

PROCUREMENT POLICY AND PROCEDURES MANUAL

HAMPTON ROADS PLANNING DISTRICT COMMISSION
&
HAMPTON ROADS TRANSPORTATION PLANNING ORGANIZATION



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HAMPTON ROADS PLANNING DISTRICT COMMISSION PURCHASING POLICY AND PROCEDURES MANUAL

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CHAPTER 1: GENERAL

1.1 INTENT

To the end that the Hampton Roads Planning District Commission (including the Hampton Roads Transportation Planning Organization “HRTPO” and related entities, collectively referred to as “HRPDC”) obtains high quality goods and services 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 HRPDC business, and that no offeror is arbitrarily or capriciously excluded, it is the policy and intent of HRPDC that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that HRPDC 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 HRPDC rather than being drawn to favor a particular vendor, and that HRPDC and vendors freely exchange information concerning what is sought to be procured and what is offered.

In furtherance of this intent, the following general policies and procedures are hereby adopted.

(Ref.: Va. Code § 2.2-4300; 2 C.F.R. § 200.100.)

1.2 PROCUREMENT OFFICER

The Procurement Officer is appointed by the Executive Director to serve as the principal public purchasing official for HRPDC. The Executive Director may authorize other officials or employees of HRPDC to administer procurements in accordance with this Policy. Certain procurement decisions, however, are reserved to the Executive Director. Where this is the case, this Manual will refer to the Executive Director specifically. The Procurement Officer shall:

- A. Purchase or supervise the purchasing of all goods, services, insurance, and construction needed by HRPDC;
- B. Exercise direct supervision over HRPDC’s physical and intangible assets and general supervision over all other inventories of goods belonging to HRPDC;
- C. Sell, trade, or otherwise dispose of surplus goods; and
- D. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the goods, services, and construction.

The Procurement Officer is authorized and directed to establish internal procedures, forms, and policies to implement the general procedures and requirements of this Manual. The provisions of this Manual should be applied flexibly by HRPDC staff so as to achieve the goals of this Manual.

(Ref.: Va. Code §§ 2.2-4302, 15.2-4205(B)(7).)

1.3 LEGAL AUTHORITY

HRPDC is a political subdivision of the Commonwealth of Virginia formed under the provisions of the Regional Cooperation Act. Its fundamental purpose is to “encourage and facilitate local government cooperation and state-local cooperation in addressing on a regional basis problems of greater than local significance.” In order to carry out its work, it frequently must purchase goods and services. As a political subdivision of the Commonwealth of Virginia, HRPDC must always comply with the provisions of the Virginia Public Procurement Act (VPPA). However, in its work it also is frequently called upon to administer programs that are funded by the Commonwealth of Virginia or by the United States federal government. These programs can also carry special programmatic requirements, such as requirements for compliance with federal requirements that supplement or preempt the VPPA. Where noted, this Manual sets forth the portions of federal law that typically conflict with the VPPA, as required by the VPPA.

(Ref.: Title 15.2, Chapter 42, Regional Cooperation Act, Code of Virginia, 1950, as amended.)

1.4 VIOLATIONS

Violation of these policies and procedures is grounds for disciplinary action up to and including termination and criminal prosecution.

(Ref.: Va. Code § 2.2-4377.)

1.5 DEFINITIONS

Words used in this Manual should be understood to have their ordinary or usual signification and meaning, except when they are used in the senses for which they are defined in the Virginia Public Procurement Act, Va. Code § 2.2-4301, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, or other provision of law.

(Ref.: Va. Code § 2.2-4301; 2 C.F.R. §§ 200.0, 200.1.)

1.6 PURCHASING OBJECTIVES AND RESPONSIBILITIES

The Procurement Officer has the following objectives and responsibilities:

- A. Ensuring that all HRPDC purchases are conducted in accordance with the Virginia Public Procurement Act (VPPA), federal regulations including Title VI where applicable, or other applicable law;
- B. Assisting other HRPDC staff members in choosing the most cost-effective and efficient procurement method, and assisting them in keeping track of special procurement requirements tied to grants and state and federal programs;
- C. In competitive sealed bidding, awarding contracts to the lowest responsive and responsible bidder, taking into account skill, experience, and previous conduct of the contractor;

- D. In competitive negotiation, awarding contracts to the offeror who makes the best overall proposal for HRPDC under the terms of the request for proposals;
- E. Keeping informed of current developments in the field of purchasing, prices, market conditions, and new products, including new laws and regulations and potential updates to this Manual necessary to comply with such new laws or regulations;
- F. Providing to HRPDC the benefits of research done in the field of purchasing by other governmental jurisdictions, national societies, national trade associations, and by private business and organizations;
- G. Maintaining a vendors file containing catalogues, descriptions of commodities, prices, and discounts;
- H. Declaring vendors who default on their quotations as irresponsible bidders and to disqualify them from receiving business from HRPDC in accordance with the procedures set forth in this Manual;
- I. Performing other functions and duties in keeping with good purchasing practices as may be assigned.

(Ref.: Va. Code § 2.2-4302.)

CHAPTER 2: METHODS OF PROCUREMENT

2.1 CHOICE OF METHOD

Choice of procurement method is the responsibility of the Procurement Officer and the HRPDC staff member who needs to purchase the good or service in question. Most purchases will be best carried out through a small purchase (see § 2.4), a purchase order on a term or job order contract (see § 2.5), or a cooperative purchase (see § 3.1). However, some types of goods and services must be purchased using full procurement under competitive negotiation or competitive sealed bidding under this Manual. For instance, in general, construction must be purchased through competitive sealed bidding; professional services (including architectural and engineering services) must be purchased through competitive negotiation; and insurance should be procured through competitive negotiation. This Chapter of this Manual is intended to assist the Procurement Officer in choosing the best method for any given purchase.

2.2 COMPETITIVE NEGOTIATION (RFP)

- A. *Common Uses.* Competitive negotiation is commonly used to purchase goods and services where a balance of quality and price is necessary, or where it is unclear what the full scope of solutions on the market are. It is typically the method of award of term and job order contracts. It is the required method for obtaining professional services under the VPPA.
- B. *In General.* In general, the process of competitive negotiation includes the following elements:

1. Development of an RFP. Issuance of a written Request for Proposals (RFP) indicating in general terms what is sought to be procured, specifying the factors that will be used in evaluating proposals, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required. Except with regard to contracts for architectural, professional engineering, transportation construction, or transportation-related construction services, HRPDC may include as a factor that will be used in evaluating a proposal the proposer's employment of persons with disabilities to perform the specifications of the contract. 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.
2. Public Notice. Public notice of the Request for Proposals at least ten (10) days prior to the date set for receipt of proposals by posting on the HRPDC website and by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. HRPDC must publish Requests for Proposals on the state Department of General Services' central electronic procurement website (eVA) if HRPDC elects not to publish notice of the Request for Proposals in a newspaper of general circulation in the area in which the contract is to be performed. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity.
3. Shortlisting. Initially, the responsible HRPDC staff member or an appropriate selection committee will review proposals and rank the offerors, based upon the criteria or the numerical scoring system set forth in the RFP. For goods and nonprofessional services, price must be considered; with some minor exceptions, price may not be considered at this stage for procurements of professional services. HRPDC may carry on repetitive informal interviews.
4. Interviews. HRPDC will generally interview two or more top-ranked offerors in order to find out additional information on offerors. Offerors will be encouraged to elaborate on their qualifications, past performance, or staff expertise, and, particularly in professional services procurement, alternative concepts. At this stage, HRPDC and offerors for professional services may discuss nonbinding estimates of prices for projects. Following interviews, offerors may be re-ranked.
5. Clearly Highest Qualified. Should HRPDC determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated

and awarded to that offeror. The decision to make such award shall be made by the Procurement Officer.

6. **Negotiations for Goods, Non-professional Services, and Insurance:** Negotiations will then be conducted with each of the selected offerors. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, HRPDC will select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are specified in the Request for Proposals, awards may be made to more than one offeror.
7. **Negotiations for Professional¹ Services:** At the conclusion of discussions, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, HRPDC will select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious, subject to the option to make an award as provided in subsection 5.

Negotiations will then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to HRPDC can be negotiated at a price considered fair and reasonable, the award will be made to that offeror. Otherwise, negotiations with the offeror ranked first will be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposals, HRPDC may award contracts to more than one offeror.

8. **Special Provisions for Federally Funded Awards.** While time and materials contracts are common for professional services, federal regulations require a firm fixed price for time and materials contracts. Furthermore, on federally funded contracts, the qualifications-based process for professional services procurement may generally only be used for architects and engineers. Other services, regardless of whether they qualify as professional under the Public Procurement Act, must be procured by the process for procurement of non-professional services under this section.

(Ref.: Va. Code §§ 2.2-4301, 2.2-4302.2; 2 C.F.R. §§ 200.318(j), 200.320(b)(2)(iv).)

¹ Professional services are defined as accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. All other services are “nonprofessional,” even if they are generally understood as white collar.

2.3 COMPETITIVE SEALED BIDDING

- A. *Common Uses.* Competitive sealed bidding is the primary method of procurement for construction and for commodity goods.
- B. *In General.* The process for competitive sealed bidding is as follows:
 1. Development of an ITB. Issuance of a written Invitation to Bid (ITB) containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless HRPDC has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. HRPDC may include in the Invitation to Bid criteria that may be used in determining whether a bidder is responsible. Such criteria may include a history or good faith assurances of (i) completion by the bidder and any potential subcontractors of specified safety training programs established by the Virginia Department of Labor and Industry and/or the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) participation by the bidder and any potential subcontractors in apprenticeship training programs approved by state agencies or the U.S. Department of Labor; or (iii) maintenance by the bidder and any potential subcontractors of records of compliance with applicable local, state, and federal laws. No Invitation to Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. When it is 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.
 2. Public Notice. Public notice of the Invitation to Bid at least ten (10) days prior to the date set for receipt of bids by posting on the HRPDC webpage and in a prominent place at HRPDC's offices. HRPDC may also publish Invitations to Bid in a newspaper or newspapers of general circulation, on the state Department of General Services' central procurement website (eVA), or other methods reasonably calculated to reach potential bidders. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity.
 3. Prebid Meeting (Optional). Frequently, in situations where construction is required, a prebid meeting is held onsite or in another location in order to give potential bidders the opportunity to inspect and ask questions. An addendum may be issued responding to questions.
 4. Unsealing. Public opening and announcement of all bids received.
 5. Evaluation. Bids are evaluated 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 that are helpful in determining acceptability, if so specified in the Invitation to Bid.

6. Award. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are specified in the Invitation to Bid, awards may be made to more than one bidder.

(Ref.: Va. Code §§ 2.2-4301, 2.2-4302.1; 2 C.F.R. § 200.320(b).)

2.4 SMALL PURCHASES

- A. The Virginia Public Procurement Act permits HRPDC to establish small purchase procedures, not requiring competitive sealed bids or competitive negotiation for single or term contracts for (i) goods and services other than professional services and (ii) non-transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$200,000; however, such small purchase procedures shall provide for competition whenever practicable. The Act also permits single or term contracts for professional services, provided that the aggregate or sum of all phases is not expected to exceed \$80,000.
- B. The following small purchase procedures have been established for use when acquiring materials, supplies, equipment, printing, and nonprofessional services under \$200,000, or professional services under \$80,000. Procurements made pursuant to these procedures do not require public bid openings or newspaper advertisements of competitively negotiated procurements. Small purchases generally do not justify the administrative time and expense necessary to conduct formal competitive sealed bidding or competitive negotiation. However, HRPDC will use the most competition that is practical under the circumstances. “Bid splitting” of pieces of a project or larger order of goods in order to fall under small purchase thresholds is not permitted.
 1. Vendor of choice/micro-purchase: Purchases and services contracts for projects up to \$10,000 in total value may be awarded without competitive quotes.
 2. Telephone/internet quotes: Purchases and services contracts for projects up to \$50,000 in total value may be awarded based upon solicitation of at least three (3) quotes from legitimate vendors. Quotes from internet websites of legitimate vendors are acceptable. For state or locally-funded projects, the vendors need not respond so long as they are legitimate vendors of the goods and services sought, unless programmatic requirements impose a higher standard. For federally-funded procurements, three quotes should be obtained.
 3. Professional services above \$50,000 but not exceeding \$80,000: Three (3) or more quotes for professional services in which the project is expected to exceed \$50,000 in value but be not more than \$80,000 in value must be solicited based upon a written scope of work. For state or locally-funded projects, the vendors need not respond so long as they are legitimate vendors of the goods and services sought, unless programmatic requirements impose a higher standard. For federally-funded procurements, three quotes should be obtained.

4. Goods and non-professional services above \$50,000 but not exceeding \$200,000: Three (3) or more quotes for goods or non-professional services in which the purchase is expected to exceed \$80,000 but not more than \$200,000 in value must be solicited based upon a written description of the goods or services sought. For state or locally-funded projects, the vendors need not respond so long as they are legitimate vendors of the goods and services sought, unless programmatic requirements impose a higher standard. For federally-funded procurements, three quotes should be obtained.

Construction generally may not be procured through small purchase procedures, but must be procured through a full procurement or pursuant to a job order contract.

- C. Contracts should be awarded based upon the best value, that is, the overall combination of quality, price, and various elements of required services that in total are optimal relative to HRPDC's needs. HRPDC's costs may be considered, for example, if a good must be picked up much further away, despite being less expensive, the travel time cost for HRPDC may be considered in determining the best value.
- D. The reasons why firms decline to quote shall be documented.

(Ref.: Va. Code § 2.2-4303(G); 2 C.F.R. § 200.320(a).)

2.5 TERM & JOB ORDER CONTRACTS

- A. *In General.* Term contracts allow HRPDC to use a competitive negotiation process to put one or more providers of goods and/or services under contract to provide goods and services on pre-negotiated terms and conditions. Job order contracting permits HRPDC to put one or more providers of maintenance or light construction services under contract to provide services based upon a unit-price book of prices. These practices can ease procurement of regularly-needed services. In federal program requirements, these contracts are often referred to as indefinite delivery/indefinite quantity (ID/IQ) contracts.

For term contracts for goods and nonprofessional services, there is no upper limit to the number of years that a contract may continue for. However, it is the general policy of HRPDC not to enter "evergreen" contracts for an indefinite period. The length of such contracts and the number of renewals, however, is in the discretion of HRPDC and may vary based upon the best interests of HRPDC.

B. Special Provisions for Architectural and Professional Engineering Term Contracts.

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

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

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

Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) HRPDC 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.

C. *Job Order Contracts.* HRPDC may, through competitive negotiation or competitive sealed bidding as appropriate under § 2.2 or § 2.3, enter job order contracts, subject to the following conditions and limitations:

1. A job order contract may be awarded for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this subdivision, whichever occurs first.
2. Such contracts may be renewable for two (2) additional one-year terms at the option of HRPDC. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed the maximum threshold amount.

The maximum annual threshold amount shall be \$6 million.

Subject to the maximum threshold amount, no individual job order shall exceed \$500,000.

3. Unused amounts from one contract term may not be carried forward to any additional term.
4. Order splitting with the intent of keeping a job order under the maximum dollar amounts is prohibited.
5. HRPDC will not issue or use a job order under a job order contract solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in Virginia Code § 54.1-400. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term.

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 \$250,000. This sum is counted against the maximum annual threshold amount.
- D. 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, HRPDC will (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 HRPDC require awarding the contract.
- E. For contracts funded with federal awards, care must be taken to ensure that there is full and fair competition. Where procurement of individual “one-off” contracts is practical, this approach should be used.

(Ref.: Va. Code §§ 2.2-4303, 2.2-4303.1, 2.2-4303.2; 2 C.F.R. 200.319(b)(4).)

2.6 SOLE SOURCE PROCUREMENT

Upon a determination by the Procurement Officer that there is only one source practicably available for goods or services, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The Procurement Officer must document the basis for this determination. The determination shall be posted on the Department of General Services’ eVA website or on the HRPDC website on the day it is adopted. The determination and the notice must state what is being procured, the contractor selected, and the date on which the contract will be awarded.

All writings documenting that there is only one source practicably available for that which is to be procured should address the following points:

- A. Explain why this is the only product or service that can meet the needs of HRPDC.
- B. Explain why this vendor is the only practicably available source from which to obtain this product or service.
- C. Explain why the price is considered reasonable.
- D. Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price.

(Ref.: Va. Code § 2.2-4303(E); 2 C.F.R. § 200.320(c).)

2.7 EMERGENCY PROCUREMENT

In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. The Procurement Officer, subject to approval by the Executive Director, shall develop a memorandum adopting or rejecting the purchase and shall document the basis for the determination, what is being procured, the contractor selected, and the date on which the contract was or will be awarded. The determination shall be posted in the Purchasing Office and on the Virginia Department of General Services' central procurement website or other appropriate websites on the day the determination is adopted or as soon thereafter as practicable.

Emergency procurements for small purchases shall be based on a written determination by the Procurement Officer of the basis for the emergency, identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. If approved, the writing shall be posted in the Finance Department on the day approved or as soon thereafter as practicable.

(Ref.: Va. Code § 2.2-4303(F); 2 C.F.R. § 200.320(c).)

2.8 DESIGN-BUILD OR CONSTRUCTION MANAGEMENT CONTRACTS FOR HRPDC

- A. The competitive sealed bid process is the preferred method of construction procurement. However, HRPDC may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided HRPDC complies with the requirements of this section.

Prior to making a determination as to the use of design-build or construction management for a specific construction project, HRPDC shall employ or contract with a licensed architect or engineer with professional competence appropriate to the project who will advise HRPDC regarding the use of design-build or construction management for that project and who shall assist HRPDC with the preparation of the Request for Proposals and the evaluation of such proposals.

For a Request for Proposals for any design-build or construction management contract for a specific construction project, HRPDC will:

1. Use the written procedures described in this Manual for the procurement of nonprofessional services through competitive negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as HRPDC determines appropriate for that particular construction project. Procedures adopted for individual procurements shall include:

- a. Design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Commonwealth Department of General Services for state agencies.
- b. Construction management projects shall include selection procedures and required construction management contract terms consistent with the procedures as adopted by the Secretary of Administration of the Commonwealth.

2. Have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to HRPDC by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

B. The contract will be awarded to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the Request for Proposals.

C. For federal-aid highway construction contracts, the specific provisions of 23 C.F.R. Part 635 and the grant manual for any particular program should be consulted before proceeding under this section. Use of design-build or CM procedures may also impact required procedures under the National Environmental Policy Act (NEPA).

(Ref.: Va. Code §§ 2.2-4303(D), 2.2-4382; 23 C.F.R. Part 636.)

CHAPTER 3: GENERAL PROCUREMENT GUIDELINES

3.1 JOINT & COOPERATIVE PROCUREMENT

A. *Joint Procurement.* HRPDC may participate in, sponsor, conduct, or administer a joint procurement agreement 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, or other public organizations, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction.

B. *Cooperative Procurement.* In addition, HRPDC may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments even if it did not participate in the request for proposal or invitation for bid, if the request for proposal or invitation for bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies, except for:

1. Contracts for architectural or engineering services; or
2. Construction.

C. *Special Provisions for Federal Funds.* When using joint or cooperative procurement, the Procurement Officer should be mindful of whether the prime contract complies with the requirements of federal procurement, as set forth in the appropriate section of this Manual.

(Ref.: Va. Code § 2.2-4304.)

3.2 COMPETITIVE PROCUREMENT BY HRPDC ON STATE-AID PROJECTS

No procurement for the construction of any building or for an addition to or improvement of an existing building by HRPDC for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided in § 2.2. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform to this Manual.

(Ref.: Va. Code § 2.2-4305.)

3.3 RESPONSIBILITY

Responsibility. In competitive sealed bidding, a contract may only be awarded to a responsible bidder; that is, a bidder who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance.

Unless prequalification is required or a bidder has been debarred, the Procurement Officer shall make an initial determination of responsibility. If the Procurement Officer believes that a bidder is nonresponsible, he or she will document and determine that the bidder is nonresponsible and forward the recommendation to the Executive Director. If the Executive Director concurs that the lowest responsive bidder is nonresponsible, he or she shall follow the process set forth in this section.

Prior to the issuance of a final written determination of nonresponsibility, HRPDC will (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 after receipt of the notice.

Within ten (10) business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. HRPDC shall issue its written determination of responsibility based on all information in the possession of HRPDC, including any rebuttal information, within five (5) business days of the date HRPDC receives the rebuttal information. At the same time, HRPDC will notify, with return receipt requested, the bidder in writing of its determination.

Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) calendar days.

(Ref.: Va. Code §§ 2.2-4301, 2.2-4359; 2 C.F.R. § 200.318(h).)

3.4 MODIFICATION OF THE CONTRACT

- A. A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the full Commission. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.
- B. HRPDC may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.
- C. HRPDC may, in any contract, place greater restrictions upon any modification.
- D. Modifications made by HRPDC that do not comply with this section are voidable at the discretion of the Commission, and the unauthorized approval of a modification may not be the basis of a contractual claim under § 7.2.
- E. For contracts funded by federal awards, modifications resulting in an increase in price larger than the small purchase threshold for the work (see § 2.4) should be analyzed prior to amendment and may require agency review.

(Ref.: Va. Code § 2.2-4309; 2 C.F.R. §§ 200.309, 200.324(a), 200.325(b)(5).)

3.5 DISCRIMINATION PROHIBITED

- A. In the solicitation or awarding of contracts, HRPDC will not discriminate against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by law relating to discrimination in employment. As a recipient of federal funds, the HRPDC will comply fully with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, Executive Order 12898 on Environmental Justice, and related statutes and regulations in all programs and activities, including the procurement process. USDOT 1050.2A Assurances (appendices A & E) will be included in all HRPDC procurement contracts and service agreements. Whenever direct solicitations are made, HRPDC will include businesses selected from a list made available by the Department of Small business and Supplier Diversity.
- B. HRPDC will encourage the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions. The programs established will be in writing and will comply with the provisions of any enhancement or remedial measures authorized by the Governor or, where applicable, by the Executive Director, and will include specific plans to achieve any goals established therein.

In awarding a contract for services to a small, women-owned, or minority-owned business that is certified by the Department of Small business and Supplier Diversity, or to a business identified by HRPDC as a service disabled veteran-owned business where the

award is being made pursuant to an enhancement or remedial program, HRPDC will include in every such contract of more than \$10,000 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, and service disabled veteran-owned businesses.”

C. Permitted Contracts with Certain Religious Organizations; Purpose; Limitations

HRPDC conforms to procedures of state and federal law permit faith-based organizations the right to enter into contracts on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section. To this end, every request for proposals, invitations to bid, contracts, or purchase orders the following statement or a statement substantially similar:

“The Hampton Roads Planning District Commission does not discriminate against faith-based organizations in the procurement of goods and services.”

HRPDC, in procuring goods or services, or in making disbursements under contracts, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in this section or by other provisions of law, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

No faith-based organization contracting with HRPDC may discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, or refusal to participate in a religious practice or on the basis of race, age, color, gender, sexual orientation, gender identity, or national origin and such faith-based organizations shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided solely for the fulfilment of the contract, and not for any purpose related to worship or proselytizing or as otherwise prohibited by law.

(Ref.: Va. Code §§ 2.2-4310, 2.2-4343.1; 2 C.F.R. § 200.300(a).)

3.6 EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED; REQUIRED CONTRACT PROVISIONS

Every contract of over \$10,000 shall include the following provisions:

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

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating 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.

2. 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.
3. Notices, advertisement 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.

B. The contractor will include the provisions of the foregoing paragraphs 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(Ref.: Va. Code § 2.2-4311.)

3.7 IMMIGRATION REFORM AND CONTROL ACT OF 1986

Every contract shall provide that the contractor shall certify that it shall not employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

(Ref.: Va. Code § 2.2-4311.1.)

3.8 DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR; REQUIRED CONTRACT PROVISIONS

Every contract over \$10,000 shall include the following provisions:

- A. During the performance of this contract, the contractor agrees to:
 1. Provide a drug-free workplace for the contractor's employees;
 2. 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;
 3. 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
 4. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

B. 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 chapter, 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.

(Ref.: Va. Code § 2.2-4312.)

3.9 USE OF BRAND NAMES

Unless otherwise provided in the Invitation for Bids, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that HRPDC, 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.

(Ref.: Va. Code § 2.2-4315; 2 C.F.R. § 200.319(b)(6).)

3.10 PREQUALIFICATION

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure must be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. For federally-funded contracts, procurements requiring prequalification should be carried out as a single-two-stage procurement so that firms may prequalify during the solicitation period itself.

C. The application form used in the prequalification process must set out the criteria upon which the qualifications of prospective contractors will be evaluated. The application form will request from prospective contracts only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form will allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of this Manual.

At least thirty (30) days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, HRPDC shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by HRPDC denying prequalification under the provisions of this section is final and conclusive unless the contractor appeals the decision as provided herein.

D. HRPDC may deny prequalification to any construction contractor only if HRPDC finds at least one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. Evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations doing business in Virginia in the amount and type required by HRPDC establishes the financial ability of the contractor to perform the contract.
2. The contractor does not have appropriate experience to perform the project.
3. The contractor or any officer, director, or owner thereof has had judgments entered against him or her within the past ten (10) years for the breach of contracts for governmental or nongovernmental construction.
4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with any public body without good cause.
5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten (10) years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of the False Claims Act, the Virginia Governmental Frauds Act, or other similar laws relating to ethics and fraud in contracting.
6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body.
7. The contractor failed to provide to HRPDC in a timely manner any information requested by HRPDC relevant to subdivisions 1 through 6 of this section.

(Ref.: Va. Code § 2.2-4317; 2 C.F.R. § 200.319(e).)

3.11 CANCELLATION, REJECTION OF BIDS; WAIVER OF INFORMALITIES

A. An Invitation for Bids, a Request for Proposals, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. HRPDC shall not cancel or reject an Invitation to Bid, a Request for Proposals, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. HRPDC may waive informalities in bids. Submission after the date and time of closing is not a waivable informality.

(Ref.: Va. Code § 2.2-4319.)

3.12 WITHDRAWAL OF BID DUE TO ERROR

A. A bidder for any contract under competitive sealed bidding, other than a contract for construction or maintenance of public highways, may withdraw its bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw its bid from consideration only if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid that shall 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.

B. The following procedure for withdrawal of a bid shall be stated in the advertisement for bids for a public construction contract: "The bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice."

C. HRPDC will notify a bidder seeking withdrawal of a bid under this section in writing within five (5) business days of its decision regarding the request to withdraw the bid. If HRPDC denies the withdrawal of a bid under the provisions of this section, it will state in the notice the reasons for its decision and award the contract to the bidder at the bid price, provided the bidder is responsible and responsive. At the same time that the notice is provided, HRPDC will return all work papers and copies that were submitted by the 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 (5%).

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

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

G. If HRPDC denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

(Ref.: Va. Code § 3.3-4330.)

3.13 RETAINAGE ON CONSTRUCTION CONTRACTS

- A. In any public contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.
- B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

(Ref.: Va. Code § 2.2-4333.)

3.14 DEPOSIT OF CERTAIN RETAINED FUNDS ON CERTAIN CONTRACTS; PENALTY FOR FAILURE TO TIMELY COMPLETE

- A. When contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, HRPDC will include in the bid package an option for the contractor to use an escrow account procedure for using HRPDC's retainage funds by so indicating in the space provided in the bid package. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the bid package and/or Contract shall be executed and submitted to HRPDC within fifteen (15) calendar days after notification. If the escrow agreement form is not submitted within the 15-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.
- B. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The escrow agreement shall be substantially the same as that used by the Virginia Department of Transportation.
- C. This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.
- D. Any such public contract for construction with HRPDC, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

E. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

(Ref.: Va. Code § 2.2-4334.)

3.15 BIDDERS LIST

HRPDC's Bidders List is compiled with the current data from all vendors who have requested to receive solicitations for specific commodities. The Procurement Officer maintains a list of persons who have requested electronic notification of procurements for goods, services, insurance, and construction as required by HRPDC.

The bidders list is compiled from various sources including,

- Bidders Application Form
- Vendors previously used
- Vendor visits
- On-line research
- Department of Small Business & Supplier Diversity
- Vendors registrations lists available from eVA
- Catalogs, Periodicals, Trade Journals, Yellow Pages

3.16 CONFERENCES AND SITE VISITS

All pre-bid conferences and/or site visits will be mentioned in both the IFB/RFP and any advertisement. If attendance at such a conference or site visit is a prerequisite for bidding, the public notice period shall be long enough to provide adequate opportunity for potential bidders to obtain a copy of the IFB/RFP and attend. Mandatory pre-bid conferences scheduled during a period of suspended HRPDC business operations (e.g., by inclement weather) should be rescheduled by the Procurement Officer to a date and time which will permit proper notification to all potentially interested participants. Any changes in the requirements of the solicitation must be made by written addendum. The due date for receipt of bids should not be less than ten (10) days after the issue date of the addendum.

CHAPTER 4: PROMPT PAYMENT

4.1 DEFINITIONS

"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.

"Contractor" or "general contractor" means the entity that has a direct contract with HRPDC.

"Debtor" means any individual, business, or group having a delinquent debt or account with HRPDC that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) forty-five (45) days after receipt by HRPDC for approval of such invoices for the amount of payment due, or (b) forty-five (45) days after receipt by HRPDC, whichever is later.

"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

(Ref.: Va. Code § 2.2-4347.)

4.2 PROMPT PAYMENT OF INVOICES

For all HRPDC contracts, the payment date shall be either (i) the payment date established in the contract, or (ii) if not established in the contract, forty-five (45) days after the goods or services are received or the invoice is rendered, whichever is later. Progress payment arrangements are not prohibited by this section. Within twenty (20) days after receipt of an invoice for goods or services, HRPDC will notify the vendor regarding any defect or impropriety in the invoice that would prevent payment by the payment date. The interest rate for late payments shall be the lesser of one percent (1%) per month or the maximum rate allowed by law. The provisions of this section do not apply to payment provisions contained in public utility tariffs.

(Ref.: Va. Code § 2.2-4352; 2 C.F.R. § 200.344(c).)

4.3 PAYMENT CLAUSES TO BE INCLUDED IN CONTRACTS

Any contract awarded by HRPDC shall include:

- A. A payment clause that obligates the contractor on a construction contract, in the event that the contractor has not received payment from HRPDC for work performed by a subcontractor under such contract, 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. Such contractor shall not be liable for amounts otherwise reducible due to the subcontractor's noncompliance with the terms of the contract. However, in the event that the contractor withholds all or a part of the amount invoiced by the subcontractor under the terms of the contract, the contractor shall notify the subcontractor within fifty (50) days of the receipt of such invoice, in writing, of his 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 the party contracting with the contractor shall not be a condition precedent to payment to any lower-tier subcontractor, regardless of that contractor's receiving payment for amounts owed to that contractor. Any provision in a construction contract contrary to this section shall be unenforceable.

- B. A payment clause that obligates the contractor to take one of the two following actions within seven (7) days after receipt of amounts paid to the contractor by HRPDC for work performed by the subcontractor under that contract:
 - 1. Pay the subcontractor for the proportionate share of the total payment received from HRPDC attributable to the work performed by the subcontractor under that contract; or
 - 2. Notify HRPDC and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- C. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
- D. 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 (7) days following receipt by the contractor of payment from HRPDC for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision B.
- E. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent (1%) per month."
- F. Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- G. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of HRPDC. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

(Ref.: Va. Code § 2.2-4354.)

CHAPTER 5: CONTRACT SECURITY

5.1 BID BONDS

- A. Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 of Chapter 2 of Title 33.2 that are in excess of \$350,000 and are partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work

mentioned in the bid. The amount of the bid bond shall not exceed five percent (5%) of the amount of the bid.

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

(Ref.: 2 C.F.R. § 200.326(a).)

5.2 PERFORMANCE AND PAYMENT BONDS

A. Upon the award of any (i) nontransportation-related public construction contract exceeding \$500,000 to any prime contractor; (ii) transportation-related project authorized pursuant to Article 2 of Chapter 2 of Title 33.2 exceeding \$350,000 that is partially or wholly funded by the Commonwealth; or for (iii) federally-funded construction exceeding \$250,000, the contractor shall furnish to HRPDC the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.
2. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment of all such material furnished or labor supplied or performed in the prosecution of the work.

B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia and on the U.S. Treasury list of eligible sureties.

C. Such bonds shall be payable to HRPDC.

D. Each of the bonds shall be filed with the Procurement Officer.

E. Nothing in this section shall preclude HRPDC from requiring payment or performance bonds for construction contracts below the thresholds set forth in subsection A if so set forth in the terms and conditions of any contract, whether for construction or other goods and services.

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 contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

G. For indefinite delivery or quantity (term) contracts awarded, HRPDC may require the contractor awarded such contract to furnish to the local public body a performance bond

and a payment bond, each of which shall be equal to the dollar amount of the individual tasks identified in the underlying contract.

(Ref.: Va. Code §§ 2.2-4337, 2.2-4339; 2 C.F.R. § 200.326(b), (c).)

5.3 ALTERNATIVE FORMS OF SECURITY

- A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.
- B. If approved by HRPDC, 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 in the sole discretion of HRPDC and only upon a determination that the alternative form of security proffered affords protection to HRPDC equivalent to a corporate surety bond.

(Ref.: Va. Code § 2.2-4338.)

5.4 ACTIONS ON PAYMENT BONDS; WAIVER OF RIGHT TO SUE

- A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material 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) days after the day on which such claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to such action.
- B. Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond but who has no contractual relationship, express, or implied, with such contractor, may bring an action on the subcontractor's payment bond. 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 retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.
- C. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

(Ref.: Va. Code § 2.2-4341.)

CHAPTER 6: PUBLIC INSPECTION & CONFIDENTIALITY OF RECORDS

- A. Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen of the Commonwealth of Virginia or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.
- B. Cost estimates relating to a proposed procurement transaction prepared by or for HRPDC shall not be open to public inspection.
- C. 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 HRPDC decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.
- D. 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 the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.
- E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application shall not be subject to the Virginia Freedom of Information Act (Code of Virginia, § 2.2-3700 *et seq.*); however, the bidder or offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

(Ref.: Va. Code § 2.2-4342, Title 2.2, Chapter 37, Freedom of Information Act, Code of Virginia 1950 as amended.)

CHAPTER 7: EXEMPTIONS

7.1 EXEMPTIONS FROM THIS MANUAL

The provisions of this Manual shall not apply to:

- A. The purchase of insurance or electric utility services if purchased through an association of which HRPDC 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 or electric

utility services by use of competitive principles and provided that HRPDC 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, and documented such determination in writing. HRPDC is a member of the Virginia Risk-Sharing Association (VRSA), through which it purchases insurance under this provision.

- B. Incentive contracting which offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. 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.
- C. The purchase of goods or services that are produced or performed by:
 - 1. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or
 - 2. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped.
- D. The purchase of legal services or expert witnesses and other services associated with litigation or regulatory proceedings.
- E. If HRPDC so chooses, other procurements exempt from competition or entirely exempt from the provisions of the Public Procurement Act, as provided therein. However, HRPDC may elect to use the procedures provided in this Manual to procure goods or services that are otherwise exempt, in its sole discretion.
- F. The purchase of goods or services subject to a public utility tariff, to the extent the terms of such purpose are set forth in such tariff.

7.2 PROCUREMENT FOR FEDERALLY FUNDED PROJECTS

- A. When HRPDC is using federally-appropriated funds to which the provisions of 2 C.F.R. Part 200 or other federal requirements are applicable, such as the Davis-Bacon Act, Buy America provisions, or special provisions for Federal Highway Administration projects, such federal provisions shall control over the provisions of this Manual. HRPDC is fully committed to compliance with Title VI of the Civil Rights Act of 1964, as amended, in all federally-funded programs.
- B. While government-to-government sales are generally not subject to the provisions of the Virginia Public Procurement Act, they may be subject to federal requirements that require procurement for government-to-government sales. Regardless of the type of entity, HRPDC must determine whether the structure of the contract makes the vendor a “subrecipient” or a “contractor.” Considerations the vendor may be subrecipient if it:
 - 1. Determines who is eligible to receive what federal assistance,

2. Has its performance measured in relation to whether the objectives of a federal program are met,
3. Has responsibility for programmatic decision-making,
4. Is responsible for adherence to federal program requirements specified in the federal award, or
5. In accordance with the agreement, uses federal funds to carry out a program for a public purpose specified in an authorizing statute, as opposed to providing goods or services for the benefit of HRPDC.

This determination of whether the proper form of the agreement with the vendor is a subaward agreement or a contract subject to the provisions of this Manual should be made prior to administration of a procurement.

(Ref.: 2 C.F.R. § 200.331.)

CHAPTER 8: REMEDIES AND DEBARMENT

8.1 CONTRACTUAL DISPUTES

- A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
- B. Contractual claims shall be decided by the Procurement Officer within thirty (30) days of the written submission, and the claimant shall be informed of the decision in writing. The claimant may appeal the decision within ten (10) days of the receipt by filing a notice of appeal with Executive Director. The appeal shall be decided by the Executive Director, whose decision thereon shall be final unless timely appealed. If no written decision is made within ninety (90) days, the claim will be deemed denied. The sole remedy for a denial or deemed denial by the Executive Director is the right to institute immediate legal action as provided in the Public Procurement Act.
- C. All decisions or deemed decisions by HRPDC must be appealed to court within six months, or they are forever barred.

(Ref.: Va. Code § 2.2-4363.)

8.2 DEBARMENT; CAUSES

The causes for debarment of a bidder or prospective bidders shall include without limitation:

- A. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- B. Conviction under state and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility of an HRPDC contractor;
- C. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- D. Violation of a contract provision of a character which is regarded by HRPDC to be so serious as to justify debarment action. Such violations shall include without limitation:
 1. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract; or
 2. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; 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.
- E. Any other cause HRPDC determines to be so serious and compelling as to affect responsibility as an HRPDC contractor including debarment by another governmental entity for any cause similar to those described herein; and for violation of the ethical standards set forth in this Manual.
- F. In addition, a prospective bidder shall be treated as debarred whenever the Tax Commissioner so determines pursuant to § 58.1-1902.

(Ref.: Va. Code § 2.2-4321; 2 C.F.R. § 200, 214, Part 180.)

8.3 DEBARMENT; NOTICE AND HEARING

Contractors will be given at least ten (10) days' notice of the HRPDC Commission meeting during which the Commission will consider debarment. By giving notice at least ten (10) business days prior to the meeting of the Commission at which debarment will be considered, the contractor will be permitted to review the contract file and the documentation and determination forming the basis for the Executive Director's recommendation of debarment. The contractor may make written submissions in response. The contractor will be given an opportunity to be heard prior to the Commission's decision.

(Ref.: 2 C.F.R. Part 180.)

8.4 DEBARMENT; WRITTEN DECISION REQUIRED; FINALITY

HRPDC Commission shall issue a written decision to debar or suspend a contractor. The decision shall state the reasons for the action taken. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended contractor. The decision of the Commission shall be final and conclusive.

CHAPTER 9: ETHICS IN PUBLIC CONTRACTING

9.1 PURPOSE

The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the False Claims Act (31 U.S.C. § 3729), State and Local Government Conflict of Interests Act (Va. Code § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Va. Code § 18.2-498.1 et seq.), and Articles 2 (Va. Code § 18.2-438 et seq.), the Virginia Fraud Against Taxpayers Act (Va. Code § 8.01-216.1 et seq.) and Article 3 (Va. Code § 18.2-446 et seq.) of Chapter 10 of Title 18.2.

The provisions of this Chapter shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

9.2 DEFINITIONS

As used in this article:

"Committee on Foreign Investment in the United States" means an interagency committee (i) operated pursuant to § 721 of the Defense Production Act of 1950 (50 U.S.C. § 4501 et seq.), as amended, and as implemented by Executive Order 11858, as amended, and the regulations set forth in 31 C.F.R. § 800 and (ii) authorized to (a) review certain real estate transactions by foreign persons in order to determine the effect of such transactions on the national security of the United States and (b) respond to new and emerging threats and vulnerabilities in the context of foreign investments.

"Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making a profit.

"ByteDance Ltd." means the Chinese internet technology company founded by Zhang Yiming and Liang Rubo in 2012, and any successor company or entity owned by such company.

"Foreign adversary" means any foreign government or nongovernment person determined by the U.S. Secretary of Commerce to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons.

“Immediate Family” means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

“Official responsibility” means administrative or operating authority, whether intermediate or final, to initiate, approve, and disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

“Pecuniary interest arising from the procurement” means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (Va. Code § 2.2-3100 et seq.).

“Procurement Transaction” means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

“Public employee” shall mean any person employed by HRPDC, including elected officials or appointed members.

“Scrutinized company” means any company owned, controlled, or operated in whole or in part by a foreign adversary, other than a company for which the Committee on Foreign Investment in the United States has determined that there are no unresolved national security concerns regarding the transaction that created such ownership or permitted such operation.

“Tencent Holdings Ltd.” means the Chinese multinational technology and entertainment conglomerate and holding company headquartered in Shenzhen, China, and any successor company or entity owned by such company.

“TikTok” means the video-sharing application developed by ByteDance Ltd. that hosts user-submitted videos.

“WeChat” means the multi-purpose social media, messaging, and payment application developed by Tencent Holdings Ltd.

(Ref.: Va. Code §§ 2.2-4368, 2.2-5514.1.)

9.3 PROSCRIBED PARTICIPATION BY HRPDC EMPLOYEES IN PROCUREMENT TRANSACTIONS

HRPDC keeps a detailed Conflict of Interest policy applicable to transactions funded by federal sources, and observes the provisions of the Conflict of Interests Act and the Virginia Public Procurement Act related to public contracting. Except as may be specifically allowed by subdivisions (A)(2) and (A)(3) of § 2.2-3112 of the Code of Virginia, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of HRPDC when the employee knows that:

- A. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;

- B. 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;
- C. 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
- D. 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.

(Ref.: Va. Code § 2.2-4369.)

9.4 PROHIBITED WEBSITES AND APPLICATIONS

No employee or agent of HRPDC or person or entity contracting with HRPDC shall download or use any application, including TikTok or WeChat, or access any website developed by ByteDance Ltd. or Tencent Holdings Ltd. (i) on any government-issued device or government-owned or government-leased equipment, including mobile phones, desktop computers, laptop computers, tablets, or other devices capable of connecting to the Internet, or (ii) while connected to any wired or wireless Internet network owned, operated, or maintained by HRPDC.

(Ref.: Va. Code § 2.2-5514.1.)

9.5 DISCLOSURE OF SUBSEQUENT EMPLOYMENT

No public employee or former public 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 HRPDC unless the employee or former employee provides written notification to HRPDC, or a public official if designated by HRPDC, or both, prior to commencement of employment by that bidder, offeror or contractor.

(Ref.: Va. Code § 2.2-4370.)

9.6 PROHIBITION ON SOLICITATION OR ACCEPTANCE OF GIFTS; GIFTS BY BIDDERS, OFFERORS, CONTRACTOR, OR SUBCONTRACTOR PROHIBITED

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

B. No bidder, offeror, contractor or subcontractor shall confer upon any public 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.

(Ref.: Va. Code § 2.2-4371.)

9.7 KICKBACKS

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

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

C. No person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for any agreement not to compete on a public contract.

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

(Ref.: Va. Code § 2.2-4372.)

9.8 PARTICIPATION IN BID PREPARATION; LIMITATION ON SUBMITTING BID FOR SAME PROCUREMENT

No person who, for compensation, prepares an invitation for bids or request for proposals for or on behalf of HRPDC 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, HRPDC may permit such person to submit a bid or proposal for that procurement or any portion thereof if HRPDC determines that the exclusion of the person would limit the number of potential qualified bidder or offerors in a manner contrary to the best interests of HRPDC.

(Ref.: Va. Code § 2.2-4373.)

9.9 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 HRPDC shall be sold by or purchased from any person employed as an independent

contractor by HRPDC 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 Code of Virginia § 2.2-3101.

- B. No building materials, supplies or equipment for any building or structure constructed by or for HRPDC 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 HRPDC to furnish architectural or engineering services in which such person has a personal interest as defined in Code of Virginia § 2.2-3101.
- C. The provisions of subsection A and B shall not apply in cases of emergency.

(Ref.: Va. Code § 2.2-4374.)

9.10 CERTIFICATION OF COMPLIANCE REQUIRED; PENALTY FOR FALSE STATEMENTS

- A. HRPDC may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this chapter.
- B. Any HRPDC employee required to submit a certification as provided in subsection A who knowingly makes a false statement in the certification shall be punished as provided by law.

(Ref.: Va. Code § 2.2-4375.)

9.11 MISREPRESENTATIONS PROHIBITED

No HRPDC employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

(Ref.: Va. Code § 2.2-4376.)

9.12 PENALTY FOR VIOLATION

A willful violation of any provision of this chapter is a Class 1 misdemeanor. Upon conviction, any HRPDC employee, in addition to any other fine or penalty provided by law, shall forfeit his or her employment.

(Ref.: Va. Code § 2.2-4377.)

CHAPTER 10: DESIGNATING SURPLUS PROPERTY AND DISPOSAL

10.1 PURPOSE AND APPLICABILITY

These procedures are created for the purpose of identifying, documenting, and disposing of HRPDC's surplus property. Surplus property is defined as any materials, supplies, or equipment purchased by HRPDC for use by HRPDC officials and employees that is in excess of need, no longer in use, broken/obsolete/and/or, disabled in some way and not serving a functional purpose.

10.2 IDENTIFYING AND DESIGNATING SURPLUS

Department heads shall identify materials, supplies, or equipment no longer in use within their operations, whether because of need or service issues. Periodically, preferably on an annual basis, these retired items, once identified, shall be listed and described, including estimated values, and submitted to the Procurement Officer.

10.3 DOCUMENTING SURPLUS

HRPDC staff, in collaboration with the Procurement Officer, hold the responsibility of documenting and coordinating the disposal of surplus property. Items requested for surplus generally must be approved by the Executive Director before transfer or disposal. Disposal shall be administered by the department head or other Procurement Officer.

10.4 DISPOSING OF SURPLUS

Disposal of surplus property should progress as follows:

- A. First, consider transfer to another HRPDC member or government office may be able to use the property.
- B. Make available to the public through the posting to GovDeals.com or otherwise through public auction or sealed bidding, or public consignment as may be available.
- C. Non-functional property may be transferred/sold as-is for parts, or for recycling material.
- D. Or, otherwise disposed of properly by accepted disposal methods at a lawfully permitted waste disposal facility. Any usable parts should be kept or transferred to appropriate user; or sold as specified above.

10.5 PROHIBITED DISPOSAL

Surplus property CANNOT be given to an HRPDC employee, nor can it be bought by HRPDC employees, except through an open public auction.

10.6 RETAINED FEDERAL INTEREST IN PROPERTY ACQUIRED WITH FEDERAL FUNDS

Equipment, supplies, and intangible property that are acquired or improved with a federal award are held in trust by HRPDC as trustee for the beneficiaries of the project or program under which the property was acquired or improved. To implement this requirement, HRPDC may record liens or other instruments of title in order to document the federal interest. Further, HRPDC adopts the following guidelines for use of such property:

- A. HRPDC use the equipment or supplies for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
- B. HRPDC will not encumber the property (except in order to document the provisions of this Section) without approval of the federal awarding agency or pass-through entity.
- C. HRPDC will use equipment as long as needed for the program for which it is acquired, whether or not the project or program continues to be supported by the federal award. When no longer needed for the original program or project, the equipment may be used in other activities supported by the federal awarding agency, in the following order of priority:
 1. Activities under a federal award from the federal awarding agency which funded the original program or project, then
 2. Activities under federal awards from other federal awarding agencies.
- D. During the time that equipment is used on the project or program for which it was acquired, HRPDC will also make equipment available for use on other projects or programs currently or previously supported by the federal government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.
- E. HRPDC will not use equipment acquired with the federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by federal statute for as long as the federal government retains an interest in the equipment.
- F. When acquiring replacement equipment, HRPDC may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(Ref.: 2 C.F.R. § 200.310 et seq.)

ADOPTION & ATTESTATION

Adopted by the Hampton Roads Planning District Commission, by the following recorded vote on May 16, 2024, to be effective for all procurements initiated on or after May 16, 2024:

A tester:

Secretary