in any document incorporated into the Request for Proposals shall be included in the Proposal. Provided, however, if Arlington Public Schools makes a material change to the Request for Proposal after the Proposal due date which if it had been made prior to the Proposal due date would have resulted in the Offeror including an exception in its submitted Proposal, the Offeror may within five (5) days following issuance by Arlington Public Schools of the material change submit in writing any exception to the material change. Any exception to the material change not submitted to Arlington Public Schools in writing within such five (5) day period shall be deemed to have been waived and shall not be considered. Any industry standard documents the Offeror requests to have included in any resulting Contract shall be included in the Offeror's submitted Proposal. Any document~~s~~ the Offeror asserts is an industry standard document~~s~~ not provided by the Offeror in its submitted Proposal shall not be considered and shall not be a part of any Contract awarded. Provided, however, in the case of a proposal for information technology, as defined in Va. Code Ann. § 2.2-2006 (hereinafter "Information Technology Proposal"), Arlington Public Schools shall not require an Offeror hereinafter "Information Technology Offeror" to state in a Proposal any exception to any liability provisions contained in the Information Technology Proposal except as provided in subsection 4-102(1)(E). If the Request for Proposals directs that no exceptions shall be included in the Proposal and an Offeror includes exceptions in its Proposal, that Offeror's Proposal shall be deemed nonresponsive and shall not be considered further.

C. Public Notice: Arlington Public Schools shall 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 posting on the Virginia Department of General Services' central electronic Web site, eVA, and the Arlington Public Schools Web site. The notice of the Request for Proposals may also be published in a newspaper of general circulation in the Arlington County area, but is not required to be so published. Arlington Public Schools shall encourage the participation of Small, Women-Owned, Minority-Owned, Service Disabled Veteran-Owned Businesses and Employment Services Organizations by making its solicitations available in accordance with Article 8 of this Procurement Resolution.

Arlington Public Schools will also post notice of the Request for Proposals on a public bulletin board in the Syphax 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 evaluation and 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 Proposals, including price if so stated in the Request for Proposals. Arlington Public Schools may seek clarification of any aspect of the Proposal from any Offeror during the initial evaluation stage. Following completion of the shortlist interviews but before making any decisions regarding which Offerors to consider further, Arlington Public Schools may seek from any Offeror which participated in the shortlist interviews clarification of any aspect of the Proposal or of issues which arose during the shortlist interview. Negotiations shall then be conducted with each of the offerors so selected. During the Negotiation Stage, individual members of the SAC may engage in discussions with any Offeror on behalf of the SAC to gather information to assist the SAC in making its final determination regarding award of the Contract. Such individual information and discussions shall be shared with the entirety of the SAC for consideration in the final determination regarding award of the Contract.

An Information Technology Offeror shall state any exception to any liability provisions contained in the Request for Proposals in writing within five (5) business days after the date of written notice by Arlington Public Schools that the Offeror has been selected for the negotiation stage, as defined in the Request for Proposals, and such exceptions shall be considered during negotiation. Failure of the Information Technology Offeror to submit written exceptions to any liability provisions within the required time shall be deemed acceptance of the liability provisions contained in the Request for Proposals, and no exceptions not so submitted shall be considered. Price shall be considered but need not be the sole determining factor. During the Negotiation Stage, individual members of the SAC may engage in discussions with any Offeror on behalf of the SAC to gather information to assist the SAC in making its final determination regarding award of the Contract. Such individual information and discussions shall be shared with the entirety of the SAC for consideration in the final determination regarding award of the Contract.

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 Proposals, awards may be made to more than one (1) Offeror. Should Arlington Public Schools at any time determine in writing and in its sole discretion that only one (1) Offeror is fully qualified, or that one (1) Offeror is clearly more highly qualified than the others under consideration, a Contract may be negotiated and awarded to that Offeror.

F. Cancelation, Rejection of Proposals, Waiver of Informalities: A Request for 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 a Request for Proposals pursuant to this subsection solely to avoid awarding a Contract to a particular Responsive and Responsible Offeror.

G. The Procurement Agent may waive Informalities in Proposals.

(2) Competitive Negotiation for Professional Services

A. Conditions for Use: Contracts for Professional Services, the cost of which is expected to exceed eighty thousand dollars ($80,000.00) 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. Professional Services estimated to cost eighty thousand dollars ($80,000.00) or less 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 Procurement Resolution, at the discretion of the Procurement Agent.

1. A Contract for architectural or professional engineering services relating to multiple 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 Proposals, and (iii) the Contract is limited to a term of one (1) year or when the cumulative total project fees reach the maximum authorized in this Section, whichever occurs first.

2. Such Contracts may be renewable for three (3) additional one (1)-year terms at the option of Arlington Public Schools. Any unused amounts from one contract term shall not be carried forward to any additional term. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

3. The sum of all projects performed in a Contract term shall not exceed ten million dollars ($10,000,000.00), and the fee for any single project shall not exceed two million five hundred thousand dollars ($2,500,000.00).

4. Competitive Negotiations for such architectural or professional engineering Contracts may result in awards to more than one (1) Offeror provided (i) the Request for Proposal so states and (ii) Arlington Public Schools 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. Any unused amounts from one Contract term shall not be carried forward to any additional term.

6. 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, Arlington Public Schools 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 Arlington Public Schools.

B. Request for Proposals: The Procurement Agent shall issue a written Request for Proposals indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the Proposals, indicating whether a numerical scoring system will be used in evaluation of the Proposals, 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 Proposals or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving Proposals.

Any exception to any provisions, terms or conditions included in the Request for Proposals or in any document incorporated into the Request for Proposals included in the Proposal shall not be considered. If the RFP is for architectural or engineering services, Arlington Public Schools shall not request or require Offerors to list, and Offerors shall not include in their Proposal, any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, or ordinance, until after the qualified Offerors are ranked for negotiations. Exceptions may be considered as set forth in subsection 4-102(2)B below.

C. Public Notice: Arlington Public Schools will make public the notice of the Request for Proposals at least ten (10) calendar days prior to the date set for receipt of Proposals by posting on the Virginia 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 Businesses, Minority-Owned Businesses, Service Disabled Veteran Owned Businesses, Women-Owned Businesses, and Employment Services Organizations by making its solicitations available in accordance with Article 8. Arlington Public Schools will also post notice of the Request for Proposals on a public bulletin board in the Syphax Education Center.

D. Selection and Award: Arlington Public Schools shall engage in individual discussions with two (2) or more Offerors deemed fully qualified, responsible and suitable on the basis of initial responses 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 Proposals 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. Exceptions provided in a Proposal will not be considered. Offerors shall submit to Arlington Public Schools in writing any exceptions to any proposed contractual terms or conditions within five (5) business days after Arlington Public Schools issues to the Offerors written notice that the Offerors have been ranked for negotiations. Exceptions may be discussed in the negotiations stage, and any term or provision to which no exception is raised in strict compliance with the foregoing provisions shall conclusively be deemed to have been accepted without objection by the Offeror. At the conclusion of discussion, outlined in this Section, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, Arlington Public Schools shall select in the order of preference two (2) 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 (1st). 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 Arlington Public Schools, the award shall be made to that Offeror. Otherwise, negotiations with the Offeror ranked first (1st) shall be formally terminated and negotiations conducted with the Offeror ranked second (2nd), 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 Proposals, Arlington Public Schools may award Contracts to more than one (1) Offeror. Should Arlington Public Schools determine in writing and in its sole discretion that only one (1) Offeror is fully qualified, or that one (1) Offeror is clearly more highly qualified and suitable than the others under consideration, a Contract may be negotiated and awarded to that Offeror. During the Negotiation Stage, individual members of the SAC may engage in discussions with any Offeror on behalf of the SAC to gather information to assist the SAC in making its final determination regarding award of the Contract. Such individual information and discussions shall be shared with the entirety of the Selection Advisory Committee for consideration in the final determination regarding award of the Contract.

E. Cancelation, Rejection of Proposals, Waiver of Informalities: A Request for Proposal 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 a Request for Proposal pursuant to this subsection solely to avoid awarding a Contract to a particular Responsive and Responsible Offeror.

F. The Procurement Agent may waive Informalities in Proposals.

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

While the Competitive Sealed Bidding 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 Construction Management at Risk ("CMR") basis, provided it complies with the requirements of this subsection 4-102(3). For limited adoption of authorization to procure using a Design-Build contract pursuant to the Energy and Operational Efficiency Performance-Based Contracting Act, Title 45.2, Chapter 17 of the Virginia Code, see Section 4-122 of this Procurement Resolution.

A. Prior to proceeding with the procurement of a CMR Contract, a written determination shall be made in advance by the Procurement Agent that Competitive Sealed Bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize CMR. The determination shall be included in the Request for Qualifications ("RFQ") and be maintained in the procurement file.

B. CMR Contracts may be utilized for projects where the project cost is expected to be less than the project cost threshold established in the procedures adopted by the Commonwealth Secretary of Administration for utilizing construction management Contracts. CMR may be utilized provided that (i) the project is a Complex Project and (ii) CMR procurement for the project is approved by the Board. The written approval of the Board shall be maintained in the procurement file for the project. For purposes of this subsection 4-102(3), a "Complex Project" means a Construction project that includes one (1) or more of the following significant components: (i) difficult site location; (ii) unique equipment; (iii) specialized building systems; (iv) multifaceted programs; (v) accelerated schedule; (vi) historic designation; (vii) intricate phasing; or (viii) some other aspect that makes Competitive Sealed Bidding not practical.

C. Prior to making a determination as to the use of CMR 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 CMR for that project and who shall assist Arlington Public Schools in the preparation of the RFQ and RFP and the evaluation of such qualifications and Proposals.

D. CMR Contracts are structured into two (2) phases.

(a). Phase 1: Pre-Construction Phase Services. The Contract for the Phase 1 Pre-Construction Phase Services shall be referred to as the Part 1-Pre-Construction Phase Services Contract. The services contemplated as Pre-Construction Phase Services are in general to provide advice, analysis and review to the architect(s)/engineer(s) and Arlington Public Schools preparing the design for the proposed project to identify and avoid potential problems or causes of delay or increase in cost related to the design documents, and to provide Value Engineering in preparation of the design documents.

(b). Phase 2: Construction Phase Services. The Contract for the Phase 2 Construction Phase Services shall be referred to as the Part 2-Construction Phase Services Contract. The CMR services contemplated as Construction Phase Services shall be to provide all labor, services, equipment and materials necessary and required to complete the project in accordance with the Contract Documents for that project.

E. As a part of Phase 1, the Procurement Agent, subject to the limitations of Article 2, subsection 2-102(3)P, and Article 4, Sections 4-107, 4-108, and 4-109 of this Procurement Resolution, may approve early release packages for commencement of specific elements of what otherwise would be part of the Part 2-Construction Phase Services Contract ("Early Release Contract"). Early Release Contracts shall be established based upon approved working drawings for the work of that Early Release Contract and the price agreed for an Early Release Contract shall serve as an interim Guaranteed Maximum Price ("GMP") for that Early Release Contract until a GMP for the project as a whole is agreed. The Early Release Contract shall provide that the scope of work shall become a part of the Part 2 Construction Phase Services Contract and that the interim GMP for that Early Release Contract shall be included in the GMP for the Part 2-Construction Phase Services Contract if an agreed GMP and Part 2-Construction Phase Services Contract is awarded to the Phase 1 Pre-Construction Services CMR. No Early Release Contract may be awarded until the CMR has obtained bids for the Early Release Contract work. If any governmental permits are required for the Early Release Contract scope of work, an Early Release Contract may be awarded prior to required governmental permits being obtained for the scope of work of the Early Release Contract, but no notice to proceed or other authorization to proceed shall be issued or granted prior to any governmental permit required for the Early Release Contract scope of work having been obtained. Early Release Contract scopes of work shall correspond with the partial permits being obtained, such as clearing and grubbing, grading, or site utilities, or shall be for long lead items that need to proceed in order to maintain the project schedule. All Early Release Contracts shall provide for termination at the convenience of Arlington Public Schools pursuant to the provisions of Article 4, subsection 4-114(4) of this Procurement Resolution.

F. Upon approval by the Board of the use of CMR Contracting for a specific Construction project, the Procurement 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 4-102(3)C.

G. The Procurement Agent shall issue a notice of RFQ from potential Offerors by (i) posting on a public bulletin board in the Syphax Education Center, (ii) posting on the Virginia Department of General Services central electronic procurement website, known as eVa, and (iii) posting on the Arlington Public Schools' website, at least thirty (30) calendar days preceding the last day set for the receipt of qualifications. Arlington Public Schools shall encourage the participation of Small, Minority-Owned, Women-Owned,

Service Disabled Veteran Owned Businesses, and Employment Services Organizations by making its solicitations available in accordance with Article 8 of this Procurement Resolution.

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. At a minimum, the qualification criteria for a CMR RFQ shall include:

(a). As the Offeror selected for the Part 1-Pre-Construction Phase Services Contract will be considered for the Part 2-Construction Phase Services Contract if the parties are able to agree on a GMP and other Contract terms, an Offeror must hold a Virginia Class A General Contractor's license in good standing. For any portion of the Work the Offeror intends to self-perform for which a classification or specialty designation is required by the Virginia Department of Professional and Occupational Regulation Board for Contractors Regulations, the Offeror must also hold such classification or specialty designation.

(b). Proof satisfactory to Arlington Public Schools of the ability to obtain appropriate insurance coverage for the duration of the project.

(c). Proof satisfactory to Arlington Public Schools of bonding capacity sufficient to satisfy the anticipated bonding requirements for the project.

(d). A listing of experience of at least three (3) projects of similar scope, complexity, and delivery method including construction cost, schedule, and owner or architect representative's contact information.

(e). A list of at least three (3) professional references including contact information.

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. Prior CMR experience may be considered, but shall not be assigned any point value in the evaluation criteria and shall not be required as a prerequisite for qualification nor for the award of a Contract. However, in the pre-qualification of potential CMR Contractors, Arlington Public Schools may consider the experience of each Offeror on comparable projects. The Procurement Agent shall receive and consider comments concerning specifications or other provisions in the RFQ 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) but not more than five (5) 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, subsection 4-101(2)F of this Procurement 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 Procurement 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.

H. The Procurement Agent shall issue a 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 sufficient detail to permit informed Proposals, and may include such other requirements as the Procurement Agent deems appropriate for the Construction project. The RFP shall also define the pre-design, design phase, bid phase and/or Construction Phase Services to be performed by the CMR. 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. Prior CMR experience may be considered, but shall not be assigned any point value in the evaluation criteria and shall not be required as a prerequisite for qualification nor for the award of a Contract. However, in the selection of a CMR Contractor, Arlington Public Schools may consider the experience of each Offeror on comparable projects. 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 Procurement Agent shall receive and consider comments concerning specifications or other provisions in the RFP prior to the time set for receipt of Proposals.

1. Cost proposals for the Phase 1 Pre-Construction Services shall include:

   (a) a Pre-Construction Phase Services Fee stated as a lump sum;

   (b) a General Conditions Fee based upon an anticipated duration set forth in the RFP, stated as a lump sum and itemized in accordance with the General Conditions Fee Itemization Form included in the RFP;

   (c) a CMR/General Conditions Fee to include all home office expenses, overhead and profit during the construction phase of the project;

(d) an Insurance and Taxes Fee expressed as a percentage to include the cost of all insurance of any type required by the RFP, with payment and performance bonds considered to be insurance for this purpose, and any taxes or licenses required to perform and complete the project, which Insurance and Taxes Fee shall be inclusive of all items that will be included in addition to the cost of the work in establishing the GMP and the final Contract value other than design or CMR contingencies and the CMR/General Conditions Fee.

2. The RFP shall not include a request for budget estimates.

3. The Offeror shall state any exceptions to any provision of the Contract Documents in writing in its Proposal as directed by the Instructions in the RFP. Any exceptions shall identify with specificity the provision to which exception is taken, the exception, the rationale for the exception, and the proposed alternative provision. The Selection Advisory Committee may, but is not required to, negotiate as it deems necessary any exceptions so submitted, but no negotiations shall occur prior to the Negotiations Stage as defined below. An Offeror shall be deemed to have waived all objections to, and accepted, all provisions of the Contract Documents to which no exception is included in its submitted Proposal and in such event no exceptions shall be considered during the Negotiation Phase. Provided, however, if APS makes a material change to the RFP after the Proposal Due Date as defined in the RFP which if it had been made prior to the Proposal Due Date would have resulted in the Offeror including an exception in its submitted Proposal, the Offeror may within five (5) days following issuance by APS of the material change submit in writing any exception to the material change. Any exception to the material change not submitted to APS in writing within such five (5) day period shall be deemed to have been waived and shall not be considered further during the Negotiation Stage or otherwise. APS may, but is not required to, defer consideration of any exceptions applicable to the Part 2-Construction Services Contract until the time of negotiations to achieve an agreed GMP and Part 2-Construction Services Contract.

4. The Selection Advisory Committee shall evaluate each Proposal and select those 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, and giving consideration to the responses to the RFQ. The CMR Fee and the Pre-Construction Phase Services Fee shall be evaluated based upon the sum of those fees and not individually.

5. Negotiations shall then be conducted with those 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, Section 4-110 of this Procurement Resolution. Price shall be a critical basis for award of the CMR Contract, 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 RFP, awards may be made to more than one (1) Offeror. During the Negotiation Stage, individual members of the SAC may engage in discussions with any Offeror on behalf of the SAC to gather information to assist the SAC in making its final determination regarding award of the Contract. Such individual information and discussions shall be shared with the entirety of the SAC for consideration in the final determination regarding award of the Contract.

6. The Part 1-Pre-Construction Phase Services Contract must be initiated no later than the schematic phase of design. The GMP for Construction Phase Services must be established by the completion of the working drawings.

7. If the parties are unable to agree on a GMP for the Part 2-Construction Phase Services Contract during the Pre-Construction Phase Services, the Part 1-Pre-Construction Phase Services Contract is concluded upon completion of the performance thereunder or the earlier termination of the Part 1 Pre-Construction Phase Services Contract and Arlington Public Schools shall not enter into a Part-2 Construction Phase Services Contract with the Phase 1 CMR. In such event, any incomplete Early Release Contracts may, at the discretion of Arlington Public Schools, be terminated for convenience as provided in the Early Release Contract or the Phase 1 CMR may be directed to complete the Early Release Contract on the terms and at the price set forth therein. If the construction drawings and specifications are substantially complete, the Procurement Agent may elect to proceed with the project using Competitive Sealed Bidding procurement procedures limited to the CMR Offerors which were selected pursuant to subsection 4-102(3) H.4 above, including the Phase 1 Preconstruction Phase Services CMR with which a GMP could not be agreed.

Alternatively, if factors remain which sustain the benefit of continuing with the CMR process, the Procurement Agent may direct the SAC to notify the Offeror which was ranked by the SAC as having made the second-best Proposal to submit a proposed GMP and attempt to negotiate an acceptable GMP for the Construction Phase Services. If an acceptable GMP is not reached with the Offeror which was ranked as having made the second-best Proposal, then the Offeror which was ranked as having made the third best Proposal shall be notified and an attempt made to negotiate an acceptable GMP, and so on until an acceptable GMP for the Construction Phase Services is achieved. Each unsuccessful negotiation removes that Offeror from further consideration. If it is determined that there is not sufficient benefit to Arlington Public Schools in continuing with the CMR process, or if Arlington Public Schools is unable to negotiate an acceptable GMP for the Construction Phase Services with any of the Offerors to which the RFP was issued, Arlington Public Schools may in its sole discretion cancel the procurement or proceed with procurement for the construction on a Competitive Sealed Bidding basis. Procurement on a Competitive Sealed Bidding

basis shall be deemed a new procurement, and having been a CMR Offeror shall not exclude any person or Business from submitting a Bid.

I. Any CMR Contract shall include Contract terms providing that 1) not more than ten percent (10%) of the Construction work (measured by cost of the work) shall be performed by the CMR with its own forces and 2) that the remaining ninety percent (90%) of the Construction work shall be performed by Subcontractors of the CMR which the CMR shall procure by Competitive Sealed Bidding to the maximum extent practicable.

J. The Procurement Agent may promulgate such additional procedures, not inconsistent with the provisions of this Section 104(3), and consistent with the procedures for the procurement of Non-Professional Services through Competitive Negotiation, as deemed necessary and appropriate to effect the selection and evaluation of offers and the award of CMR Contracts.

K. Cancelation, Rejection of Proposals, Waiver of Informalities: A Request for Proposal for CMR services 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 a Request for Proposal pursuant to this Section 104(3) solely to avoid awarding a Contract to a particular Responsive and Responsible Offeror.

L. The Procurement Agent may waive Informalities in Proposals.

M. Performance and Payment Bonds on CMR Part-2 Construction Phase Services Contracts

1. Upon the award of any Arlington Public Schools CMR Part-2 Construction Phase Services Contract to any Contractor requiring the performance of labor or the furnishing of material for buildings, structures, or other improvements to real property owned or leased by Arlington Public Schools, the Contractor shall furnish to Arlington Public Schools the following bonds:

   a. 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. The performance bond shall be on a form approved by Arlington Public Schools.

   b. 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 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. As used in this subsection, "labor or materials" includes public utility services and reasonable rentals of equipment, but only for periods

when the equipment rented is actually used at the site. The payment bond shall be on a form approved by Arlington Public Schools.

2. 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.

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

4. Each of the bonds shall be filed with the office of the Procurement Agent, or a designated office or official thereof.

5. 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 subcontract 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.

(4) Purchase of Insurance

Upon a written determination made in advance by the Procurement 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 subsection 4-102 (1) of this Procurement Resolution.

4-103 Sole Source Procurement

Upon a determination in writing by the Procurement Agent that there is only one (1) 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 (1) 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 Procurement Office, the using school or department shall immediately notify the Procurement Agent who shall either purchase the required Goods, Services, Professional Services, or Construction, 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 Procurement 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 Procurement Office, the concerned school or department may purchase directly the required Goods, Services, Professional Services, or Construction. 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 Procurement 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 Procurement Agent. The Procurement 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, Arlington Public Schools 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 Goods, Services, Professional Services or Construction is or are needed for immediate use due to reasonably unforeseeable circumstances.

4-105 Small Purchases

(1) Any single or term Contract for (i) Goods, Services other than Professional Services and non-transportation related Construction, if the aggregate or sum of all phases is not expected to exceed two hundred thousand dollars ($200,000.00) and Professional Services estimated to cost eighty thousand dollars ($80,000.00) or less and (ii) transportation-related Construction, if the aggregate or sum of all phases is not expected to exceed twenty-five thousand dollars ($25,000.00), may be awarded, at the discretion of the Procurement Agent, in accordance with small purchase procedures approved in this Section. However, such small purchase procedures shall provide for competition wherever practicable. Small purchases for Construction shall comply with the Uniform Statewide 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, solicitation of only one (1) person or Business to submit a written quote is required for purchases where based on all information reasonably available at the time of the award the anticipated total cost, or the aggregate or the sum of all phases of the Goods, Nonprofessional Services or non-transportation-related construction being procured that to be provided is not greater than ten thousand dollars ($10,000.00) but multiple persons or Businesses may be solicited.

C. Insofar as it is practical, no less than three (3) persons or Businesses shall be solicited to submit written quotations where

based on all information reasonably available at the time of the award the anticipated total cost, or the aggregate or the sum of all phases of the Goods, Nonprofessional Services or non-transportation-related construction being procured is between ten thousand and one dollars ($10,001.00) and thirty thousand dollars ($30,000.00).

D. Insofar as it is practical, no less than four (4) persons or Businesses shall be solicited to submit written quotations where based on all information reasonably available at the time of the award the anticipated total cost, or the aggregate or the sum of all phases of the Goods, Nonprofessional Services or non-transportation-related construction being procured is between thirty thousand and one dollars ($30,001.00) and two hundred thousand dollars ($200,000.00).

E. Insofar as it is practical, no less than three (3) persons or Businesses shall be solicited to submit written quotations where based on all information reasonably available at the time of the award the anticipated total cost, or the aggregate or the sum of all phases of the Professional Services being procured is less than eighty thousand dollars ($80,000.00).

F. For purchases of construction for any amount permitted by this Part 4-105, compliance with the Uniform State Building Code shall be a Contract requirement.

G. For purchases where based on all information reasonably available at the time of the award the anticipated total cost, or the aggregate or the sum of all phases of the Goods, Nonprofessional Services, Professional Services, or construction being procured is not greater than two hundred thousand dollars ($200,000.00), and where the purchases are being made by an office within different departments or schools for the same or similar Goods, Nonprofesional Services, Professional Services, or Construction, each office has is its own ceiling in the amounts set forth above and each office is required to solicit the number of quotes so stated in this subsection. Purchases shall not be manipulated or coordinated in any manner by, between or among those offices making the purchases for the purpose of staying below any applicable ceiling.

H. Award shall be made to the person or Business offering the lowest acceptable responsive and responsible quotation.

I. The names of the persons or Businesses submitting quotations and the date and the amount of each quotation shall be recorded and maintained as a public record.

J. All quotations solicited shall be submitted in writing by the persons or Businesses.

K. Nothing in this Section shall preclude the Procurement 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 Procurement Agent, the best interests of Arlington Public Schools would be served by such waiver.

L. A small purchase Contract may become effective through issuance by APS of a written Purchase Order accepted by Contractor performance or by written agreement signed by both parties.

4-106 Interest in More Than One Bid and Collusion

(1) Where more than one (1) Bid or Proposal is received in response to a single solicitation from a person or Business or affiliate thereof under the same or different names, all Bids or Proposals from the person or Business or affiliate thereof 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 (1) 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 person or Business acting only as a Subcontractor may be included as a Subcontractor for two (2) 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 Procurement Agent's determination as otherwise provided in this Procurement 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 Procurement Agent may waive the provisions in subsection 2, above, prior to issuing a solicitation when the Procurement 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 five hundred thousand dollars ($500,000.00) shall be awarded without the prior approval of the Board.

(2) Capital Improvement Projects are defined as work on real property or its improvements other than normal maintenance in excess of fifteen thousand dollars ($15,000.00), 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 five hundred thousand dollars ($500,000.00), shall be awarded without the prior approval of the 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 fifty thousand dollars ($50,000.00), whichever is greater, without the advance written approval of the 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 Proposal.

(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, Section 7-107 or any other applicable statute or regulation. Modifications made by Arlington Public Schools that fail to comply with this subsection are voidable at the discretion of the Board, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in Article 7, Section 7-107.

(4) No amendment of a Contract for Capital Improvement Project or Professional or Nonprofessional Services performed as part of a Capital Improvement Project shall be made without a writing signed by the Procurement Agent or the Procurement Agent's designee.

(5) Any individual change orders in excess of one hundred thousand dollars ($100,000.00) 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 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 fifty thousand dollars ($50,000.00), whichever is greater, without the advance written approval of the 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 Proposal.

(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, Section 7-107 or any other applicable statute or regulation. Modifications made by Arlington Public Schools that fail to comply with this subsection are voidable at the discretion of the Board, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in Article 7, Section 7-107.

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

(5) Any individual Contract Amendment having significant impact on the approved project budget requires prior approval by the 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 Procurement Agent, except where permitted either by this Procurement Resolution or by 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 and is not binding upon Arlington Public Schools unless it has been signed by the APS Procurement 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 Procurement 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 Procurement 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 or insurance contrary to the provisions of this Procurement 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 Procurement 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 Sealed 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 fifty thousand dollars ($50,000.00) 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 subsection 4-102(1)A of this Procurement Resolution. The procedure for the advertising for Bids or for Proposals and for letting of the Contract shall conform, *mutatis mutandis*, to the VPPA.

4-113 Public Access to Procurement Information

Except as provided in this Procurement 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 solicitation. 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 solicitation. 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 subsection 4-101(2) of this Procurement Resolution shall not be subject to the Virginia Freedom of Information Act, Va. Code 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. A Bidder, Offeror, or Contractor shall not designate as trade secrets or proprietary information (a) an entire Bid, Proposal, or prequalification application; (b) any portion of a Bid, Proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total Bid, Proposal, or prequalification application prices.

4-114 Provisions to be Included in every Contract over $10,000.00

(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, as amended in 2008 and as may be further amended, 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 ten thousand dollars ($10,000.00), 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 ten thousand dollars ($10,000.00), 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 Procurement 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) Termination for Convenience:

Arlington Public Schools shall have the right to terminate this Contract, in whole or in part, at its own convenience for any reason by giving seven (7) days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the lesser of: (1) the actual cost of any Work actually performed or in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof, plus ten percent (10%); or (2) the pro rata percentage of completion, which shall be based upon the approved Schedule of Values if so required by the Contract, plus the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof. Each subcontract shall contain a similar termination provision for the benefit of the Contractor and Arlington Public Schools. The Contractor shall not be entitled to receive anticipated profits on unperformed portions of the Work. Arlington Public Schools shall have the right to employ an independent accounting firm to verify any amounts claimed by the Contractor to be due under this Paragraph. Arlington Public Schools shall have the right of audit of all records of the Contractor applicable to any amounts claimed to be due hereunder. In the event a termination by Arlington Public Schools for default, in whole or in part, subsequently is determined to have been without sufficient justification, such termination shall be deemed a termination for convenience and the Contractor's remedies shall be limited as provided in this subsection.

(5) Criminal Conviction Certification:

Required Certification

All Contracts with Arlington School Board, where the Contractor or its employees, or its Subcontractors or their employees, will have direct contact with students on school property during regular school hours, or during school-sponsored activities, shall require the Contractor to certify that neither it nor any of its employees nor any of its Subcontractors' nor any of its Subcontractors' employees, who will have direct contact with students, have been:

(1) convicted of a felony or of a sexually violent offense as defined in Va. Code Ann. § 9.1-902 as mandated by Va. Code Ann. § 18.2-370.5,

(2) convicted of an offense occurring on or after July 1, 2006, where the offender was more than three years older than the victim involving:

(a) the rape of a child under age 13 pursuant to Va. Code Ann. § 18.2-61.A(iii),

(b) forcible sodomy of a child less than 13 years of age pursuant to Va. Code Ann. § 18.2-67.1.A.1,

(c) object sexual penetration of a child under 13 years of age pursuant to Va. Code Ann. § 18.2-67.2.A.1, or

(d) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

This requirement is applicable without exception for a person convicted of a felony or of a sexually violent offense as defined in Va. Code Ann. § 9.1-902, but for all other offenses set forth above this requirement does not apply unless the qualifying offense was done in the commission of, or as a part of the same course of conduct of, or as part of a common scheme or plan as a violation of:

(a) abduction or kidnapping in violation of Va. Code Ann. § 18.2-47.A,

(b) abduction with intent to extort money of for immoral purpose in violation of Va. Code Ann. § 18.2-48,

(c) burglary in violation of Va. Code Ann. § 18.2-89,

(d) entering a dwelling house with intent to commit murder, rape, robbery or arson in violation of Va. Code Ann. § 18.2-90,

(e) aggravated malicious wounding in violation of Va. Code Ann. § 18.2-51.2, or

(f) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

A. Crimes of Moral Turpitude:

Contractors and their employees, and their Subcontractors and their employees, may also be disqualified if they fail to disclose a conviction for a crime of moral turpitude. Crimes of moral turpitude are typically defined as those involving forgery, lying, cheating and stealing, such as convictions for false statements or petit larceny.

The Procurement Agent will have the authority to determine whether a reported conviction regarding any of the crimes listed above involving a child disqualifies the Contractor or its employees, or its Subcontractors or their employees.

B. Contractor's Employees or Subcontractors:

As a condition of awarding a Contract the performance of which requires the Contractor or its employees, or its Subcontractors or employees, to have direct contact with students on school property during regular school hours or during school-sponsored activities, the Contractor shall certify that no persons who will provide such performance have been convicted of a felony or of any offense involving the sexual molestation or physical or sexual abuse of a child. Any such Contract shall require that the Contractor provide Arlington Public Schools with evidence and/or cooperate with any background check necessary to establish that any of the Contractor's employees or its Subcontractor's employees satisfy this restriction. In addition to Contractors selected through an applicable procurement process, these restrictions also shall apply, by way of example and not by way of exclusion, to Contracts for student interns and student teachers; counselors, therapists, portrait providers, and other support Services providers; bus drivers; field trips or camps, where a Contractor's employee or an employee of its Subcontractor(s)will be accompanying the students. The Contractor must keep the individual employee certifications on file, and make them available to Arlington Public Schools on request.

The Contractor Certification Regarding Criminal Convictions can be found at Attachment A to this Procurement Resolution.

C. Waiver of Certification Requirement:

The Superintendent and Assistant Superintendents have the authority to waive the certification requirement if they determine (in writing) that a particular Services Contract does not involve any contact with students, and that the Contract cannot be concluded unless the certification requirement is waived.

D. Solicitations and Contracts:

For those requirements where the Contractor or its employees, or its Subcontractors or their employees, will have direct contact with students during regular school hours or during school sponsored activities, the solicitation and resulting Contract will include certification language.

E. Contractor Prohibited in Assisting Person for New Job if Engaged in Misconduct with Minor:

As a condition of being awarded a Contract, or Contract renewal, the Contractor acknowledges it is prohibited from assisting the elected and appointed officials of Arlington Public Schools, its officers, current and former employees, agents, departments, agencies, boards, and commissions employee, and Contractors, including all levels of Subcontractors, in obtaining a new job if the Contractor knows or has probable cause to believe that the elected and appointed officials of Arlington Public Schools, its officers, current and former employees, agents, departments, agencies, boards, and commissions employee, and Contractors, including all levels of Subcontractors, engaged in the sexual molestation, physical or sexual abuse, or rape of a child or have been the subject of any finding of child abuse or neglect.

(6) Prompt Payment by Arlington Public Schools and Contractors

Every Contract for Goods, Services, Professional Services or Construction or any other type of contractual business with nongovernmental, privately owned enterprises (for purposes of this subsection 4-114(6) collectively "Goods, Services, Professional Services or Construction"), shall contain the following payment provisions, which shall be deemed to be included in the Contract whether stated therein or not:

A. Arlington Public Schools shall pay for the completed delivered Goods, Services, Professional Services or Construction by the required payment date. The required payment date shall be either: (i) the date on which payment is due under the terms of the Contract; or (ii) if a date is not established by the Contract, not more than forty-five (45) days after the Goods, Services, Professional Services or Construction which are the subject of the Contract are received or not more than forty-five (45) days after the invoice is rendered, whichever is later.

B. Separate payment dates may be specified for Contracts which provide for a series of partial executions or deliveries to the extent that the Contract provides for separate payment for partial execution or delivery.

C. Within twenty (20) days after receipt of the invoice or of the Goods, Services, Professional Services or Construction, whichever is later, Arlington Public Schools shall notify the Contractor of any defect or impropriety that would prevent payment by the required payment date.

D. Every Contract shall provide for payment by Arlington Public Schools of a finance charge of six percent (6%) per annum for any payment not made by the required payment date, unless excused pursuant to the provisions hereof or of the Contract. When payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these provisions.

E. Every Contract shall provide that no interest shall accrue or be payable by Arlington Public Schools:

1. when payment is delayed because of disagreement between Arlington Public Schools and a Contractor regarding the quantity, quality or time of delivery or performance of Goods, Services, Professional Services or Construction or the accuracy of any invoice received for the Goods, Services, Professional Services or Construction. Interest shall, however, accrue and be payable by Arlington Public Schools to the portion of any invoice not paid by the required payment date which is not disputed or otherwise subject to withholding.

2. on retention properly withheld;

3. on amounts withheld in accordance with the terms of the Contract

F. For purposes of this Section 4-114(6), (i) a "Construction Contract" means a contract relating to the construction, alteration, repair,

or maintenance of a building, structure or appurtenance to such building or structure, including moving, demolition, and excavation connected with such building or structure, or any provision contained in any contract relating to the construction of projects other than buildings, and (ii) a ”Subcontractor” means any entity that has a contract to supply labor or materials to the Contractor or to any Subcontractor in the performance of the work provided for in such contract. All Contracts shall include:

1. If the Contract is a Construction Contract, a payment clause that obligates the Contractor, in the event that the Contractor has not received payment from Arlington Public Schools for work performed by a Subcontractor, to be liable for the entire amount owed to such Subcontractor and to pay such Subcontractor within sixty (60) days of the receipt of an invoice following satisfactory completion of the work for which the Subcontractor has invoiced. The Contractor shall not be liable for amounts otherwise reducible due to the Subcontractor’s noncompliance with the terms of the subcontract. However, in the event that the Contractor withholds all or a part of the amount invoiced by the Subcontractor under the terms of the subcontract, the Contractor shall notify the Subcontractor within fifty (50) days of the receipt of such invoice, in writing, of the Contractor’s intention to withhold all or a part of the Subcontractor’s payment with the reason for nonpayment, specifically identifying the contractual noncompliance, the dollar amount being withheld, and the lower-tier Subcontractor responsible for the contractual noncompliance. Payment by Arlington Public Schools to the Contractor shall not be a condition precedent to payment of any lower-tier subcontractor, regardless of that Contractor’s receiving payment for amounts owed to that Contractor. Any provision in a Construction Contract or subcontract contrary to this section shall be unenforceable. Nothing in this subsection shall be construed to (i) apply to or prohibit the inclusion of any retainage provisions in a Construction Contract or (ii) apply to contracts awarded solely for Professional Services where Arlington Public Schools is contracting directly with an architectural and engineering firm. The provisions of this Part 4-114(6).F.1 shall become effective on January 1, 2023 and shall apply to construction contracts executed on or after January 1, 2023, regardless of the date the procurement solicitation was issued.

2. A payment clause that obligates the Contractor to take one of the two following actions within seven (7) days after receipt of payment by Arlington Public Schools under the Contract: (i) pay each Subcontractor for the proportionate share of the total payment received from Arlington Public schools attributable to the portion of the Contract performed by the Subcontractor, or (ii) notify Arlington Public Schools and the Subcontractor in writing, of the Contractor’s intention to withhold all or a part of the Subcontractor’s payment with the reason for nonpayment.

3. A payment clause that requires (i) individual Contractors to provide their social security numbers and (ii) Businesses to

provide their federal employer identification numbers.

4. An interest clause that obligates the Contractor to pay interest to the Subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from Arlington Public Schools for work performed or goods provided under that Contract, except for amounts withheld as allowed in subsections 4-114(6)F.1 and F.2.

5. An interest rate clause stating: "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

6. A requirement that the Contractor include in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirement with respect to each lower-tier Subcontractor.

7. A clause providing that the Contractor's obligation to pay an interest charge to a Subcontractor for late payment (i) shall not be construed to be an obligation by Arlington Public Schools, (ii) shall not be the basis for any modification to the amount payable to the Contractor under the Contract, and (iii) shall not be the basis for any claim against Arlington Public Schools for reimbursement of such interest charge.

(7) All competitive solicitations issued by Arlington Public Schools in any format shall contain the following provision:

Following the award of any Contract or Contracts, or the cancellation of any solicitation, all Bidders or Offerors or potential Bidders or Offerors are invited to provide to APS written comments regarding the manner in which the solicitation was conducted and any suggested modifications to that process which might make future solicitations by APS more efficient, more productive, and more attractive to potential Bidders or Offerors.

4-115 Exemptions

(1) 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, and expert witnesses and other services associated with litigation or regulatory proceedings.

(2) 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 Procurement 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.

(3) Upon a determination made in advance by the Procurement 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.

(4) 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.

(5) Arlington Public Schools may, without competition enter into a single or term Contract not to exceed ten thousand dollars ($10,000.00) in the sum or aggregate. However, under the small purchase procedure competition shall be obtained whenever practicable.

(6) The purchase of Virginia-grown food products for use by Arlington Public Schools where the fiscal year cost of the product is not expected to exceed one hundred thousand dollars ($100,000.00), provided that the procurement is accomplished by (i) obtaining written informal solicitation of a minimum of three (3) bidders or offerors if practicable and (ii) including a written statement regarding the basis for awarding the Contract. 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 Public 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 (1) year or when the cumulative total project fees reach the maximum authorized in this Section, whichever occurs first. Contractors may be selected through either Competitive Sealed Bidding or Competitive Negotiation.

(2) Such Contracts may be renewable for two (2) additional one (1)-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 (1)-year Contract term ("maximum threshold amount") shall not exceed six million dollars ($6,000.000.00). No individual job order shall exceed five hundred thousand dollars ($500,000.00).

(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 Services that constitute the practice of 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 twenty-five thousand dollars ($25,000.00) per job order, and (iii) do not exceed seventy-five thousand dollars ($75,000.00) per Contract term.

(6) Job Order Contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass. However, Job Order Contracting may be used for safety improvements or traffic calming measures for individual job orders up to two hundred and fifty thousand dollars ($250,000.00), subject to the maximum threshold amount.

4-117 Guidelines for the Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002, as Amended

The Guidelines can be found at Appendix A of this Procurement Resolution

4-118 Purchase of Flags of the United States and the Commonwealth

Notwithstanding any provision of law to the contrary, whenever Arlington Public Schools purchases a flag of the United States or a flag of the Commonwealth for public use, such flag shall be made in the United States from articles, materials, or supplies that are grown, produced, and manufactured in the United States, if available.

4-119 Prohibition on the use of Certain Products and Services

Arlington Public Schools may not use, whether directly or through work with or on behalf of another Public Body, any hardware, software, or services that have been prohibited by the U.S. Department of Homeland Security for use on federal systems as determined by the Chief Information Officer of the Commonwealth pursuant to the provisions of Va. Code Ann. §2.2-2009.

4-120 Requirement for Superintendent's Approval of Plans

Arlington Public Schools shall not solicit, contract for, erect or otherwise acquire any public school building, or make any addition or alteration thereto, for either permanent or temporary use, until the plans and specifications therefor (i) have been approved in writing by the Superintendent; (ii) are accompanied by a statement by an architect or professional engineer licensed by the Commonwealth of Virginia Department of Professional and Occupational Regulation Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects that such plans and specifications are, in that person's professional opinion and belief, in compliance with the regulations of the Commonwealth of Virginia Board of Education and the Uniform Statewide Building Code; and (iii) have been reviewed by an individual or entity with professional expertise in building security and crime prevention through building design. The Superintendent's approval, architect's or engineer's statement, all reviewers' comments, and a copy of the final plans and

specifications shall be submitted to the Commonwealth of Virginia Superintendent of Public Instruction.

4-121 Preference in the Procurement of Energy and Water Efficient Goods.

A. As used in this section, "FEMP" means the Federal Energy Management Program.

B. When in the course of procuring goods, if Arlington Public Schools receives two or more Bids for products that are Energy Star certified, which meet FEMP-designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are WaterSense certified, Arlington Public Schools may only select among those Bids unless, before selecting a different Bid, it provides a written statement that demonstrates the cost of the products that are Energy Star certified, meet FEMP-designated efficiency requirements, appear on FEMP's Lo Standby Power Product List, or are WaterSense certified was unreasonable.

4-122 Energy Performance-Based Facility Improvements

(A). As used in this Part 4-122, the following definitions apply:

1. "Energy Conservation Measures" and "Operational Efficiency Measures" mean the use of methods and techniques, the application of knowledge, or the installation of devices, including an alteration or betterment of an existing facility, that reduces energy consumption or operating costs and includes:

a. Insulation of the facility structure and systems within the facility.

b. Installation of storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, or additional glazing; reduction in glass area; or the completion of other window and door system modifications that reduce energy consumption.

c. Installation of automatic energy control systems, including related software, or required network communication wiring, computer devices, wiring, and support services, or the design and implementation of major building technology infrastructure with operational improvements.

d. Modification or replacement of heating, ventilating, or air-conditioning systems.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system. Such replacement or modification shall, at a minimum, conform to the applicable provisions of the Uniform Statewide Building Code (Va. Code Ann. § 36-97 et seq.)

f. Installation of energy recovery systems.

g. Installation of cogeneration systems that produce, in addition to electricity, steam or another form of energy, such as

heat, for use primarily within a facility or complex of facilities.

h. Installation of Energy Conservation Measures of Operational Efficiency Measures that provide long-term operating cost reductions and significantly reduce the BTUs consumed.

i. Installation of building technology infrastructure measures that provide long-term operating cost reductions and reduce related operational costs.

j. Installation of an energy system, such as solar, biomass, or wind.

k. Installation of devices that reduce water consumption or sewer charges.

2. "Energy Cost Savings" means a measured reduction in fuel, energy, or operation and maintenance costs created from the implementation of one or more Energy Conservation Measures or Operational Efficiency Measures when compared with an established baseline for previous fuel, energy, or operation and maintenance costs. When calculating Energy Cost Savings attributable to the services performed or equipment installed pursuant to an Energy Performance-Based Contract, Maintenance Savings shall be included.

3. "Energy Performance-Based Contract" means a contract for the evaluation, recommendation, and implementation of Energy Conservation Measures or Operational Efficiency Measures that include, at a minimum:

a. The design and installation of equipment to implement one or more such measures and, if applicable, the operation and maintenance of such measures.

b. The amount of any actual annual savings. Such amount shall meet or exceed the total annual contract payments made by Arlington Public Schools for such contract.

c. The financing charges to be incurred by Arlington Public Schools for such contract.

4. "Energy Performance Contractor" means the Contractor under an Energy Performance-Based Contract.

5. "Maintenance Savings" means the operating expenses eliminated and future capital replacement expenditures avoided as a result of new equipment installed or services performed by the Energy Performance Contractor.

6. "Performance Guarantee Bond" means the performance bond provided by the Performance Contractor for each year of the energy program in an amount equal to, but no greater than, the guaranteed measured and verifiable annual savings set forth in the program.

(B). Solicitation and Award of Energy Performance-Based Contracts

1. Prior to issuing a procurement solicitation for a Design-Build basis Energy Performance-Based Contract, 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 for that project and who shall assist Arlington Public Schools in the preparation of the RFQ and RFP and the evaluation of such qualifications and Proposals.

2. Arlington Public Schools may enter into an Energy Performance-Based Contract with an Energy Performance Contractor for the purpose of significantly reducing (i) energy costs to a level established by Arlington Public Schools or (ii) operating costs of a facility through one or more Energy Conservation Measures or Operational Efficiency Measures. Energy Conservation Measures or Operational Efficiency Measures shall not include roof replacement projects except as provided in Part 4-122(B).3 below.

3. The Energy Performance Contractor shall be selected through competitive sealed bidding or competitive negotiation as set forth in Part 4-101 or Part 4-102.

a. If the procurement is through competitive negotiation, the process shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department of General Services of the Commonwealth of Virginia for state public bodies, and evaluation of the Proposals shall analyze the estimates of all costs of installation, maintenance, repairs, debt service, post-installation project monitoring, and reporting.

b. Notwithstanding any other provision of this Procurement Resolution or law, pursuant to the authorization provided in Va. Code Ann. Sec. 45.2-1703.B.1, Arlington Public Schools may purchase Energy Conservation Measures or Operational Efficiency Measures under an Energy Performance-Based Contract entered into by another Public Body which complies with the requirements of this Part 4-122 if the Request for Proposals specified that the procurement was being conducted on behalf of other contracting entities.

4. Arlington Public Schools may procure a roof replacement as part of a larger Energy Conservation Measure or Operational Efficiency Measure, including solar, where the replacement is necessary for the installation of such measure. In the event the contract for the Energy Conservation Measure or Operational Efficiency Measure does not include a roof replacement and Arlington Public Schools determines that the replacement of more than twenty percent (20%) of the roof is necessary for the installation of such measure APS may procure a roof replacement by any other means of competitive procurement permitted by law, in which event the roof replacement procurement shall be publicly noticed on the Department of General Services' central electronic procurement website. All roof replacement projects procured separately from a contract for Energy Conservation Measures or Operational Efficiency Measures as provided herein shall be designed by a licensed architect or professional engineer.

5. An Energy Performance-Based Contract shall be comprised of two phases.

a. The Evaluation Phase shall require that the Energy Performance Contractor provide a report disclosing all costs associated with the proposed Energy Conservation Measures and providing an estimate of the amount of the Energy Cost Savings. APS shall review the report and evaluate the following information:

(1). Whether the amount to be saved in energy and operation costs more than twenty (20) years from the date of installation, based on life-cycle costing calculations, if the recommendations in the report were followed, exceeds the amount Arlington Public Schools would spend on the Energy Conservation Measures.

(2). Does the Performance Contractor provide in the report a written guarantee that the Energy Cost Savings and operating cost savings, either or both, will meet or exceed the costs of the system.

(3). The cost savings calculations are based on payments over a period not to exceed twenty (20) years.

b. If the foregoing evaluation factors all are answered to the satisfaction of Arlington Public Schools, then Arlington Public Schools may enter into a Construction Phase Energy Performance-Based Contract with the Energy Performance Contractor for installation of the Energy Performance Measures. If the foregoing evaluation factors are not all answered to the satisfaction of Arlington Public Schools, then no Construction Phase Energy Performance-Based Contract for the proposed Energy Performance Measures shall be awarded.

(C). Required Provisions in an Energy Performance-Based Contract

1. Before entering into a contract for Energy Conservation Measures, Arlington Public Schools shall require the Performance Contractor to provide payment and performance bonds relating to the installation of energy conservation measures in an amount consistent with the provisions of Part 4-101(19) of this Procurement Resolution.

2. The term of any Energy Performance-Based Contract shall expire at the end of each Arlington Public Schools fiscal year but may be renewed annually for up to twenty (20) years from the initial date of award, subject to Arlington Public Schools making sufficient annual appropriations based upon continued realized Energy Cost Savings. The Energy Performance-Based Contract shall stipulate that the agreement does not constitute a debt, liability, or obligation of Arlington Public Schools or a pledge of the faith and credit of Arlington Public Schools. Such Energy Performance-Based Contract may also provide capital contributions for the purchase and installation of Energy Conservation Measures that cannot be totally funded by the Energy Cost Savings and operational savings.

3. The Energy Performance-Based Contract shall include a guarantee by the Energy Performance Contractor that annual Energy Cost Savings and operational savings, either or both, will meet or exceed the amortized cost of Energy Conservation Measures or Operational Efficiency Measures incurred by Arlington Public Schools for the Energy

Performance-Based Contract. The guaranteed Energy Performance-Based Contract shall include a written guarantee by the Energy Performance Contractor that either the Energy Cost Savings or operational cost savings, or both, will meet or exceed within twenty (20) years from contract award the costs of the Energy Conservation Measures or Operational Efficiency Measures and that the Energy Performance Contractor will reimburse Arlington Public Schools for any shortfall of guaranteed Energy Cost Savings.

4. The Energy Performance-Based Contract shall include a provision requiring that the Energy Performance Contractor provide a one hundred percent (100%) performance guarantee bond to Arlington Public Schools for the installation and faithful performance of the installed Energy Savings Measures in compliance with the requirements of the Energy Performance-Based Contract. The surety on such bond shall meet all requirements of payment and performance bonds set forth in Part 4-101(19) of this Procurement Resolution.

5. The Energy Performance-Based Contract shall include a provision requiring that the Energy Performance Contractor provide to Arlington Public Schools an annual reconciliation of the guaranteed Energy Cost Savings in such form and with such detail and supporting information as may be reasonably required by Arlington Public Schools. This reconciliation as approved by Arlington Public Schools shall be the basis for determining whether any payment is due from the Energy Performance Contractor for any shortfall of guaranteed Energy Cost Savings.

ARTICLE 5 - DISPOSAL OF SURPLUS PROPERTY

5-101 General

The Procurement Agent shall sell, transfer, trade, or otherwise dispose of personal property belonging to Arlington Public Schools which has become obsolete, surplus or damaged. Any such sales, trades or exchanges, other than transfers or donations as permitted herein, shall be based on competitive bidding requirements wherever practicable. No school/department shall permit any obsolete, surplus or damaged personal property to be transferred, loaned, donated, or otherwise disposed of except as the Procurement Agent shall direct.

No Arlington School Board member, Arlington Public Schools employee, or any spouse or relative residing in the same household as any Arlington School Board member or Arlington Public Schools employee may accept, bid, or benefit from a disposal of surplus property.

Personal property includes, but is not limited to materials, supplies and equipment. Personal property does not include an interest in real property or in any improvements thereon.

5-102 Real Property

If the Arlington School Board determines that it has no use for some of its real property, the sale or exchange of the real property shall be pursuant to Va. Code Ann. § 22.1-129.

5-103 Donations of Obsolete Educational Technology Hardware and Software

Arlington Public Schools may donate obsolete educational technology hardware and software that is being replaced pursuant to subsection (B)(4) of Va. Code Ann. § 22.1-199.1. Any such donations shall be offered to other school divisions, to students, as provided in Board of Education guidelines, and to preschool programs in the Commonwealth. In addition, the Arlington School Board may donate such obsolete educational technology hardware and software and other obsolete personal property to a Virginia nonprofit organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

5-104 Disposal of Surplus Personal Property

Personal property may be disposed of when it has been determined to be obsolete, surplus or damaged. The disposal of surplus personal property will be by the method determined by the Procurement Agent to be most advantageous to Arlington Public Schools.

Methods available include:

- Transfer to Arlington County Agencies
- Sale to other public jurisdictions
- Sale by competitive bids through public auction
- Trade-in on the purchase of other items
- Disposal as scrap

In the event that disposal of surplus property cannot be achieved by one or more of the above options, obsolete, surplus or damaged property will be disposed of in a manner most economical to Arlington Public Schools.

ARTICLE 6 – DEBARMENT AND SUSPENSION

6-101 Authority to Debar or Suspend

The Procurement 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 of the person or Business, or of any officer, director, owner, partner, agent, or related person or Business 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 of the person or Business, or of any officer, director, owner, partner, agent, or related person or Business 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 moral, ethical or business integrity or business honesty;

(3) Conviction of the person or Business, or of any officer, director, owner, partners, agent, or related person or Business under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) Incriminating testimony provided by the person or Business, or by any officer, director, owner, partner, agent, or related person or Business entity, that is protected by a grant of immunity which shows involvement by the person or Business, or by any officer, director, owner, partner, agent, or related person or Business, in conduct specified in subparagraphs 6-101(1), (2) or (3) without any criminal conviction.

(5) Failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

(6) 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;

(7) Action has been taken by APS, the Commonwealth, or any other Public Body in the Commonwealth to recover on the bid bond or performance bond of the person or Business on any other contract within a period of five (5) years from the date of the Invitation to Bid or of the Request for Proposal.

(8) Breach (including anticipatory breach) of a contract with a Public Body.

(9) Sale or attempted sale to a Public Body of Goods, Services, Professional Services, Construction, or insurance which are required to be purchased under another contract, when the person or Business knew or had reason to know that the Goods, Services, Professional Services, Construction, or insurance are required to be purchased under that contract.

(10) Statement of an unwillingness or inability to honor a binding bid. A mere request to withdraw a bid, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.

(11) Falsifying or misrepresentation of manufacturer's specifications in order to appear responsive to a solicitation.

(12) Permitting an employee, or a Subcontractor or any of its employees, to work on any Arlington Public Schools Contract in the presence of students without having submitted a completed Certification in compliance with Article 4, Section 114(5) of this Procurement Resolution

(13) Permitting any employees or employees of Subcontractors to work on any Arlington Public Schools Contract which will result or did result in the employee having direct contact with students if the employee has been convicted of any of the offenses identified in Article 4, Section 114(5) of this Procurement Resolution which disqualify such person from working on a Contract which will result in them having direct contact with students.

(14) Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of a Public Body who exercises any "official responsibility" for a "procurement transaction" as those terms are defined in the Code of Virginia, Section 2.2-4368. It is not necessary that the employee accept the offer, or that the offer be made with intent to influence the employee in an official act. Offers of any discounts or privileges not available to all State or Public Body employees is considered to be offering an advantage.

(15) Failure to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner of the person or Business awarded the Contract or purchase order by any Public Body.

(16) A determination by APS that the person or Business, or any officer, director, owner, partner, agent, or related person or Business has used abusive or obscene language or behaved in a threatening manner toward APS personnel.

(17) Sale, under non-emergency conditions, of building materials, supplies, or equipment for any building or structure constructed by or for any Public Body by an independent person or Business employed to furnish architectural or engineering services, but not Construction, for such building or structure or from any person or Business in which such architect or engineer has a personal interest (Code of Virginia, Section 2.2-639.2 and Section 2.2-4374).

(18) Sale of Goods, Services, Professional Services, Construction or insurance to APS when such sale is prohibited by any debarment then in effect.

(19) Failure to pay re-procurement costs pursuant to a Contract termination for default.

(20) Debarment by the Commonwealth of Virginia, by any other Public Body in the Commonwealth of Virginia, by any agency or department of the United States Government, or by any other state or public body within another state.

(21) Failure by a person or Business who or which has been prequalified to notify APS that after prequalification it has been debarred by the Commonwealth of Virginia, by any other Public Body in the Commonwealth of Virginia, by any agency or department of the United States Government, or by any other state or public body within another state or it or any officer, director, owner, partner, agent, or related person or Business has been convicted of any offense identified in this Section 6-101 as grounds for debarment.

(22) Any other conduct or circumstance which so seriously impacts the business ethics, honesty, integrity, financial condition or performance capabilities of the person or Business which is so serious as to justify debarment.

(23) Should any manufacturer, vendor or Subcontractor commit any of the acts described in this Section 6-101, Bids or Proposals offering material, equipment, supplies or performance from or by that firm may be rejected even though the Bid or Proposal is submitted by a Bidder or Offeror in good standing.

(24) A judicial determination of violations listed above is not necessary to support a debarment except for those identified in subsections 6-101(1), (2) or (3).

(25) If the Procurement Agent finds that the cause for debarment reflects on the business traits or tendencies only with regard to certain Goods, Services, Professional Services, Construction, or insurance, the debarment may at the discretion of the Procurement Agent apply only to such Goods, Services, Professional Services, Construction or insurance. Otherwise the debarment applies to all procurement activities within the purview of APS.

(26) A prospective Contractor shall be debarred from contracting with Arlington Public Schools whenever the Department of Taxation has determined that the prospective Contractor should be debarred from contracting with public bodies pursuant to the provisions of Va. Code Ann. § 58.1-1902.

6-102 Decision to Debar or Suspend

The Procurement 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 Section 6-102 of this Procurement 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 Procurement 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. A debarment for a violation of subsections 6-101(1), (2) or (3) shall be for a period of three (3) years. The debarment for subsection 6-101(17) shall be for a period of one (1)

year or until the re-procurement costs are paid or until the Contract breach is resolved, whichever is longer. A debarment pursuant to subsection 6-101(26) shall be for such period as is established by the Virginia Department of Taxation pursuant to Va. Code Ann. § 58.1-1902.

(2) The Procurement 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.

(4) Debarment shall commence upon notification, or upon expiration of any existing debarments, if later. If the person or Business corrects the underlying cause of debarment, debarment may be, but is not required to be, lifted.

6-105 Finality of Decision

A decision by the Procurement Agent to debar or suspend a person or Business under the provisions of this Article 6 shall be final and conclusive unless the debarred or suspended person or Business appeals the decision as provided in Section 7-101 of this Procurement 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 Procurement 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 Procurement Agent, the Bidder, Offeror, Contractor, person or Business may submit rebuttal information challenging the evaluation. The Procurement Agent shall issue a written determination of disqualification or ineligibility or debarment or suspension based on all information in the possession of the Procurement Agent, including any rebuttal information, within five (5) business days of the date the Procurement 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 Procurement 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 be disqualified from participation, in the Arlington Public Schools Contract, or should be debarred or suspended, the Procurement 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 Procurement Agent by instituting legal action as provided in Section 7-108 of this Procurement Resolution.

7-102 Appeal of Denial of Withdrawal of Bid

A decision denying withdrawal of Bid under the provisions of subsections 4-101 (9) or (16) of this Procurement 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 Procurement Agent by instituting legal action as provided in section 7-108 of this Procurement Resolution.

If no bid bond was posted, a Bidder refused withdrawal of a Bid under the provisions of subsections 4-101 (9) or (16) of this Procurement Resolution, prior to appealing, shall deliver to the Procurement 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 Non-responsibility

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 Va. Code Ann. § 2.2-4302.1 is amended after the adoption of this Procurement Resolution, such statutory amendment shall control the evaluation process. At the same time, the Procurement Agent shall determine whether the apparent low Bidder is a Responsible Bidder. If the Procurement Agent so determines, then it may proceed with an award in accordance with subsection 4-101(11) of this Procurement Resolution. If the Procurement Agent determines that the apparent low Bidder is not a Responsible Bidder, it shall proceed as follows:

1. Prior to the issuance of a written determination of non-responsibility by the Procurement Agent, the Procurement 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 Procurement Agent, the Bidder may submit rebuttal information to the Procurement Agent challenging the evaluation. The Procurement Agent shall issue his written determination of responsibility based on all information in the possession of the Procurement Agent, including any rebuttal information, within five (5) business days of the date the Procurement 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 Procurement Agent may proceed upon expiration of such period with issuance of his written determination of responsibility. At the same time, the Procurement 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 Procurement Agent by invoking legal action as provided in Section 7-108 of this Procurement Resolution.

   The provisions of this Subsection shall not apply to procurements involving the prequalification of Bidders. A determination that a potential Bidder is not qualified under such prequalification is not a determination that the potential Bidder is not responsible, and there is no right of appeal of such decision to deny prequalification.

   A Bidder contesting a determination that it 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 Section 7-104 of this Procurement 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; Competitive Sealed Bidding or Competitive Negotiation

Any Bidder or Offeror who desires to protest the award or decision to award a Contract shall submit the protest in writing to the Procurement 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 Syphax 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 Procurement 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 Section 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 Section 4-110, or at such later time as provided in this Section 7-104.

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 Procurement Agent shall issue a decision in writing within ten (10) calendar days of the date the Procurement 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 Section 7-108 of this Procurement Resolution.

Nothing in this section shall be construed to permit a Bidder or Offeror 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 Procurement 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 Procurement 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 Procurement Agent determines, after a hearing held following reasonable notice to all Bidders or Offerors, 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 Procurement Resolution, the Procurement Agent may enjoin the award of the Contract to a particular Bidder or Offeror and authorize either cancellation or re-solicitation.

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 Procurement 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 Section 7-104 of this Procurement Resolution, or the filing of a timely legal action as provided in Section 7-108 of this Procurement Resolution, no further action to award the Contract will be taken unless there is a written determination by the Procurement Agent that proceeding without delay is necessary to protect the interests of Arlington Public Schools or unless the Bid or Proposal would expire.

7-107 Contractual Disputes

(1) Strict compliance with all claims submission requirements set forth herein or in the Contract 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 the Contractor contends it is due additional compensation beyond the Contract Sum stated in the Contract, 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 Procurement 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 Procurement 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 Procurement 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 Procurement 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 Procurement 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 Procurement 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 Contract shall provide that 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 Procurement 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 the Contract shall require that any and all rights to make any such claims are waived.

(8) Failure of Arlington Public Schools at any time to require compliance with any term or conditions 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, the Contract shall provide that 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) The Contract shall require that the 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, and shall provide that any legal action brought by a Contractor shall name Arlington School Board as the defendant.

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 or proposing 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 Non-responsibility. If the Invitation to Bid includes a listing of factors Arlington Public Schools may consider in determining responsibility, any determination that a low Bidder is not responsible that uses such factors as a basis for its decision shall be presumptively considered an honest exercise of discretion. If, upon appeal of a determination of non-responsibility, 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 or Request for Proposal, and the award of the Contract in question has not been made, the sole relief shall be a finding that the Bidder or Offeror is a Responsible Bidder or Responsible Offeror 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 section 7-102 of this Procurement 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 section 7-104 of this Procurement 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 Procurement 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.

(5) Any such legal action brought by a Bidder or Offeror or any other person or Business interested in a procurement action shall name Arlington School Board as the defendant.

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 Procurement Agent shall:

1. For any Arlington Public Schools requirement for Goods, Services, Professional Services, Construction or insurance requiring Competitive Sealed Bidding or Competitive Negotiation, advertise the Invitation to Bid or Request for Proposal 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 in the Procurement Process Prohibited

(1) In the soliciting or awarding of Contracts, Arlington Public Schools shall not discriminate against a Bidder or Offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever direct solicitations are made, Arlington Public Schools shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity of the Commonwealth.

(2) The Procurement Agent shall establish programs consistent with this Article to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions. The

programs shall be established in writing and shall comply with provisions of any enhancement or remedial measures authorized by the Governor pursuant to Va. Code Ann. § 2.2-4310.C, and shall include specific plans to achieve any goals established therein.

(3) In awarding a Contract for Services to a small, women-owned, or minority-owned business that is certified in accordance with Va. Code Ann. § 2.2-1606, or to a business identified by Arlington Public Schools as a service disabled, veteran-owned business where the award is being made pursuant to an enhancement or remedial program as provided in Va. Code Ann. 2.2-4310.C, Arlington Public Schools shall include in every such Contract of more than ten thousand dollars ($10,000.00) the following: "If the Contractor intends to subcontract work as part of its performance under this Contract, the Contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, service disabled veteran-owned businesses and employment services organizations."

(4) As used in this Article:

A. "Employment services organization" means an organization that provides community-based services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

B. "Minority individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

5. "Minority owned business" means a sole proprietorship or Business that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other

Business, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other Business is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university as defined in Va. Code Ann. § 2.2-1604, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other Business, the equity ownership interest in the corporation, partnership, or limited liability company or other Business.

6. "Service disabled veteran" means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) who was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

7. "Service disabled veteran business" means a sole proprietorship or Business that is at least 51% owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other Business, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other Business is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

8. "Small business" means a sole proprietorship or Business, independently owned and controlled by one or more individuals, or in the case of a cooperative association organized pursuant to Chapter 3(§ 13,1-301 et seq.) of Title 13.1 as a nonstock corporation, controlled by one or more members, who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of ten million dollars ($10,000,000.00) or less averaged over the previous three years. One or more of the individual owners or members shall control both the management and daily business operations of the small business.

9. "Women-owned business" means a sole proprietorship or Business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

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 Governments 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 Article 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 Va. Code Ann. Section 2.2-3112.A.2,.3 and.4., 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 of any tier 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 recover the value of anything conveyed in violation of this Section.

No Bidder, Offeror, Contractor or Subcontractor of any tier 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 of any tier shall demand or receive from any of his suppliers or subcontractors of any tier, 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 of any tier 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 of any tier 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 subsections 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 Procurement Agent may permit such person to submit a Bid or Proposal for that procurement or any portion thereof if the Procurement 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 subsection A who knowingly makes a false statement in the certification may be punished as provided in section 9-110 of this Procurement 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.

Attachment A

Contractor Certification

Regarding Criminal Convictions

The completed form from the Contractor is a condition precedent to the award of the Contract.

As the official authorized to enter into this Contract on behalf of my organization, I certify that the Contractor, its employees, its Subcontractor(s) and their employees, who will have direct contact with students either on or off school property either during regular school hours or during school-sponsored activities during the performance of this Contract, has not been convicted of:

1. A felony or of any offense involving the sexual molestation, physical or sexual abuse, or rape of a child;
2. A sexually violent offense as defined in Va. Code Ann. § 9.1-902;
3. Any of the offense listed below occurring on or after July 1, 2006 in which the offender was more than three years older than the victim, when the offense was done in the commission of, or as a part of the same course of conduct of, or as part of a common scheme or plan to commit, (i) abduction or kidnaping in violation of Va. Code Ann. § 18.2-47 or § 18.2-48, (ii) burglary in violation of Va. Code Ann. § 18.2-89, (iii) entering a dwelling house with intent to commit crimes in violation of Va. Code Ann. § 18.2-90 or Va. Code Ann. § 18.2-91, or (iv) aggravated malicious wounding in violation of Va. Code Ann. § 18.2-51.2., or (v) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof:

   a. Rape of a child under 13 in violation of Va. Code Ann. § 18.2-61;
   b. Forcible sodomy with a child under 13 in violation of Va. Code Ann. § 18.2-67.1; or
   c. Object sexual penetration with a child under 13 in violation of Va. Code Ann. § 18.2-67.2;.or
4. A conviction for a crime of moral turpitude.

I understand that a materially false statement regarding this certification is a Class 1 misdemeanor and that conviction of such misdemeanor shall result in the revocation of this Contract and of any related license that I may hold. I declare under penalty of perjury that the foregoing statements are true and correct.

_____ _____
Name of Business Signature

_____ _____
Name and Title (please type or print)

_____
Address of Business

_____ _____

APPENDIX A OF THE ARLINGTON PUBLIC SCHOOLS PROCUREMENT RESOLUTION

GUIDELINES FOR THE IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002, AS AMENDED

April 20, 2017

Arlington Public Schools Guidelines for the Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002, as Amended

Table of Contents

I. Definitions ..... p. 5

II. Introduction ..... p. 8

III. Freedom of Information Act ("FOIA")/Public Disclosure Requirements ..... p. 9

A. General Applicability of Disclosure Provisions. ..... p. 9

B. Protection from Mandatory Disclosure for Certain Documents Submitted by a Private Entity ..... p. 9

C. Protection from Mandatory Disclosure for Certain Documents Generated by APS ..... p. 10

D. Disclosure after Execution of Interim of Comprehensive Agreement ..... p. 10

IV. Use of Public Funds ..... p. 11

V. Applicability of Other Laws ..... p. 11

VI. Unsolicited PPEA Proposals ..... p. 11

A. Proposal Submission ..... p. 11

B. Minimum Required Content of Unsolicited PPEA Proposals ..... p. 11

C. Review and Evaluation of Unsolicited PPEA Proposals ..... p. 13

D. Encouraging Unsolicited PPEA Proposals ..... p. 15

E. Requirement to Solicit Competing Proposals ..... p. 15

F. Publication of Decision to Proceed with Qualifying Project Resulting from an Unsolicited PPEA Proposal ..... p. 15

VII. Advertisement of Solicited Bids/Proposals and of Accepted Unsolicited PPEA Proposals ..... p. 16

A. APS Solicitation of PPEA Proposals ..... p. 16

B. Information Regarding Format and Supporting Information for Bid/Proposal ..... p. 16

C. Advertising Requirements ..... p. 17

D. Procedure for Competitive Sealed Bidding ..... p. 17

E. Procedure for Competitive Negotiation ..... p. 18

VIII. Guidelines for Determination of a Qualifying Project ..... p. 19

A. Untitled ..... p. 18

B. Necessity for Board Approval ..... p. 19

C. Time for Completion ..... p. 19

IX. Guidelines for Review and Evaluation of Proposals or Bids ..... p. 19

A. Untitled ..... p. 19

B. Untitled ..... p. 20

C. Untitled ..... p. 20

X. Proposal Preparation and Submission ..... p. 20

A. Untitled ..... p. 20

B. Format for Submission of Proposals ..... p. 20

C. Format for Submissions at Detailed Stage ..... p. 25

XI. Proposal Evaluation and Selection Criteria ..... p. 26

A. Qualifications and Experience ..... p. 26

B. Project Characteristics ..... p. 27

C. Project Financing ..... p. 27

D. Project Benefit and Compatibility ..... p. 28

E. Other Factors ..... p. 28

F. Public Hearing During Proposal Review Process; Notice and Posting Requirements ..... p. 28

XII. Interim and Comprehensive Agreements ..... p. 29

A. Interim Agreement Terms ..... p. 30

B. Comprehensive Agreement Terms ..... p. 30

I. DEFINITIONS

"Accept, Acceptance, or Accepted" regarding an Unsolicited PPEA Proposal means that APS has determined that the Proposed Project is a Qualifying Project which APS is interested in pursuing further.

"APS" means Arlington Public Schools and all of its employees and appointed officials.

"Bid" means a bid submitted to APS by a Private Entity in response to an Invitation to Bid for a Qualifying Project being procured through Competitive Sealed Bidding.

"Bidder" is a Private Entity submitting a Bid in response to an ITB.

"Board" means the School Board for Arlington Public Schools.

"Comprehensive Agreement" means the written comprehensive agreement or contract between the Private Entity and APS that is required prior to the development of a Qualifying Project.

"Conceptual Stage" means the initial phase of Project evaluation when APS makes a determination whether the Unsolicited PPEA Proposal serves a public purpose, meets the criteria for a Qualifying Project, assesses the qualifications and experience of a Proposing Private Entity, reviews the Project for financial feasibility, and determines whether or not the Unsolicited PPEA Proposal should be Accepted. The Conceptual Stage also is the stage at which Bids or Proposals in response to an Invitation to Bid or Request for Proposal are received, reviewed and evaluated.

"Cost-Benefit Analysis" means an analysis that weighs expected costs against expected benefits in order to choose the best option. An example is comparing the costs and benefits of constructing a new building to those of renovating and maintaining an existing structure serving the same purpose in order to select the most financially advantageous option.

"Day or Days" means calendar day except as specifically provided in the context where used. 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 Syphax Education Center (Syphax 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 Syphax Education Center is closed.

"Detailed Stage" means the second phase of Project evaluation where (i) for an Unsolicited PPEA Proposal APS has completed the Conceptual Stage and Accepted the Unsolicited PPEA Proposal and has proceeded with solicitation of competing Proposals, and (ii) for Bids/Proposals received in response to an ITB/RFP has completed the review and evaluation of Bids/Proposals and requested additional information and where applicable has entered into Competitive Negotiations with one or more Private Entities to develop an Interim or Comprehensive Agreement.

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"FOIA" means the Virginia Freedom of Information Act, VA. CODE ANN. §§ 2.2-3700, *et seq.*)

"Guidelines" means the Guidelines for the Implementation of the PPEA adopted by the Board and any amendments thereto adopted by the Board.

Interim Agreement" means a written agreement between a Private Entity and APS that provides for phasing of the development or operation, or both, of a Qualifying Project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the Project that constitutes activity on any part of the Qualifying Project preceding a Comprehensive Agreement.

"**ITB**" means Invitation to Bid, the initiation of a public procurement by APS when the means of procurement is by competitive sealed bidding as provided in the VPPA and the Procurement Resolution.

"**Lease Payment**" means any form of payment, including a land lease, by APS to the Private Entity for the use of a Qualifying Project.

"**Life-Cycle Cost Analysis**" means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one Proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value is considered.

"**Major Subcontractor**" is a Private Entity to be identified in an Unsolicited PPEA Proposal, a Bid, or a Proposal, as applicable, responsible for 10% or more of the reasonably anticipated cost of the Proposed Project, and is proposed as part of the initial Project Team.

"**Material Default**" means any default by the Private Entity in the performance of its duties under VA. CODE ANN. § 56-575.8.E, or in the performance of any other contract or legal duty, which jeopardizes adequate service to APS or to the public from a Qualifying Project.

"**Notice of Acceptance of Unsolicited PPEA Proposal**" means the written notice issued by APS informing a Proposing Private Entity that its Unsolicited PPEA Proposal has been Accepted.

"**Offeror**" is a Private Entity submitting a Proposal in response to a RFP.

"**Operate**" means to finance, maintain, improve, equip, modify, repair, or operate.

"**Operator**" means the Private Entity responsible for operating the completed Qualifying Project.

"**Opportunity Cost**" means the cost of passing up another choice when making a decision or the increase in costs due to delays in making a decision.

"**PPEA**" means the Public-Private Education Facilities and Infrastructure Act of 2002, VA. CODE ANN. §§ 56-575.1, *et seq.*, as may be amended by the General Assembly

"**Private Entity**" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

"**Project Team**" the Private Entities assembled by the Proposing Private Entity and identified in the Unsolicited PPEA Proposal, Proposal or Bid, as applicable, as the overall team to perform the Proposed Project

"**Proposal**" is a written Proposal submitted to APS by a Private Entity, either unsolicited requesting Acceptance of a Proposed Project as a Qualifying Project or in response to a Request for Proposal for a Qualifying Project.

"Proposal Review Fee" is as defined in Part VI.C in these Guidelines.

"Proposed Project" means the project proposed by an Unsolicited PPEA Proposal or identified as a Qualifying Project in an ITB/RFP.

"Proposing Private Entity" means the Private Entity submitting to APS an Unsolicited PPEA Proposal or a Bid or Proposal in response to an ITB or to a RFP.

"Procurement Agent" is the employee of APS authorized to act on behalf of the Owner in contractual matters. The Procurement Agent may designate in writing others to act on his behalf, and such designation shall state any limitations on the authority of such designee. No Private Entity shall rely upon and APS shall not be bound by any statement or representation made on behalf of APS by any person not designated by the Procurement Agent to the Private Entity in writing as authorized to so act on behalf of the Procurement Agent. It shall be the responsibility of the Private Entity to establish the authority to act regarding any communication or action by any person other than the Procurement Agent. Use of the term Procurement Agent in any writing issued by APS related to any Proposed Project or Qualifying Project shall be deemed to include such properly authorized designee within the scope of that designee's authorization. The Procurement Agent is also referred to as the Procurement Director/Director of Procurement. Prior to July 1, 2019 was referred to as the Purchasing Agent.

"Procurement Resolution" means the Arlington Public Schools Procurement Resolution as in effect at the time of any procurement to which these Guidelines are applicable.

"Qualifying Project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for APS; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by APS; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any services designed to increase the productivity or efficiency of APS through the use of technology or other means; or (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools.

"Revenues" means all revenues, income, earnings, User Fees, Lease Payments or other Service Payments arising out of or in connection with supporting the development or operation of a Qualifying Project, including without limitation, money received as grants or otherwise from the United States of America, from any public body, agency or department, or from any agency or instrumentality of the foregoing in aid of such facility.

"RFP" means Request for Proposal, the initiation of a public procurement by APS when the means of procurement is by Competitive Negotiation of "other than professional services" as provided in the VPPA and the Procurement Resolution.

"Service Contract" means a written contract entered into between APS and the Private Entity for the delivery of services to be provided as part of a Qualifying Project in exchange for such service payments and other consideration as APS may deem appropriate.

"Service Payments" means payments to the Private Entity of a Qualifying Project pursuant to a Service Contract.

"Team Member" means all members of the Project Team required to be identified in an Unsolicited PPEA Proposal, a Proposal, or a Bid, as applicable, as set forth in Part X, PROPOSAL PREPARATION AND SUBMISSION of these Guidelines or as further specified in an ITB/RFP.

"Unsolicited PPEA Proposal" means a Proposal submitted to APS by a Private Entity proposing a Project for Acceptance as a Qualifying Project not in response to an Invitation to Bid or Request for Proposal.

"User Fees" mean the rates, fees or other charges imposed by the Private Entity of a Qualifying Project for use of all or a portion of such Qualifying Project pursuant to the Comprehensive Agreement.

"VPPA" means the Virginia Public Procurement Act, VA. CODE ANN. §§ 2.2-4300, *et seq*.

II. INTRODUCTION

The School Board (the "Board") of Arlington Public Schools ("APS") adopted these Guidelines on April 20, 2017 (the "Guidelines"). APS staff shall seek authorization from the Board prior to proceeding with any Qualifying Project under the PPEA. APS staff will follow these Guidelines in receiving and evaluating any Proposal submitted to APS under the provisions of the PPEA. APS staff will make recommendations to the Board regarding whether to accept or reject any Unsolicited PPEA Proposal, or to proceed with solicitation for a Qualifying Project in the absence of an Unsolicited PPEA Proposal, but only the Board may authorize the APS Procurement Agent to enter into an Interim Agreement or a Comprehensive Agreement with a Private Entity.

The Board recognizes that APS is a responsible public entity as defined in the PPEA, as APS "has the power to acquire, design, construct, improve, renovate, expand, equip, maintain, or Operate the applicable Qualifying Project." The PPEA therefore grants to APS the authority to create and enter into both Interim Agreements and Comprehensive Agreements with Private Entities for the development of a wide range of projects for public use if APS determines there is a need for the Proposed Project and that Private Entity involvement may provide the Proposed Project to the public in a timely or cost-effective fashion. Individually negotiated Comprehensive Agreements between the Private Entities and APS will define the respective rights and obligations of APS and the Private Entities under each Qualifying Project.

The Board recognizes that the PPEA establishes requirements to which APS must adhere when reviewing and determining whether to Accept Unsolicited PPEA Proposals, in identifying potential Qualifying Projects, and in soliciting PPEA Proposals. In addition, the PPEA specifies the criteria to be used in the required contents of Bids and Proposals whether solicited or unsolicited, and the contents required for any Interim Agreement or Comprehensive Agreement detailing the relationship between APS and the Private Entity. These Guidelines shall not supersede any requirement of the PPEA, compliance with which will be required in consideration and implementation of any Qualifying Project. In the event of any conflict between the provisions of these Guidelines and the PPEA, these Guidelines shall, if reasonably appropriate, be interpreted in such manner as to supplement and carry forward the purpose and intent of the PPEA rather than being superseded.

Section 56-575.16 of the PPEA requires that APS may not consider any Unsolicited PPEA Proposal nor solicit PPEA Bids or Proposals for a Qualifying Project until APS has adopted and made publicly available guidelines that are sufficient to enable APS to comply with the PPEA. These Guidelines are adopted by the Board for the purpose of satisfying that requirement. Once adopted, these Guidelines may be amended only by

the Board, but the Procurement Agent is authorized to adopt policies and procedures and make interpretations which carry out the purpose and intent of these Guidelines. In the event the PPEA is amended in a manner that either conflicts with these Guidelines or concerns material matters not addressed by these Guidelines but these Guidelines are not amended prior to the effective date of the new law, these Guidelines shall be interpreted in a manner to conform to the new law; any provision of these Guidelines in conflict with any amendment to the PPEA shall be subordinate to the PPEA amendment. In interpreting and applying the PPEA and these Guidelines, APS shall be guided by the direction of the PPEA that it is to be liberally construed in conformity with the purpose of encouraging the development and operation of public facilities in a timely manner at the best price APS can obtain under the circumstances of the proposed project. Unless specifically stated otherwise, or where by the context an intended limitation of authority to the Board is clear, all references in these Guidelines to "APS" shall refer to and include the Board and/or the APS executive and administrative staff.

III. FREEDOM OF INFORMATION ACT ("FOIA")/PUBLIC DISCLOSURE REQUIREMENTS

A. General Applicability of Disclosure Provisions

1. Proposal documents submitted by a Proposing Private Entity in support of an Unsolicited PPEA Proposal, and Bid or Proposal documents submitted in response to an ITB/RFP, are subject to the Virginia Freedom of Information Act ("FOIA") unless an exemption applies including but not limited to such exemptions under Va. Code Ann. 2.2-4342 as may be applicable. Under the FOIA, documents submitted by a Private Entity to APS are releasable upon a request properly submitted pursuant to the FOIA. The FOIA makes provision for exemption from disclosure for certain confidential proprietary information submitted to APS by a Private Entity in a Proposal submitted pursuant to the PPEA. FOIA exemptions are discretionary, and APS may elect to release some or all of any documents asserted to be confidential or proprietary, except to the extent such documents are:

a. Trade secrets of the Private Entity as defined in the Uniform Trade Secrets Act (currently VA. CODE ANN. §§ 59.1-336, *et seq.*);

b. Financial records of the Private Entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or

c. Other information submitted by a Private Entity, where if the record or document were made public prior to the execution of an Interim Agreement or a Comprehensive Agreement the financial interest or bargaining position of APS or the Private Entity would be adversely affected.

2. APS must comply with any court order regarding disclosure of Proposal documents regardless of any confidentiality or proprietary protection asserted by the Private Entity submitting the Proposal.

B. Protection from Mandatory Disclosure for Certain Documents Submitted by a Private Entity

1. As a condition precedent to any document being withheld from disclosure, the Private Entity submitting the document must make a written request to APS at the time the documents are submitted designating with specificity the documents for which the protection is being sought and a

clear statement of the reasons for invoking the protection with reference to one or more of the three (3) categories specified above. A general request for withholding of an entire Proposal will be deemed a failure to comply with this requirement to designate with specificity.

2. Upon receipt of a written request for nondisclosure, APS shall determine whether the specified documents contain (i) trade secrets, (ii) protected financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of APS or the Private Entity as set forth above. APS shall submit to the Private Entity its written determination of the nature and scope of the protection to be afforded by APS under this Subsection within fifteen (15) Days after receipt of the Private Entity's written request. If the written determination provides less protection than the Private Entity's request, then the Private Entity will be given a reasonable opportunity to clarify, modify, or further justify its request. Upon a final determination by APS to provide less protection than requested by the Private Entity, the Private Entity will be given an opportunity to withdraw its Proposal and if it chooses to withdraw the Proposal all documents will be returned to the Private Entity.

3. If a Proposing Private Entity fails to designate information, records or documents as trade secrets, financial records, or other confidential or proprietary information for protection from disclosure, such information, records or documents shall be subject to disclosure under FOIA.

C. Protection from Mandatory Disclosure for Certain Documents Generated by APS

1. APS may withhold from disclosure memoranda, staff evaluations, or other records prepared by APS, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of PPEA Proposals where (i) if such records were made public prior to or after the execution of an Interim or a Comprehensive Agreement, the financial interest or bargaining position of APS would be adversely affected, and (ii) the basis for such determination is documented in writing by APS.

2. Cost estimates relating to a proposed procurement transaction prepared by or for APS shall not be open to public inspection.

D. Disclosure After Execution of Interim or Comprehensive Agreement

Once an Interim Agreement or a Comprehensive Agreement has been entered into, APS shall make procurement records available for public inspection, upon request. Provided, however,

1. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adverse effect on the financial interest or bargaining position of APS or the Private Entity.

2. Such procurement records shall not include (i) trade secrets of the Private Entity as defined in the Uniform Trade Secrets Act (VA. CODE ANN. §§ 59.1-336, *et seq.*); (ii) financial records, including balance sheets or financial statements of the Private Entity that are not generally available to the public through regulatory disclosure or otherwise; (iii) cost estimates relating to the Proposed Project or any other procurement transaction prepared by or for APS.

3. These public disclosure requirements shall apply to Accepted Proposals regardless of whether the process of bargaining will result in an Interim Agreement or a Comprehensive Agreement.

IV. USE OF PUBLIC FUNDS

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any Interim Agreement or Comprehensive Agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be deemed to be incorporated into planning for any PPEA project.

V. APPLICABILITY OF OTHER LAWS

A. Nothing in the PPEA shall affect the duty of APS to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act is as set forth in the PPEA or in these Guidelines.

B. The procedures, requirements, limitations and conditions related to determinations of responsiveness of Bids or Proposals and responsibility of Bidders or Offerors set forth in the Virginia Public Procurement Act and in the Arlington Public Schools Procurement Resolution shall apply to procurements conducted pursuant to these Guidelines.

C. The procedures, requirements, limitations and conditions related to the submission and resolution of Contractor claims or remedies of any form or nature set forth in the Virginia Public Procurement Act and the Arlington Public Schools Procurement Resolution shall be applicable to any procurement or Contract awarded pursuant to these Guidelines.

D. Arlington Public Schools shall not solicit, contract for, erect or otherwise acquire any public school building, or make any addition or alteration thereto, for either permanent or temporary use, until the plans and specifications therefor (i) have been approved in writing by the Superintendent; (ii) are accompanied by a statement by an architect or professional engineer licensed by the Commonwealth of Virginia Department of Professional and Occupational Regulation Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects that such plans and specifications are, in that person's professional opinion and belief, in compliance with the regulations of the Commonwealth of Virginia Board of Education and the Uniform Statewide Building Code; and (iii) have been reviewed by an individual or entity with professional expertise in building security and crime prevention through building design. The Superintendent's approval, architect's or engineer's statement, all reviewers' comments, and a copy of the final plans and specifications shall be submitted to the Commonwealth of Virginia Superintendent of Public Instruction.

VI. UNSOLICITED PPEA PROPOSALS

A. Proposal Submission

An Unsolicited PPEA Proposal may be submitted by a Private Entity ("Proposing Private Entity") to APS at any time. The Proposal shall be clearly identified as an "Unsolicited PPEA Proposal." To be considered, one (1) original hard copy and six (6) electronic copies of any Unsolicited PPEA Proposal must be submitted along with the applicable Proposal Review Fee to the Office of the APS Procurement Agent, Department of Finance & Management Services, 2110 Washington Boulevard,

Arlington, Virginia 22204. It shall be the responsibility of the Proposing Private Entity submitting an Unsolicited PPEA Proposal to make sure that the Unsolicited PPEA Proposal is received in the correct office at this address.

B. Minimum Required Content of Unsolicited PPEA Proposals

1. Unsolicited PPEA Proposals should be prepared simply and economically, providing a concise description of the capabilities of the Proposing Private Entity to complete the Proposed Project and the benefits to be derived from the Proposed Project by APS.

2. At a minimum, an Unsolicited PPEA Proposal shall contain the following information, any portion of which may be waived by APS in its sole discretion upon request:

a. A topographic map (1:2,000 or other appropriate scale) indicating the location of the Proposed Project;

b. A description of the Proposed Project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the Proposed Project to include the proposed major responsibilities and timeline or activities to be performed by both APS and the Proposing Private Entity.

c. A description of the anticipated benefit to APS from proceeding with the Proposed Project, including a Cost-Benefit Analysis;

d. A statement setting forth the method by which the Proposing Private Entity proposes to secure necessary property interests required for the Proposed Project;

e. A list of all permits and approvals required for the Proposed Project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

f. A list of public utility facilities, if any, that will be crossed by the Proposed Project and a statement of the plans of the Proposing Private Entity to accommodate such crossings;

g. A statement setting forth the Proposing Private Entity's general plans for financing the Proposed Project including the sources of the Private Entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the Proposing Private Entity, containing enough detail to allow an analysis by APS of the financial feasibility of the Proposed Project;

h. A statement of the steps which have been taken to identify anticipated public support and opposition, a description of such support and opposition, or both, and a statement of the steps which have been taken in the Proposal to address such opposition;

i. Detailed information on the qualifications and experience needed for the Proposed Project to succeed and how the Proposing Private Entity satisfies those standards;

j. The names and addresses of the persons who may be contacted for further information concerning the request;

k. User Fees, Lease Payments, and other Service Payments over the term of the Interim Agreement or Comprehensive Agreement and the methodology and circumstances for changes to such User Fees, Lease Payments, and other Service Payments over time; and

l. Such additional material and information as APS may reasonably request.

C. Review and Evaluation of Unsolicited PPEA Proposals

1. Proposal Review Fee for Unsolicited PPEA Proposals
The PPEA authorizes APS to charge a reasonable fee to cover the costs of processing, reviewing and evaluating Unsolicited PPEA Proposals. The Proposal Review Fee may be applied by APS to cover the costs of such analysis. Any fee charged for such review of an Unsolicited PPEA Proposal should be reasonable in comparison to the level of expertise required to review the Unsolicited PPEA Proposal and should not be greater than the direct costs associated with evaluating the Proposed Project. These costs may include the fees and costs of outside professionals. "Direct costs" may include (i) the cost of staff time required to process, evaluate, review and respond to the Unsolicited PPEA Proposal and (ii) the amounts paid to the outside professionals. If the total of the analysis costs is estimated to exceed the initial Proposal Review Fee, or the final cost exceeds the Proposal Review Fees previously paid by the Proposing Private Entity, the Proposing Private Entity shall pay such additional fees before APS will continue to process, review and evaluate the Unsolicited PPEA Proposal.

a. A Proposal Review Fee of Two Thousand Five Hundred Dollars ($2,500.00.00) shall accompany an initial Unsolicited PPEA Proposal. Such Initial Fee shall be paid with certified funds.

2. APS shall, within sixty (60) days from receipt of the Unsolicited PPEA Proposal and the Proposal Review Fee, make a "pre-evaluation determination" whether the Proposed Project is reasonably likely, subject to further review, to be a Qualifying Project and if so whether APS has sufficient interest to pursue further review. If the Proposed Project either is not reasonably likely to be a Qualifying Project or APS is not interested in further review of the Proposed Project, the Proposing Private Entity shall be so notified and the Proposal, all documents submitted therewith, and the Proposal Review Fee, shall be returned to the Proposing Private Entity,

3. If APS determines that the Proposed Project is reasonably likely to be a Qualifying Project and that APS has sufficient interest to pursue further review, the Proposing Private Entity shall be so notified and the Proposal Review Fee may be applied to cover the costs of processing, reviewing and evaluating the Unsolicited PPEA Proposal.

4. Proposing Private Entities submitting an Unsolicited PPEA Proposal may be required to follow a two-part Unsolicited PPEA Proposal submission process. All Unsolicited PPEA Proposals shall be considered Conceptual Stage PPEA Proposals. The purpose of the Conceptual Stage is to permit APS to determine if the Proposed Project is a Qualifying Project which APS is interested in pursuing. APS may require the Proposing Private Entity

to submit further information or respond to questions with such additional detail as APS in its sole discretion may determine is necessary in order to complete its Conceptual Stage review and evaluation.

5. In determining whether to Accept an Unsolicited PPEA Proposal, APS shall conduct an analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs and cost benefits of the Proposed Project. This review and evaluation shall include, but is not limited to,

a. a determination whether there is a public need for or benefit derived from the Proposed Project sufficient to justify further consideration;

b. the estimated cost of the Proposed Project in relation to similar facilities;

c. whether the information provided supports a conclusion that the Unsolicited PPEA Proposal will result in the timely development or operation of the Proposed Project;

d. whether the Proposing Private Entity appears to be financially responsible and competent to carry out the Unsolicited PPEA Proposal;

e. whether the Unsolicited PPEA Proposal complies with the requirements of the PPEA and of these Guidelines.

f. If APS determines in writing that it has in its employ staff with sufficient expertise to conduct the necessary analysis, such analysis may be conducted by APS staff. Otherwise, APS shall, or even if it has sufficient expertise in its employ may, engage the services of qualified professionals not otherwise employed by APS, such as but not limited to attorneys, financial advisors, architects, professional engineers, certified public accountants, or other consultants as APS may in its sole discretion determine are necessary for a proper evaluation of the Unsolicited PPEA Proposal.

g. The Proposal Review Fee may be applied to all costs incurred in this review and evaluation process, including without limitation reasonable attorneys' fees and fees for financial, technical, and other necessary advisors or consultants and reasonable compensation to APS for its staff time devoted to such review and evaluation.

6. Within ninety (90) days from notification to the Proposing Private Entity that APS intends to proceed with further review of the Unsolicited PPEA Proposal, APS shall make an initial determination whether to Accept the Unsolicited PPEA Proposal for a Qualifying Project. Failure to render a determination within such time, or to notify the Proposing Private Entity that the time for making such determination is being extended to a specified date not to exceed an additional sixty (60) days shall be deemed a determination that APS does not intend to Accept the Unsolicited PPEA Proposal.

7. If APS determines not to Accept an Unsolicited PPEA Proposal after the Conceptual Stage review and evaluation, APS shall return the Proposal, together with all unexpended fees and accompanying documentation, to the Proposing Private Entity.

8. Proposed Project benefits to be considered by APS in evaluating an Unsolicited PPEA Proposal are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the Proposed Project.

9. To assist in its evaluation, APS may require clarifications or modifications of the Unsolicited PPEA Proposal during the Conceptual Stage without requiring a complete re-submittal of a complete amended Unsolicited PPEA Proposal. Additional copies of a complete amended Unsolicited PPEA Proposal as modified may be required of the Proposing Private Entity at the conclusion of the Conceptual Stage.

10. APS may establish criteria pursuant to which the Proposing Private Entity may provide further details and clarification to the submission. If APS determines additional information is necessary before it can make a decision on whether or not to proceed, APS may request, and the Proposing Private Entity shall provide, a more detailed Unsolicited PPEA Proposal which should refine the Proposed Project in greater detail, contain specified deliverables, and address any questions raised by APS. It is solely at the discretion of APS to determine whether to proceed to the Detailed Stage and request additional information, or to make its decision on the basis of the information submitted in the initial Unsolicited PPEA Proposal.

11. If, following such analysis, APS determines that it is in the best interests of APS to proceed to the publication stage, further proceedings shall be as set forth in Part VI.F, "Publication of Decision to Proceed with Qualifying Project Resulting from an Unsolicited PPEA Proposal" and Part VII, "Advertisement of Solicited Bids/Proposals and of Accepted Unsolicited PPEA Proposals." If the determination is that it is not in the best interests of APS to proceed to the publication stage, the Proposing Private Entity shall be so informed, any unexpended fees returned to the Proposing Private Entity, and the file closed.

12. APS may discontinue its evaluation of an Unsolicited PPEA Proposal at any time for any reason. If an Unsolicited PPEA Proposal is rejected after the pre-evaluation determination but before the Conceptual Stage review and evaluation is completed, the Unsolicited PPEA Proposal and all documentation submitted therewith, and all fees paid by the Proposing Private Entity, shall be returned to the Proposing Private Entity.

D. Encouraging Unsolicited PPEA Proposals

APS may publicize its needs for any procurement which could become a Qualifying Project without issuing an ITB/RFP in order to encourage Private Entities to submit Proposals to address those needs without issuing a complete ITB/RFP. Any Proposals received which are not in response to an issued ITB/RFP shall be processed as an Unsolicited PPEA Proposal.

E. Requirement to Solicit Competing Proposals

To ensure APS receives the best value for any Qualifying Project, APS is required by the PPEA to seek and encourage competing unsolicited Proposals before it may make any award.

F. Publication of Decision to Proceed with Qualifying Project Resulting from an Unsolicited PPEA Proposal

1. If APS decides to proceed with a Qualifying Project resulting from an Unsolicited PPEA Proposal, it shall, within ten (10) working days after

its decision to Accept an Unsolicited PPEA Proposal, give written notice of such Acceptance to the Proposing Private Entity and post on APS's website and in such other locations and in such other manners or methods as are set forth in the Procurement Resolution for publication of an ITB/RFP a Notice of Acceptance of Unsolicited PPEA Proposal.

2. The Notice of Acceptance of Unsolicited PPEA Proposal shall remain posted for a period of not less than ten (10) calendar days.

3. The Notice of Acceptance of Unsolicited PPEA Proposal shall state that

a. APS will receive for simultaneous consideration any competing Proposals that comply with these Guidelines and the PPEA, and

b. at least one (1) copy of the Unsolicited PPEA Proposal shall be available upon request, subject to any applicable restrictions under the FOIA or the PPEA.

4. In addition to the posting requirements, at least one (1) copy of the Accepted Unsolicited PPEA Proposal shall be made available for public inspection, subject to applicable FOIA requirements and any applicable restrictions under the PPEA, at the office of the Procurement Agent. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

5. The ITB/RFP, as applicable, for the Qualifying Project shall be published contemporaneously with the Notice of Acceptance of Unsolicited PPEA Proposal as provided in Part VII.C.

VII. ADVERTISEMENT OF SOLICITED BIDS/PROPOSALS AND OF ACCEPTED UNSOLICITED PPEA PROPOSALS

A. APS Solicitation of PPEA Proposals

APS may identify projects it deems to be Qualifying Projects and issue ITBs or RFPs, depending on whether the means of procurement is through competitive sealed bidding or competitive negotiation, inviting Bids/Proposals from Private Entities to acquire, construct, improve, renovate, expand, maintain or operate Qualifying Projects or to design or equip projects so constructed, improved, renovated, expanded, maintained or operated.

B. Information Regarding Format and Supporting Information for Bid/Proposal

Whether the solicitation is for a Qualifying Project initiated by APS or the result of Acceptance of an Unsolicited PPEA Proposal, APS should set forth in the ITB/RFP the format and supporting information that is required to be submitted in the Bid/Proposal, consistent with the provisions of these Guidelines, the Procurement Resolution, and the PPEA. The ITB/RFP shall include the following information:

1. If the ITB/RFP is the result of an Accepted Unsolicited PPEA Proposal, a summary of the Unsolicited PPEA Proposal which has been Accepted for a Qualifying Project;

2. If the ITB/RFP is the result of an Accepted Unsolicited PPEA Proposal, the location where a copy of the Unsolicited PPEA Proposal is available for public inspection;

3. Whether any Comprehensive Agreement which may result from the Proposals submitted will be awarded through competitive sealed bidding or through competitive negotiation consistent with the procedures for procurement of "other than professional services" through competitive negotiation as set forth in the Procurement Resolution and in the VPPA;

4. If the procedure for award of a Comprehensive Agreement is through competitive sealed bidding, the ITB shall specify the method by which the responsible Bidder submitting the lowest responsive Bid will be determined;

5. The ITB/RFP shall state that APS may negotiate an Interim Agreement which may lead to a Comprehensive Agreement with the successful Bidder or Offeror based on the Bid or Proposal;

6. An ITB/RFP may include requirements which vary from those set forth in these Guidelines, but no Bid/Proposal evaluation procedures or ITB/RFP requirements which are inconsistent with the general intent of these Guidelines or of the PPEA shall be included;

7. The ITB/RFP should specify, but not necessarily be limited to, information and documents that must accompany each Bid/Proposal and the factors that will be used in evaluating the submitted Bids/Proposals;

8. The ITB/RFP should contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the Bidders/Offerors;

9. Pre-Bid/pre-Proposal conferences may be held as deemed appropriate by APS.

10. The ITB/RFP shall contain sufficient information as to provide potential Bidders/Offerors a reasonable basis to understand the nature, characteristics, purposes and determination of public benefit for the Qualifying Project on which they are submitting a Bid/Proposal;

11. The ITB/RFP should be publicized in the same manner provided for publication of ITBs/RFPs generally in the Procurement Resolution; and

12. Such other information and requirements as in the opinion of APS may be necessary to inform potential Bidders/Offerors of the nature of the Qualifying Project and of the requirements for its performance so as to encourage potentially responsible Bidders/Offerors to participate.

C. Advertising Requirements

1. For a Qualifying Project initiated by APS, an ITB/RFP as determined by APS to be applicable may be issued at such time as determined by APS to be most advantageous to it and in compliance with the requirements of the Procurement Resolution for an ITB/RFP as applicable.

2. For an Accepted Unsolicited PPEA Proposal, within ten (10) working days following issuance by APS to the Proposing Private Entity of Notice of Acceptance of Unsolicited PPEA Proposal, APS shall, in addition to posting of the Notice of Acceptance of Unsolicited PPEA Proposal as provided in Part VI.F, commence advertisement of the ITB/RFP in compliance with the requirements of the Procurement Resolution.

D. Procedure for Competitive Sealed Bidding

If the procedure for procurement is through competitive sealed bidding, the following procedures shall be applicable:

1. When, due to the nature or complexity of (i) the Qualifying Project, (ii) the Lease Payments, (iii) the Revenues, (iv) the Service Contract, (v) the Service Payments, (vi) the User Fees, or (vii) any other factor as reasonably determined by APS, it is impractical to prepare initially a purchase description to support an award based on prices, APS shall pre-qualify potential Bidders pursuant to the provisions of VA. CODE ANN. § 2.2-4317 and of the Procurement Resolution, § 4-101(2).

2. If following pre-qualification APS elects to proceed with the Qualifying Project, Bids may be solicited from the Pre-Qualified Bidders by ITB. The ITB shall set forth all factors which will be considered in determining the acceptability of the Bid as provided in VA. CODE ANN. § 2.2-4302.1.4, which may include special qualifications of potential Private Entities in addition to those satisfied by pre-qualification, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality , workmanship, delivery, and suitability for a particular purpose, and factors particularly applicable to the form, substance and characteristics of the Qualifying Project which are helpful in determining acceptability of Bidders and Bids. The ITB also shall state how price will be determined based on Lease Payments, Revenues, Service Payments, User Fees, or any other expense to APS or benefit to be received by APS from the Qualifying Project.

3. Award, if made, shall be made to the responsible, acceptable Bidder submitting a responsive and acceptable Bid at the lowest price.

4. Award, if made, will result in a Comprehensive Agreement or an Interim Agreement followed by a Comprehensive Agreement pursuant to the provisions of Part XII, INTERIM AND COMPREHENSIVE AGREEMENTS.

E. Procedure for Competitive Negotiation

1. If the procedure for procurement is through Competitive Negotiation, APS may use a two-part Proposal process consisting of an initial Conceptual Stage and a Detailed Stage. It shall be at the sole discretion of APS whether a Detailed Stage is necessary to make a determination whether to proceed with an Interim Agreement and/or a Comprehensive Agreement.

2. The RFP shall state how price will be determined for purposes of inclusion in the evaluation process, based on Lease Payments, Revenues, Service Payments, User Fees, or any other expense to APS or benefit to be received by APS from the Qualifying Project.

3. The RFP shall inform potential Offerors that APS will consider price as one factor in evaluating the Proposals received, but may provide that price is not the controlling factor. Other factors that may be identified in the RFP as to be considered in evaluating Proposals, in addition to those otherwise referenced in these Guidelines, are (i) the proposed cost of the Qualifying Project; (ii) the general reputation, industry experience, and financial capacity of the Private Entity; (iii) the proposed design of the Qualifying Project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under these Guidelines; (v) local citizen and government comments; (vi)

benefits to the public; (vii) the Private Entity's compliance with, or good faith efforts to comply with, a participation plan for small businesses, minority owned businesses, women owned businesses, service disabled veteran-owned businesses, and employment services organizations; (viii) the Private Entity's plans to employ local contractors and residents; and (ix) other criteria that APS deems appropriate.

4. APS may determine from the content of the Conceptual Stage Proposals if any Offeror has failed to meet the requirements of the RFP to a sufficient degree that they will not be invited to participate in the Detailed Stage. The remaining Offerors will be invited to submit Detailed Stage Proposals, from which APS will make the determination with which Offeror or Offerors to enter into negotiations as provided in the Procurement Resolution for competitive negotiation.

VIII. GUIDELINES FOR DETERMINATION OF A QUALIFYING PROJECT

A. APS may grant approval of the development or operation of the education facility, technology infrastructure or other public infrastructure or facility needed by APS, or the design or equipping of a Qualifying Project so developed or operated, if APS determines that the project serves the public purpose of the PPEA and these Guidelines. APS may determine that the development or operation of the Qualifying Project serves such public purpose if:

1. There is a public need for or benefit derived from the Qualifying Project;

2. The estimated cost of the Qualifying Project is reasonable in relation to similar facilities; and

3. The Proposing Private Entity's plans will result in the timely development or operation of the Qualifying Project.

B. Necessity for Board Approval

Any approval of a Qualifying Project shall be subject to the Private Entity selected for the Qualifying Project entering into an Interim Agreement or Comprehensive Agreement with APS after Board approval of the proposed Interim Agreement or proposed Comprehensive Agreement.

C. Time for Completion

In connection with its approval of a Qualifying Project, APS shall establish a date for the commencement of activities related to the Qualifying Project. APS may extend such date from time to time at its sole discretion based upon all circumstances affecting the Qualifying Project.

IX. GUIDELINES FOR REVIEW AND EVALUATION OF PROPOSALS OR BIDS

A. APS shall determine during the Conceptual Stage for Unsolicited PPEA Proposals, and prior to issuance of an RFP or ITB for solicited Qualifying Projects, whether award of any Comprehensive Agreement will be accomplished through:

1. Procurement through Competitive Sealed Bidding according to the procedures set forth in the Procurement Resolution and as modified by these Guidelines for PPEA projects, and consistent with the VPPA; or

2. Procurement through Competitive Negotiation according to the procedures set forth in the Procurement Resolution for procurement of

"other than professional services" through Competitive Negotiation and consistent with the requirements of the Procurement Resolution and the VPPA for such form of procurement. Provided, however, APS may proceed using such Competitive Negotiation rather than Competitive Sealed Bidding only if it first makes a written determination that doing so is likely to be advantageous to APS and the public based upon either (i) the probable scope, complexity or urgency of need for the Qualifying Project, or (ii) the risk sharing, including guaranteed cost of completion guarantees, added value or debt or equity investments proposed by the Private Entity, or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available.

B. In reviewing the Unsolicited PPEA Proposal and any competing Proposals submitted in accordance with any solicitation or invitation, and in reviewing any Bids/Proposals submitted in response to an ITB/RFP, APS shall engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by APS, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a Private Entity for approval of a Qualifying Project unless APS makes a written determination that such analysis of an Unsolicited PPEA Proposal shall be performed by employees of APS.

C. APS at all times retains the right to reject any Proposal at any time for any reason whatsoever, including but not limited to a decision that it no longer wishes to proceed with the Proposed Project or the solicited Qualifying Project.

X. PROPOSAL PREPARATION AND SUBMISSION

A. Only Proposals complying with the requirements of these Guidelines and the PPEA, that contain sufficient information for a meaningful evaluation, and that are provided in an appropriate format in substantial compliance with the requirements of the ITB/RFP if applicable may be considered by APS for further review at the Conceptual Stage.

B. Format for Submission of Proposals

1. Unsolicited PPEA Proposals and Bids/Proposals in response to an ITB/RFP, collectively included in the term "Proposals," shall contain information in the following areas: (i) qualifications and experience, (ii) Project characteristics, (iii) Project financing, (iv) anticipated public support or opposition, or both, (v) Project benefit and compatibility and (vi) any additional information as APS may reasonably request including, but not limited to, information to comply with the requirements of the PPEA. All information required to be submitted in response to an ITB/RFP, will be set forth with specificity in the ITB/RFP. The Bid/Proposal information required by any such ITB/RFP will comply with the applicable requirements of the PPEA in effect at the time APS issues the ITB/RFP, and should not vary substantially from Bid/Proposal information required of a Bid/Proposal in these Guidelines.

2. APS has a standard form Comprehensive Agreement and General Conditions which shall be incorporated into any Unsolicited PPEA Proposal submitted to APS. Copies of these standard from documents are available by request from the Procurement Agent. These standard form documents may be modified by APS to accommodate the specific Qualifying Project identified in an ITB/RFP, or to accommodate the Proposed Project in an

Unsolicited PPEA Proposal. A Proposing Private Entity may suggest modifications to the standard form documents as part of an Unsolicited PPEA Proposal. All such proposed modifications shall be identified with specificity in a separate attachment to the Unsolicited PPEA Proposal, with the justification for such change, including but not limited to any benefit to APS resulting therefrom, set forth in the attachment. Acceptance of an Unsolicited PPEA Proposal does not mean that any such proposed modifications will be approved by APS, which shall be resolved prior to Acceptance.

3. Formatting and substantive information to be included in Proposals at the Conceptual Stage regarding qualifications and experience should contain at least the following:

a. Identify the legal structure of the Proposing Private Entity.

b. Identify the organizational structure for the Project, the management approach and how each Private Entity in the organizational structure fits into the overall team assembled by the Proposing Private Entity to perform the Proposed Project ("Project Team"). The Proposing Private Entity should identify any Major Subcontractor (a "Major Subcontractor" is a Private Entity responsible for 10% or more of the reasonably anticipated cost of the Proposed Project that is proposed as a part of the initial Project Team), and those architecture/engineering firms which will be providing design services. All intended members of the Project Team ("Team Members") known at the time the Proposal is submitted for the Conceptual Stage must be identified. Identified Team Members may not be substituted or replaced once an Unsolicited PPEA Proposal has been Accepted or a Bid/Proposal has been submitted to APS without the written approval of APS.

c. For each Team Member, a certification that it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, including the identification number issued to it by the State Corporation Commission (SCC) or, if the Team Member is not required to be authorized to transact business in Virginia by the SCC a statement of the reasons why.

d. The Virginia contractor's license or certificate for each Team Member required by law to be so licensed, including the number, issue date, expiration date, and classification(s). For any Team Member not required to have a Virginia contractor's license or certificate, a statement of the reasons why.

e. Describe the relevant experience of each Team Member and of the key personnel to be involved in the Proposed Project, including experience with Projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of each Team Member. Include the identity of any Team Members that will provide design, construction and completion, or financial guarantees and warranties and a description of such guarantees and warranties.

f. Provide the names, addresses, and telephone numbers of persons within each Team Member who may be contacted for further information.

g. Provide a current or most recently audited financial statement for each Team Member and for each owner of each such Team Member with an equity or controlling interest of twenty percent (20%) or greater.

h. Identify any persons affiliated with any Team Member who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the Project pursuant to The Virginia State and Local Government Conflict of Interest Act, VA. CODE ANN. §§ 2.2-3100 *et seq*.

i. Provide for each Team Member a statement listing all of the Team Member's prior projects and clients for the past five (5) years and contact information for same (name, address, telephone number and e-mail address). If a member of the Project Team has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the Proposed Project and, second, it shall include as many of its most recent projects as the required number permit.

j. For each Team Member provide a brief summary of the safety performance record and current safety capabilities, including a summary of state and federal OSHA citations and records during the past five (5) years. APS reserves the right to determine, in its sole discretion, the extent to which safety records impact the qualifications of any Team Member.

k. For each Team Member provide the following information:

1. A sworn certification by an authorized representative of the Team Member attesting to the fact that the Team Member currently is not debarred or suspended by any federal, state or local government Entity;

2. A mandatory disclosure and description by the Team Member for the past five (5) years of any of the following conduct or action taken by or against the Team Member:

a. Bankruptcy filings.

b. Assessing and/or being assessed liquidated damages.

c. The imposition of any fines, penalties or assessments.

d. Any judgments or decrees.

e. Legal claims or lawsuits filed by or against the Team Member, including both judicial proceedings and arbitrations.

f. Contract terminations (whether for default, convenience or otherwise).

g. License evocations, suspensions or other disciplinary actions.

h. Prior debarments or suspensions by a non-governmental Entity.

i. Denials of prequalification.

j. Findings of non-responsibility.

k. Violations of any federal, state or local criminal or civil law.

l. Criminal indictments or investigations of the Team Member or any principals, officers, directors or owners of the Team Member.

4. Formatting and substantive information to be included in Proposals at the Conceptual Stage regarding Proposed Project characteristics should contain at least the following:

a. Provide a description of the Proposed Project, including the conceptual design. Describe the Proposed Project in sufficient detail so that type and intent of the Proposed Project, the location, and the communities or areas that may be affected are clearly identified.

b. Identify and fully describe any work to be performed by APS.

c. Include a list of all federal, state and local permits and approvals required for the Proposed Project and a schedule for obtaining such permits and approvals.

d. Identify any anticipated adverse social, economic and environmental impacts of the Proposed Project. Specify the strategies or actions to mitigate known impacts of the Proposed Project.

e. Identify the projected positive social, economic and environmental impacts of the Proposed Project.

f. Identify the proposed schedule for the work on the Proposed Project, including the estimated time for completion.

g. Propose allocation of risk and liability for work completed beyond the Proposed Project's completion date to be included in the Comprehensive Agreement.

h. State assumptions related to ownership, legal liability, law enforcement and operation of the Proposed Project and the existence of any restrictions on APS's use of the Proposed Project.

i. Provide information relative to phased or partial openings of the Proposed Project prior to completion of the entire work.

5. Formatting and substantive information to be included in Proposals at the Conceptual Stage regarding Project Financing shall include at least the following information:

a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.

b. Submit a plan for the development, financing and operation (as applicable) of the Proposed Project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan (if applicable) should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports such as but not limited to feasibility studies.

c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.

d. Identify the proposed risk factors and methods for dealing with these factors.

e. Identify any local, state or federal resources that the Proposing Private Entity contemplates requesting for the Proposed Project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of APS's credit or revenue.

f. Identify the amounts and the terms and conditions for any revenue sources.

g. Identify any aspect of the Proposed Project that could disqualify the Proposed Project from obtaining tax-exempt financing.

6. Formatting and substantive information to be included in Conceptual Stage Proposals regarding Project Benefit and Compatibility shall include at least the following information:

a. Identify who will benefit from the Proposed Project, how they will benefit and how the Proposed Project will benefit the overall community, region, or state.

b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the Proposed Project.

c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the Proposed Project.

d. Describe the anticipated significant benefits to the community, region or state including anticipated benefits to the economic condition of APS and whether the Proposed Project is critical to attracting or maintaining competitive industries and businesses to the surrounding region.

e. Describe the Proposed Project's compatibility with the local comprehensive plan, local infrastructure development plans, the

capital improvements budget or other government spending plan.

f. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with the Proposed Project with regard to the following types of businesses: (i) minority-owned businesses; (ii) women-owned businesses, (iii) small businesses; (iv) service disabled veteran owned businesses; (v) employment service organizations.

7. Any additional information as APS may reasonably request or require.

C. Format for Submissions at Detailed Stage

If APS decides to proceed to the Detailed Stage of review with one or more Proposals submitted in response to an ITB/RFP, or determines the Detailed Stage of review is necessary prior to making an Acceptance determination for an Unsolicited PPEA Proposal, the following information should be provided by the Proposing Private Entities even if previously waived or deferred by APS, unless waived for the Detailed Stage review by APS or as otherwise requested by APS or set forth in an ITB/RFP issued by APS:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the Proposed Project.

2. A list of public utility facilities, if any, that will be crossed by the Proposed Project and a statement of the plans of the Proposing Private Entity to accommodate such crossings.

3. A statement and strategy setting out the plans for securing all necessary property. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the Proposing Private Entity intends to request APS to condemn.

4. Identify each Major Subcontractor and describe its scope of work, the qualifications and experience with respect to such scope of work and the Proposed Project, and how it fits into the overall Project Team.

5. For each Private Entity which or who has become a Team Member subsequent to submission of the Conceptual Stage Proposal, or for whom or for which the information required for Team Members was not provided as part of the Conceptual Stage Proposal, or for whom or for which such information was provided but no longer is correct, provide all current information required for Team Members as specified above.

6. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties if in any way different from the Team Members with such responsibilities previously identified.

7. Detailed resumes for all key personnel for each Team Member.

8. A total life-cycle of costs, specifying methodology and assumptions of the Proposed Project and the proposed start date for the Proposed Project. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of Proposed Project revenues and Proposed Project costs. The Life-Cycle Cost Analysis should include, but not be limited to, a detailed analysis of the projected return, rate

of return, or both, expected useful life of facility and estimated annual operating expenses. A sensitivity analysis should also be included to show the positive and adverse effects of significant variables, risks, and uncertainties on the projected cash flows, if applicable, and life-cycle costs.

9. A detailed discussion of assumptions about Lease Payments, Revenues, Service Contracts, Service Payments, User fees, and usage of the Proposed Project.

10. Identification of any known government support or opposition, or general public support or opposition for the Proposed Project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.

11. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.

12. Explanation of how the Proposed Project would impact local development plans of each affected local area of Arlington County.

13. Identification of any known conflicts of interest or other disabilities that may impact APS's consideration of the Proposal, including the identification of any persons in any way affiliated with any Team Member or the Proposed Project known to the Proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the Proposed Project pursuant to The Virginia State and Local Government Conflict of Interest Act, VA. CODE ANN. §§ 2.2-3100 *et seq*.

14. Each Team Member may be required to submit any or all performance evaluation reports or other documents which are in its possession evaluating the Team Member's performance during the preceding five (5) years in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful development, operation and completion of a project.

15. Additional material and information as APS may reasonably request.

XI. PROPOSAL EVALUATION AND SELECTION CRITERIA

The following are factors that may be considered by APS in the evaluation and selection of Unsolicited PPEA Proposals or Bids/Proposals in response to an ITB/RFP. In the event that an ITB/RFP is issued by APS, the factors to be considered will be set forth in the ITB/RFP and they may vary from those set forth in these Guidelines but will in any event be consistent with the intent of these Guidelines and in compliance with the applicable requirements of the PPEA in effect at the time APS issues the ITB/RFP.

A. Qualifications and Experience

Factors to be considered in either phase of APS's review to determine whether the Proposing Private Entity and its Project Team possess the requisite qualifications and experience may include, but shall not be limited to:

1. Experience, training and preparation with similar projects.

2. Demonstration of ability to perform work.

3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plan, specifications, applicable laws and codes, quality of workmanship, cost-control and project safety.

4. Leadership structure.

5. Project manager's experience and the experience and capabilities of the Team Members and their key personnel.

6. Management approach.

7. Project staffing plans, the skill levels of the proposed workforce and the proposed safety plans for the Proposed Project.

8. Financial condition, bonding capacity, and insurance coverage of the Proposing Private Entity and other Team Members.

9. Proposed Project ownership.

B. Project Characteristics

Factors to be considered in determining the Proposed Project characteristics may include, but are not limited to:

1. Proposed Project definition.

2. Proposed Project schedule.

3. Operation of the Proposed Project.

4. Technology; technical feasibility.

5. Conformity to laws, regulations, and standards.

6. Environmental impacts.

7. Condemnation impacts.

8. State and local permits.

9. Maintenance of the completed Proposed Project.

C. Project Financing

Factors to be considered in determining whether the proposed financing for the Proposed Project allows adequate access to the necessary capital to finance the Proposed Project may include, but are not limited to:

1. Cost and cost benefit to APS.

2. Financing and the impact on the budget requirements of APS.

3. Financial plan, including the degree to which the Proposing Private Entity has conducted due diligence investigation and analysis of the proposed financial plan (including risk assessment and mitigation)

and the results of any such inquiries or studies (including feasibility studies and forecasted cash flow sensitivity analyses).

4. Opportunity Cost assessment.

5. Estimated cost.

6. Life-Cycle Cost Analysis.

7. The identity, credit history, and past performance of any third party that will provide financing for the Proposed Project and the nature and timing of their commitment, as applicable.

8. Such other items as APS deems appropriate.

D. Project Benefit and Compatibility

Factors to be considered in determining the Proposed Project's compatibility with the appropriate local or regional comprehensive or development plans include, but are not limited to:

1. Community benefits.

2. Community support or opposition, or both.

3. Public involvement strategy.

4. Compatibility with existing and planned facilities.

5. Compatibility with local, regional, and state economic development efforts.

E. Other Factors

Other factors that may be considered by APS in the evaluation and selection of Unsolicited PPEA Proposals or a Bid/Proposal submitted in response to an ITB/RFP include, but are not limited to:

1. The proposed cost of the Proposed Project.

2. The general reputation, industry experience, and financial capacity of each firm included on the Project Team.

3. The proposed design of the Proposed Project.

4. The eligibility of the Proposed Project for accelerated documentation, review, and selection.

5. Local citizen and government comments.

6. Benefits to the public, including financial and nonfinancial.

7. The Proposing Private Entity’s compliance with a participation plan or good faith efforts to comply with the goals of such a plan for the participation of small businesses, minority-owned businesses, women-owned businesses, service disabled veteran-owned businesses, and employment services organizations.

8. The Proposing Private Entity's plans to employ local contractors and residents.

9. Other criteria that APS deems appropriate.

F. Public Hearing During Proposal Review Process; Notice and Posting Requirements

1. At least thirty (30) days prior to entering into an Interim Agreement or Comprehensive Agreement, APS shall hold a public hearing on the Proposals that have been received. Such public hearing shall be conducted by the Procurement Agent or his designee.

2. Notice of the public hearing before the Procurement Agent or his designee shall be posted on APS' website and in such other locations and in such other manners or methods as are set forth in the Procurement Resolution for publication of an ITB/RFP, shall state the date, time and location of the public hearing, and shall be posted at least ten (10) days prior to the hearing date.

3. Once the negotiation phase for the development of an Interim Agreement or a Comprehensive Agreement is complete, but before an Interim Agreement or a Comprehensive Agreement is entered into, APS shall make available the proposed Interim Agreement or Comprehensive Agreement by posting notice of the proposed Interim Agreement or Comprehensive Agreement on APS's website and in such other locations and in such other manners or methods as are set forth in the Procurement Resolution for publication of an ITB/RFP. Such notice shall provide:

   a. A brief description of the Proposed Project.

   b. A statement that APS is prepared to submit the proposed Interim Agreement or Comprehensive Agreement to the Board for acceptance.

   c. That at least one (1) copy of the proposed Interim Agreement or Comprehensive Agreement is available for inspection in the office of the Procurement Director, subject to any applicable restrictions under the FOIA or the PPEA. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

   d. That the proposed Interim Agreement or Comprehensive Agreement will be considered for acceptance by the Board at a public meeting to be held not less than ten (10) days after the posting of the Notice, with the date, time and location of the Board meeting included.

4. All posting and public inspection requirements shall be subject to applicable restrictions of FOIA or the PPEA.

XII. INTERIM AND COMPREHENSIVE AGREEMENTS

Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the Qualifying Project, the selected

Proposing Private Entity shall enter into a Comprehensive Agreement with APS. Prior to entering into a Comprehensive Agreement, an Interim Agreement may be entered into that permits a Private Entity to perform compensable activities related to the Qualifying Project. APS may designate a working group to be responsible for negotiating any Interim Agreement or Comprehensive Agreement but an Interim Agreement or Comprehensive Agreement must be approved by the Board before it may be signed by APS. Each Interim Agreement or Comprehensive Agreement shall define the rights and obligations of APS and the selected Private Entity with regard to the Qualifying Project.

A. Interim Agreement Terms

The scope of an Interim Agreement may include, but is not limited to:

1. Project planning and development.

2. Design and engineering.

3. Environmental analysis and mitigation.

4. Survey.

5. Ascertaining the availability of financing for the proposed Qualifying Project through financial and revenue analysis.

6. Establishing a process and timing of the negotiation of the Comprehensive Agreement.

7. Any other provisions related to any aspect of the development or operation of a Qualifying Project that the parties may deem appropriate prior to the execution of a Comprehensive Agreement.

B. Comprehensive Agreement Terms

The terms of the Comprehensive Agreement shall include, but not be limited to, the following:

1. The delivery of maintenance, warranty, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the Qualifying Project.

2. The review of plans and specifications for the Qualifying Project by APS, and incorporation of modifications as suggested or directed by APS.

3. The rights of APS to inspect the Qualifying Project at all stages of its development and/or construction to ensure compliance with the Comprehensive Agreement.

4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the Qualifying Project and the tort liability to the public and employees, and to enable the continued operation of the Qualifying Project.

5. The monitoring of the practices of the Operator by APS to ensure

proper maintenance.

7. The terms under which the Operator will reimburse APS for services provided if applicable.

8. The policy and procedures that will govern the rights and responsibilities of APS and the Operator in the event that the Comprehensive Agreement is terminated or there is a Material Default by the Operator, including the conditions governing assumption of the duties and responsibilities of the Operator by APS and the transfer or purchase of property or other interests of the Operator by APS.

9. The terms under which the Operator will file appropriate financial statements on a periodic basis.

10. The mechanism by which Lease Payments, Service Payments, or User Fees, if any, may be established from time to time upon agreement of the parties. Any Lease Payments, Service Payments, or User Fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the Qualifying Project. The execution of the Comprehensive Agreement or any amendment thereto shall constitute conclusive evidence that the Lease Payments, Service Payments, or User Fees provided for comply with this provision. User Fees or Lease Payments established in the Comprehensive Agreement as a source of Revenues may be in addition to, or in lieu of, Service Payments.

11. Requiring a copy of any Service Contract to be filed with APS and providing that a schedule of the current User Fees or Lease Payments shall be made available by the Operator to any member of the public upon request.

12. The terms and conditions under which APS may contribute financial resources, if any, for the Qualifying Project.

13. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the party responsible for conducting the assessment and taking necessary remedial action.

14. The terms and conditions under which APS will be required to pay money to the Private Entity and the amount of any such payments for the Project.

15. The Comprehensive Agreement shall incorporate the duties of the Private Entity under the PPEA and may contain such other terms and conditions that APS determines serve the public purpose of the PPEA as applicable to the Qualifying Project. Without limitation, the Comprehensive Agreement may contain provisions under which APS agrees to provide notice of default and cure rights for the benefit of the Private Entity and the persons specified therein as providing financing for the Qualifying Project.

16. The Comprehensive Agreement may contain such other lawful terms and conditions to which the Private Entity and APS may mutually agree.

17. The Comprehensive Agreement may also contain provisions where the authority and duties of the Operator and Private Entity shall cease and the Qualifying Project is dedicated to APS for public use.

18. The Comprehensive Agreement may provide for the development or operation of phases or segments of a Qualifying Project.

19. Any other provisions required by applicable law or as APS may deem appropriate.

Conditions precedent to the validity of any changes in the terms of the Comprehensive Agreement as may be agreed upon by the parties from time to time shall be that they be made or added to the Comprehensive Agreement only by written amendment and have received prior approval by the Board.