



PROCUREMENT POLICY

Originally Adopted April 1983

Revised: October 1, 2018

LOUDOUN WATER

PROCUREMENT POLICY

PREFACE

October 1, 2018 Edition/Revision

The purpose of the following policy is to ensure compliance with the Code of Virginia, §2.2-4300 et seq., the Virginia Public Procurement Act (VPPA), as amended, and to effectuate the purposes of those statutes with regard to procurement of goods, services, insurance and construction and to provide procedures for the disposal of surplus property. Loudoun County Sanitation Authority (DBA Loudoun Water) previously adopted through resolution in April 1983, the Purchasing Policies and Procedures. The Purchasing Policies and Procedures were revised in June 1999, November 2005, September 2006, July 14, 2011, September 8, 2011, October 1, 2013, February 26, 2014, July 1, 2017, and November 1, 2017.

The Loudoun Water Procurement Policy, October 1, 2018 revision, sets forth the policies to be followed by Loudoun Water employees, in fulfilling procurement responsibilities within their delegated limits. The Procurement Manager may from time to time issue directives or memoranda which are effective until a revision is made to the Policy.

This Policy was written for the use of Loudoun Water personnel in executing purchasing transactions. Comments, suggestions, and questions of interpretation of this policy should be addressed to the Loudoun Water Procurement Department.



Amy E. Bevins, CPPB
Procurement Manager

I. PURPOSE AND NEED

All procurement of goods and services, including but not limited to construction, shall be in accordance with the Code of Virginia §2.2-4300, the Virginia Public Procurement Act, as supplemented herein, unless otherwise provided.

II. GUIDING PRINCIPLES

A. Loudoun Water is committed to competitive procurement practices that are accountable to our ratepayers and the public, ethical, impartial, professional, transparent and fully in accordance with applicable law.

B. The Procurement Manager is responsible for the purchase, rent, lease or otherwise acquiring goods, professional and non-professional services, and construction services. In addition, the Procurement Manager is responsible for control and disposal of excess, obsolete, and salvageable materials and equipment.

The Procurement Manager shall establish procedures consistent with this policy and may designate other Loudoun Water staff to act on his/her behalf.

C. Except for small purchases (less than \$5,000), no employee has the authority to enter into any purchase agreement or contract except for the Procurement Manager or such other employee as may be designated by the General Manager.

III. DEFINITIONS

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

IV. PROCEDURES

A. Generally, competition shall be sought for all procurement with the following exceptions:

1. Purchase of goods or services other than professional services where the total value will not exceed \$5,000. Related purchases shall not be divided into separate actions to meet this threshold.
2. Sole Source – Purchase of goods or services where there is only one source practicably available. The requesting department shall provide a written determination supporting the sole source to the Procurement Manager. The General Manager must approve all sole sources above \$100,000 for specific vendor and specific application.

3. Emergency – Where emergency actions are required to protect public safety, public health, Loudoun Water employees or property or the environment, a contract can be awarded without competition upon a written emergency declaration, approved by the Procurement Manager. The General Manager must approve all emergency procurements above \$100,000. Competition should be sought if possible with emergency contracts even if typical procurement procedures cannot be fully followed.
- B.** In accordance with §2.2-4303 G. competitive sealed bids or competitive negotiation for single or term contracts is not required for (i) goods and services other than professional services and (ii) non transportation-related construction where the total value of the procurement will not exceed \$5,000. The following procedure shall be followed:
1. A minimum of one quote is required. When possible, multiple quotes should be obtained. Use of Small, Women-owned, and Minority-owned businesses is encouraged for all procurement actions whenever possible.
 2. Purchase is normally made using a Loudoun Water P-Card.
 3. Purchase may be made by any Loudoun Water employee granted purchasing authority by their department director.
 4. Basis of award shall be a determination that the stated need will be met and the price is fair and reasonable.
- C.** In accordance with §2.2-4303 G. competitive sealed bids or competitive negotiation for single or term contracts is not required for (i) goods and services other than professional services and (ii) non-transportation-related construction where the total value of the procurement will be greater than \$5,000 and not to exceed \$100,000. The following procedure shall be followed:
1. Purchases shall be initiated by the submission of a requisition to Procurement.
 2. An unsealed (informal) quote/proposal shall be solicited by Procurement from a minimum of three sources in response to a Request for Quote (RFQ) or Request for Proposal (RFP).
 3. Basis of award shall be lowest responsive and responsible bidder or best value as determined by criteria included in the RFQ or RFP.
- D.** In accordance with §2.2-4303 G. competitive negotiation is not required for purchase of professional services where the total value of the

procurement will not exceed \$100,000. The following procedure shall be followed:

1. Purchases shall be initiated by the submission of a requisition to Procurement.
 2. An unsealed (informal) quote/proposal shall be solicited by Procurement from a minimum of three sources in response to an RFQ or RFP.
 3. Basis of award shall be lowest responsive and responsible bidder or best value as determined by criteria included in the RFQ or RFP.
- E.** In accordance with §2.2-4308, design-build or construction management contracts shall be procured in accordance with [Appendix A](#) of this policy.
- F.** In accordance with §2.2-4310 B, Loudoun Water promotes the use of small businesses and businesses owned by women, minorities, and service disabled veterans in procurement transactions in accordance with [Appendix B](#) of this policy.
- G.** In accordance with §2.2-4316, comments concerning specifications or other provisions in IFB or RFP must be submitted and received in accordance with the procedures specified in the IFB or RFP for comment submittal.
- H.** In accordance with §2.2-4317, prequalification for construction contracts shall be in accordance with [Appendix C](#) of this policy.
- I.** In accordance with §2.2-4318, if the bid from the lowest responsible bidder exceeds available funds, negotiations may be entered with the apparent low bidder to obtain a contract price within available funds in accordance with [Appendix D](#) of this policy.
- J.** In accordance with §2.2-4321, contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time in accordance with [Appendix E](#) of this policy.
- K.** Bids for construction and other may be withdrawn in accordance with §2.2-4330 and [Appendix F](#) of this policy.
- L.** In accordance with §56-575.3:1, Loudoun Water may conduct a project under the Public-Private Education Facilities and Infrastructure Act in accordance with [Appendix G](#) of this policy.

V. APPROVALS

All purchases must be within the constraints of the annual budget approved by the Board and in accordance with Loudoun Water's budget guidelines. The following actions specifically require the approval of the Loudoun Water Board of Directors before executing unless executed under an approved emergency declaration:

- All construction and professional services contracts for \$100,000 or more and
- Any amendment to a construction or professional services contract which would cause a contract to be or exceed \$100,000, or which is for an amount greater than 25% of the existing contract price or \$50,000.

The Board of Directors, through a Resolution adopted on July 1, 2016 authorized the General Manager and Treasurer, or his/her designee, to sign on behalf of Loudoun Water contracts and other instruments that are in accordance with the general policies and directives of Loudoun Water.

VI. ETHICS

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

- A.** Ethics in Public Contracting (§2.2-4367)
- B.** Virginia Governmental Frauds Act (§18.2-498.1) and Articles 2 (§18.2-438) and 3 (§18.2-446) of Chapter 10 of Title 18.2.
- C.** State and Local Government Conflict of Interests Act (§2.2-3100)
- D.** Virginia Freedom of Information Act (§2.2-3700 et seq.)

VII. RESPONSIBILITY AND AUTHORITY

This policy was developed in accordance with Resolution approved by the Loudoun Water Board of Directors and the Code of Virginia. Any changes to this policy shall be made in writing and approved by the Loudoun Water Board of Directors.

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

SUMMARY OF PROCUREMENT POLICIES

Goods, Non-Professional Services, and Non-Transportation Related Construction	Procedure	Award Approval
Up to \$5,000	One (1) quote is required. P-Card is the preferred purchasing and payment option; however, a requisition may be submitted to Procurement. Term Contracts may be utilized.	Division
\$5,000 to \$100,000	Division submits approved requisition to Procurement with estimated budget amount. An unsealed (informal) quote/proposal shall be solicited by Procurement from three sources in response to a Request for Quote (RFQ) or Request for Proposal (RFP). Obtain approval of the Division Director.	Procurement
\$100,000+	Division submits approved requisition to Procurement with estimated budget amount. Procurement issues a formal solicitation.	Non-Construction Procurement Construction >\$100,000 Board
Professional Services	Procedure	Award Approval
<\$100,000	Division submits approved requisition to Procurement with estimated budget amount. An unsealed (informal) quote/proposal shall be solicited by Procurement from three sources in response to a Request for Quote (RFQ) or Request for Proposal (RFP). Obtain approval of the Division Director.	General Manager or Procurement Manager
>\$100,000	Competitive negotiations process with the issuance of an RFP.	Board
Emergency	Procedure	Award Approval
> \$5,000	Competition required, if possible. Written determination of the basis of the emergency and for the selection of the particular contractor shall be included in the contract file. Public posting is required on Loudoun Water website.	<\$100,000 Procurement Manager >\$100,000 General Manager
Sole Source	Procedure	Award Approval
> \$5,000	Upon written determination that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source. Procurement prepares written notice to be included in the contract file. Public posting is required on Loudoun Water website.	<\$100,000 Procurement Manager >\$100,000 General Manager

I. PURPOSE AND NEED

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

II. PROCEDURES

While the competitive sealed bid process remains the preferred method of construction contracting at Loudoun Water, Loudoun Water may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided Loudoun Water complies with the requirements of the relevant sections of the [Virginia Code Chapter 43.1, Construction Management and Design-Build Contracting, §2.2-4378 et seq.](#)

A. Definitions

The following definitions shall apply to these procedures:

1. "Architect" means a person who, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural design, acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture and whose competence has been attested to by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as an architect.
2. "Construction" means building, altering, repairing, improving or demolishing any structure, building or highway and any draining, dredging, excavation, grading or similar work upon real property.
3. "Complex project" means a construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes competitive sealed bidding not practical.
4. "Construction management contract" means a contract in which a person is retained by the Board in connection with a construction project to advise the Board on matters of constructability, cost, and schedule; to assist the Board as an independent resource with technical expertise; to coordinate and administer contracts for construction services for the

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Contracting



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benefit of the owner; and to provide, or be at-risk for, some portion of the construction services for the project.

5. "Construction manager" means a person who enters into a construction management contract with the Board.
6. "Construction services" means any service which facilitates construction or which is traditionally provided by a contractor as a part of his contract for construction, including, but not limited to, general condition provisions, site safety, and scheduling and coordination of trade contractors.
7. "Design-build contract" means a contract between Loudoun Water and another party in which the party contracting with Loudoun Water agrees to both design and build the structure, or other item specified in the contract.
8. "Guaranteed Maximum Price" ("GMP") means the maximum amount for which the Board will provide compensation for the project.
9. "Person" means any individual, sole proprietorship, partnership, association, limited liability company, joint venture, corporation or other legal entity.
10. "Professional engineer" means a person who, by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education, is qualified to engage in the practice of engineering and whose competence has been attested to by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designer and Landscape Architects through licensure as a professional engineer.
11. "Request for Proposals (RFP)" means the second step of a two-step, competitive negotiation process in which the Board issues a written request to those persons who have been pre-qualified by the Board to participate in a Construction Management or Design-Build procurement.
12. "Request for Qualifications (RFQ)" means the first step of a two-step, competitive negotiation process in which the Board publishes a written request for the purpose of inviting interested qualified persons to apply for pre-qualification.
13. "Board" means Loudoun Water Board of Directors.

14. "Statement of Qualifications" ("SOQ") means the documents submitted by an Offeror in response to an RFQ.

B. Proposal Payment

Under no circumstances will the Evaluation Committee, Loudoun Water, or its directors, officers, employees or agents be liable for or reimburse any costs incurred by any offeror, whether or not selected for negotiations or contract award, in developing proposals unless otherwise noted in the RFP. In the event a construction management or design-build procurement process is terminated for any reason, Loudoun Water shall not be responsible for any proposal payments, partial or in full, for any costs incurred by the offerors in developing proposals.

II. Construction Management Procurement Procedures

A. Prior to Determination to Use Construction Management Services

Prior to making a determination as to the use of construction management for a specific construction project, the Board shall take the following steps:

1. **Funding.** The Board must identify adequate funding, which may include competitive grants that are not yet awarded, for design, construction and completion of the entire project before initiating procurement of a construction management contract.
2. **Professional Advisor.** The Board shall employ or contract with a licensed architect or engineer with professional competence appropriate to the project (a "Professional Advisor") who shall advise the Board regarding the use of construction management for that project and who shall assist the Board with the preparation of the RFQs, RFPs, and the evaluation of responses to both submitted by interested offerors in response to the RFQ and RFP for that project. The licensed professional engineer or architect services may be provided under a professional services contract by a qualified person or firm.

B. Determination to Use Construction Management Services

1. The Board may proceed with a construction management procurement when it determines in advance, and sets forth in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination. Construction management contracts may be approved for use only on projects where (i) fast tracking of construction is needed to meet Loudoun

Water's program requirements, or (ii) value engineering and/or constructability analyses concurrent with design are required. The use of construction management contracts shall be limited to projects with a construction value that is estimated to be in excess of \$10,000,000, although with proper justification for small complex projects, the General Manager may grant a waiver of this requirement.

2. Prior to taking any further action, the Procurement Department shall request authority, in writing, and receive approval from the General Manager to use a construction management contract. The request shall justify and substantiate that a construction management contract meets the criteria found in paragraph II.B.1 of these Procedures. The request must also include the stipulation that the construction management contract will be initiated no later than the completion of the Schematic Phase of design, unless prohibited by authorization of funding restrictions. The request shall also include a written justification that competitive sealed bidding is either not practicable or not fiscally advantageous to the public. These justifications for the use of a construction management contract shall also be stated in the RFQ. Approval of exceptions to this policy may be granted by the General Manager, who is the approving authority for requests to use construction management procedures.

C. CM Selection Procedures

On projects approved for construction management, procurement of the contract shall be a two step process unless a one step process is approved pursuant to Subsection II.F. The following procedures shall be used in selecting a construction manager and awarding a contract.

1. The General Manager or his authorized designee shall appoint an Evaluation Committee consisting of at least three voting members, including the Professional Advisor. If an employee of Loudoun Water, the Professional Advisor may be a voting member. If not an employee of Loudoun Water, the Professional Advisor may be a voting or non-voting member of the Evaluation Committee, as determined by the General Manager.
2. The basis of the award of the contract shall be in accordance with Virginia Code § 2.2-4301(3)(b) and the criteria for the award shall be submitted to the General Manager, in advance, for approval. Cost shall be a critical component of the selection process.

3. Selection Phase One: Selection of Qualified Offerors (Prequalification)

On projects approved for construction management, Loudoun Water shall conduct a prequalification process as follows to determine which offerors are qualified to receive RFPs.

- a. The Evaluation Committee shall prepare an RFQ containing its facility requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate SOQs and other relevant information, including any unique capabilities or qualifications the will be required of the contractor. All offerors shall have a licensed Class "A" contractor registered in the Commonwealth of Virginia as part of the Project team.
- b. Public Notice of the RFQ shall be posted at least 30 days prior to the date set for receipt of qualification proposals. The posting shall be in accordance with the current standards for the posting of public bids in the Code of Virginia.
- c. The Evaluation Committee shall evaluate each SOQ submitted in response to the RFQ and any other relevant information and shall determine those deemed qualified with respect to the criteria established for the project.
- d. The SOQ evaluation process shall result in a short list of two to five offerors to receive the RFP. An offeror may be denied pre-qualification only upon those grounds specified in Virginia Code §2.2-4317, but the short list shall also be based upon the RFQ criteria.
- e. At least 30 days prior to the date established for the submission of proposals, Loudoun Water shall advise in writing each offeror that sought pre qualification whether that offeror has been prequalified. Prequalified offerors that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that an offeror is denied pre-qualification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.

4. Selection Phase Two: Selection of a Construction Manager

- a. The Evaluation Committee shall send an RFP to the offerors on the short list and request submission of formal proposals from them. The criteria for award shall be included in the RFP.

- b. Proposals as described in the RFP shall be submitted to the Evaluation Committee.
- c. The Evaluation Committee will evaluate and rank the proposals. After evaluation and ranking of the proposals, the Evaluation Committee shall:
 - i. Conduct negotiations with two or more offerors submitting the highest ranked proposals, or
 - ii. Should the Evaluation Committee determine, in writing and at its sole discretion, that only one offeror is fully qualified or that one offeror is clearly more qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.
- d. The Evaluation Committee shall make its recommendation on the selection of the construction manager to the Board based on its evaluation and negotiations. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the RFP.
- e. Loudoun Water will notify all offerors who submitted proposals which offeror was selected for the project. In the alternative, Loudoun Water may notify all offerors who submitted proposals of Loudoun Water's intent to award the contract to a particular offeror at any time after the construction manager has been selected. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
- f. Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.

D. Required Construction Manager Contract Terms

Any GMP construction management contract entered into by Loudoun Water will contain provisions requiring that (i) not more than 10% of the construction work (measured by cost of the work) shall be performed by the construction manager with its own forces and (ii) that the remaining 90% of the construction work shall be performed by subcontractors of the construction manager which the construction manager must procure by publicly advertised competitive sealed bidding to the maximum extent practicable. Documentation shall be placed in the file detailing the reasons any work is not procured by publicly advertised competitive sealed bidding.

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Contracting***



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The General Manager may modify these contractual requirements in whole or in part for projects where it would be fiscally advantageous to the public to increase the amount of construction work performed by the construction manager.

- E. If the project calls for a GMP, then the GMP shall be established at the completion of working drawings unless a waiver has been granted to this requirement by the General Manager.
- F. The Procurement Department may request from the General Manager approval to perform a one-step solicitation for a construction management project. If adequate justification is provided, in writing, the General Manager may approve the request.

III. Design-Build Procurement Procedures

A. Prior to Determination to Use Design-Build Services

Prior to making a determination as to the use of design-build for a specific construction project, the Board shall take the following steps:

1. Funding. The Board must identify adequate funding, which may include competitive grants that are not yet awarded, for design, construction and completion of the entire project before initiating procurement of a design-build contract.
2. Professional Advisor. The Board shall employ or contract with a licensed architect or engineer with professional competence appropriate to the project (a "Professional Advisor") who shall advise the Board regarding the use of design-build for that project and who shall assist the Board with the preparation of the RFQs, RFPs, and the evaluation of responses to both submitted by interested offerors in response to the RFQ and RFP for that project. The licensed professional engineer or architect services may be provided under a professional services contract by a qualified person or firm.

B. Determination to Use Design-Build Services

1. The Board may proceed with a design-build procurement when it determines in advance, and sets forth in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination. Additionally, design-build contracts may be approved for use only on projects where they can minimize the project risk for Loudoun Water as

the owner and reduce the delivery schedule by overlapping the design phase and construction phase of a project.

2. Prior to taking any further action, the Procurement Department shall request authority, in writing, and receive approval from the General Manager to use a design-build approach. The request shall justify and substantiate that design-build is more advantageous than a competitive sealed bid construction contract with a general contractor and shall indicate how Loudoun Water will benefit from using design-build. The request shall also include a written that competitive sealed bidding is either not practicable or not fiscally advantageous to the public. These justifications for the use of design-build shall be stated in the RFQ. Approval of exceptions to this policy may be granted by the General Manager, who is the approving authority for requests to use design-build procedures.

C. Design-Build Selection Procedures

On projects approved for design-build, procurement of the contract shall be a two step competitive negotiation process. The following procedures shall be used in selecting a design-builder and awarding a contract.

1. The General Manager or his authorized designee shall appoint an Evaluation Committee consisting of at least three voting members, including the Professional Advisor. If an employee of Loudoun Water, the Professional Advisor may be a voting member. If not an employee of Loudoun Water, the Professional Advisor may be a voting or non-voting member of the Evaluation Committee, as determined by the General Manager.
2. The basis of the award of the contract shall be in accordance with Virginia Code § 2.2-4301(3)(b) and the criteria for the award shall be submitted to the General Manager, in advance, for approval. Cost shall be a critical component of the selection process.
3. Selection Phase One: Selection of Qualified Offerors (Prequalification)
The two-phase selection process requires an RFQ and RFP. On projects approved for design-build, Loudoun Water shall conduct a prequalification process as follows to determine which offerors are qualified to submit proposals.
 - a. The Evaluation Committee shall prepare an RFQ containing its facility requirements, building and site criteria, site and survey data (if

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- available), the criteria to be used to evaluate SOQs and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All offerors shall have a licensed Class "A" contractor and an Architect or Engineer registered in the Commonwealth of Virginia as part of the Project Team.
- b. The RFQ shall be posted in accordance with the current standards for the posting of public bids in the Code of Virginia.
 - c. The Evaluation Committee shall evaluate each SOQ submitted in response to the RFQ and any other relevant information and shall determine which offerors are fully qualified and suitable for the project.
 - d. The SOQ evaluation shall result in a short list of two to five offerors to receive the RFP. An offeror may be denied prequalification only as specified under § 2.2-4317 of the Code of Virginia, but the short list shall also be based upon the RFQ criteria.
 - e. At least 30 days prior to the date established for the submission of proposals, the Evaluation Committee shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. Prequalified offerors that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.
4. Selection Phase Two: Selection of Design-Build Contractor
- a. The Evaluation Committee will send an RFP to the design-build offerors on the short list for the project and request formal proposals from them. The criteria for award shall be included in the RFP.
 - b. Sealed Technical Proposals as described in the RFP shall be submitted to the Evaluation Committee. Separately-sealed Cost Proposals shall be submitted to the Procurement Department's contracting officer for the project and shall be secured by and kept sealed until evaluation of the Technical Proposals and the design adjustments are completed.
 - c. The Evaluation Committee will evaluate the Technical Proposals based on the criteria contained in the RFP. It will inform each design-build offeror of any adjustments necessary to make its Technical Proposal fully comply with the requirements of the RFP. In addition, the

Evaluation Committee may require that offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the Evaluation Committee during design development.

- d. Based on the adjustments made to the Technical Proposals, an offeror may amend its Cost Proposal. In addition, an offeror may submit cost modifications to its original sealed Cost Proposal which are not based upon revisions to the Technical Proposals.
- e. The Evaluation Committee shall evaluate (and rank if technical rankings are considered as a criteria for award) the Technical Proposals. Should the Evaluation Committee 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 with that offeror after approval of the General Manager. Otherwise, the Evaluation Committee shall open the Cost Proposals and apply the criteria for awards as specified in the RFP and approved by the General Manager.
- f. The Evaluation Committee shall make its recommendation on the selection of a design-builder to the Board based on its evaluations of the Technical and Cost Proposals and all amendments thereto. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the RFP.
- g. Loudoun Water will notify all offerors who submitted proposals which offeror was selected for the project. In the alternative, Loudoun Water may notify all offerors who submitted proposals of its intent to award the contract to a particular offeror at any time after the design-build contractor has been selected. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
- h. Upon request, documentation of the process used for the final selection shall be made available to unsuccessful proposers.

IV. Conflict of Interest

Offerors shall require their proposed team members to identify potential conflicts of interest (real or perceived) relative to any construction management or design-build project. Offerors are notified that prior or existing contractual obligations

between a company and Loudoun Water relative to a specific project or Loudoun Water's construction management or design-build program may present a conflict of interest. If a potential conflict of interest is identified, the offeror shall present the pertinent information to the Procurement Department. Loudoun Water, in its sole discretion, will make a determination relative to potential organizational conflicts of interest. An offeror or proposed team member with a conflict of interest that cannot be mitigated in the sole discretion of Loudoun Water shall not be allowed to participate as a team member for a specific construction management or design-build project.

Failure to abide by Loudoun Water's determination in this matter may result in a proposal being declared non-responsive.

Conflicts of interest are described in state and federal law, and may include (but are not limited to) the following:

- a. An organization or individual hired by Loudoun Water to provide assistance in development of instructions to offerors or evaluation criteria for a project.
- b. An organization or individual hired by Loudoun Water to provide assistance in development of instructions to Offerors or evaluation criteria as part of the programmatic guidance or procurement documents for Loudoun Water's construction management or design-build program, and as a result has a unique competitive advantage relative to a project.
- c. An organization or individual with a present or former contract with Loudoun Water to prepare planning, environmental, engineering, or technical work product for the project, and has a potential competitive advantage because such work product is not available to all potential offerors in a timely manner prior to the procurement process.

V. Reporting Requirements

Loudoun Water shall report no later than November 1 of each year to the Director of the Department of General Services on all completed capital projects in excess of \$2 million, which report shall include at a minimum (i) the procurement method utilized, (ii) the project budget, (iii) the actual project cost, (iv) the expected timeline, (v) the actual completion time, and (vi) any post project issues.

I. PURPOSE AND NEED

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

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

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

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

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

As an integral part of the company-wide culture, Loudoun Water does not discriminate because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran or any other basis prohibited by law. Additionally, in procuring goods or services or in making disbursements, Loudoun Water shall not (i) discriminate against a faith-based organization on the basis of the organization’s religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based

organization, except, in accordance with Virginia Code §2.2-4343.1(F), that no funds shall be expended on contracts for sectarian worship, instruction, or proselytizing, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

II. PROCEDURES

The Procurement Department shall:

- A. Ensure SWaM businesses have the maximum practicable opportunity in procurement and contractual activities
- B. Apprise potential SWaM businesses of Loudoun Water’s procurement activities
- C. Identify SWaM businesses for Loudoun Water solicitations
- D. Promote the use of SWaM contractors through formal and informal training classes
- E. Include qualified businesses selected from the Loudoun Water centralized contractor/supplier database, the Department of Minority Business Enterprise www.dmb.state.va.us (Code of Virginia §2.2-4310), and/or the Virginia Minority Supplier Development Council <http://vmsdc.org/> consistent with this policy whenever soliciting quotes or qualifications.

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

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

III. RESPONSIBILITY AND AUTHORITY

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

I. PURPOSE AND NEED

Pursuant to Code of Virginia §2.2-4317, Loudoun Water (“Loudoun Water”) adopts the following as its prequalification process to prequalify prospective construction contractors to bid on selected projects:

- A. The General Manager or his designee may, in his discretion, when he believes it to be in the best interests of Loudoun Water, require prequalification of prospective contractors to bid on a specific construction project for Loudoun Water. The purpose of such prequalification shall be to limit prospective bidders for the specific construction project to contractors who demonstrate themselves to be qualified to construct the project. When the prequalification process is used for a project, only contractors who have complied with the prequalification process and have been determined qualified will be eligible to submit bids for the project.
- B. In conducting prequalification of potential contractors, the General Manager or his designee shall follow this prequalification process and the requirements of Code of Virginia §2.2-4317.
- C. The General Manager or his designee shall develop the appropriate documentation for potential contractors to apply for prequalification. The General Manager or his designee may prescribe in such documentation specific mandatory requirements contractors must meet in order to prequalify for specific projects. The documentation used in Loudoun Water’s prequalification process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The documentation shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The documentation shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor as part of its prequalification application shall be considered a trade secret or proprietary information subject to the provisions of subsection F of Code of Virginia §2.2-4342.
- D. In all instances in which Loudoun Water requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submissions shall be sufficiently in advance of the date set for the submission of bids or proposals for such construction so as to allow the prequalification process to be accomplished.
- E. At least thirty (30) days prior to the date established for submission of bids or proposals under the procurement for which the prequalification applies, Loudoun Water 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.

BOARD ADOPTED POLICY

Procurement Policy – Appendix C
Prequalification Process for Construction Projects



Adopted: June 13, 2013

Revised: July 1, 2016

- F. A decision by the General Manager or his designee under this prequalification process shall be final and conclusive unless the contractor appeals the decision as provided in Code of Virginia §2.2-4357.
- G. Loudoun Water may deny prequalification to any Contractor only if Loudoun Water finds one of the following:
 - a. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
 - b. The contractor does not have appropriate experience to perform the construction project in question;
 - c. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten (10) years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;
 - d. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If Loudoun Water has not contracted with a particular contractor in any prior construction contracts, Loudoun Water may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. Loudoun Water may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
 - e. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including but not limited to, a violation of (i) Article 6 of the Virginia Public Procurement Act (§ 2.2-4367, et seq.), (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1 or (iv) any substantially similar law of the United States or another state;
 - f. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

BOARD ADOPTED POLICY

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Prequalification Process for Construction Projects



Adopted: June 13, 2013

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- g. The contractor failed to provide to Loudoun Water in a timely manner any information requested by Loudoun Water relevant to subdivisions a through f of this subsection.
- H. In determining if a contractor has the “appropriate experience” under Subsection 8.b. to be prequalified, Loudoun Water may consider and use specific minimum experience requirements established by the General Manager or his designee for the specific project. Loudoun Water may also consider the contractor’s past performance on the projects that provide its past experience to determine if the projects provide the appropriate experience required.
- I. To the extent any provision in this process is deemed to be inconsistent with Code of Virginia §2.2-4317, whether due to amendment of that statutory provision or otherwise, then the provisions of §2.2-4317 shall control as to such inconsistency.
- J. The provisions of this process and its implementation are intended to be severable, and if any provision is deemed invalid, this shall not be deemed to affect the validity of other provisions.
- K. This prequalification process does not apply to any procurement done under the Public-Private Education Facilities & Infrastructure Act of 2002 (“the PPEA”), Code of Virginia §56-575.1 et seq., and is in no way intended to limit Loudoun Water’s discretion in the way it selects contractors under the PPEA.
- L. A determination that a contractor is prequalified does not necessarily preclude Loudoun Water from determining that such contractor is not responsible following bid opening. Among other things, a change in circumstances, change in information, or different criteria allowed to be considered for prequalification versus responsibility, may lead to a different result. For example, a prequalified contractor that becomes debarred between prequalification and bid opening, or a contractor who is subsequently discovered not to have been totally candid in answering its prequalification questionnaire, might be deemed non-responsible at the bid opening.
- M. Prequalification of a contractor to bid on a specific project does not prequalify that contractor to bid on a different project. Prequalification of a contractor to bid on a specific project does not mean that the contractor will necessarily be deemed to be a responsible bidder for a different project.
- N. Neither this prequalification process nor its implementation by Loudoun Water shall be deemed to create any contract right in any prospective contractor or to give any prospective contractor any right beyond that conferred by Code of Virginia §2.2-4317. All prospective contractors shall be responsible for their own expenses in applying for prequalification, and Loudoun Water shall have no liability for any such expense.

I. PURPOSE AND NEED

If the bid from the lowest responsible bidder exceeds available funds, Loudoun Water may, but shall not be required to, negotiate with the apparent low bidder to obtain a contract price within available funds in accordance with this policy.

II. PROCEDURES

Unless all bids are cancelled or rejected, Loudoun Water reserves the right to negotiate with the lowest responsible, responsible bidder to obtain a contract price within the funds available. The term “available funds” shall mean those funds which were budgeted by the requesting Loudoun Water division for the contract prior to the issuance of the written Invitation for Bids (IFB). The procurement record in the Procurement Department shall include documentation of the “available funds” prior to the issuance of the IFB, but Loudoun Water shall not be required to make public its cost estimates for the project.

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

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

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

III. RESPONSIBILITY AND AUTHORITY

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

I. PURPOSE AND NEED

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

II. PROCEDURES

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

- A. Conviction of, or civil judgment establishing a contractor’s:
 - 1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract; or
 - 2. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or
 - 3. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the prospective contractor; or
 - 4. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, partner, or agent of the vendor in a contract or purchase order awarded by Loudoun Water; or
 - 5. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals; or

- 6. Conviction of any officer, director, owner, partner, or agent of the vendor of any criminal offense involving public contracting.

- B. Violation of the terms of a government contract or subcontract so serious as to justify debarment, such as (but not limited to) willful failure to perform in accordance with the terms of one (1) or more contracts, or a history of failure to perform, or of unsatisfactory performance of one (1) or more contracts.

- C. Debarment by a federal, state or local government, a public authority, or other agency or entity subject to public procurement laws and requirements.

- D. Any other cause of so serious or compelling a nature that it affects the present responsibility of a government contractor or subcontractor.

If a determination is made that a prospective contractor should be debarred, the Procurement Manager shall submit a written report notifying the prospective contractor of the proposed debarment, including the length of the debarment, disclosing the basis for the proposed debarment, and allowing the prospective contractor an opportunity to inspect any documents relating to the proposed debarment within five (5) business days after receipt of notification and to submit rebuttal information within ten (10) business days after receipt of notification. Rebuttal evidence may include any information or argument that the prospective contractor deems relevant to the proposed debarment or basis therefore, including without limitation any specific information that raises a genuine dispute as to a fact that is material to the Procurement Manager’s findings or conclusions. For the purposes of this Appendix E, notices shall be deemed received on the date on which it is hand delivered to the prospective contractor. Courtesy copies may be transmitted by e-mail or other means, but the official notice shall be the one hand delivered.

The Procurement Manager shall revise the report as appropriate within ten (10) business days after receipt of rebuttal information (if any) and submit the revised report to the prospective contractor and the General Manager.

The General Manager shall submit the revised report and his recommended action to the Loudoun Water attorney for review. The Procurement Manager shall notify the prospective contractor of the General Manager’s final determination including, if debarred, the basis of the debarment and the term of the debarment. The General Manager’s determination shall be final unless the prospective contractor takes legal action as provided for in the Virginia Code

Section 2.2-4364 within ten (10) business days of its notification of the General Manager’s decision.

III. RESPONSIBILITY AND AUTHORITY

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

I. PURPOSE AND NEED

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

II. PROCEDURES

For bids on construction projects, withdrawal procedures shall be in accordance with §2.2-4330 where the bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original papers with such notice.

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

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

III. RESPONSIBILITY AND AUTHORITY

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

I. INTRODUCTION

The Loudoun County Sanitation Authority DBA Loudoun Water has determined to adopt these guidelines under the authority of the Public-Private Education Facilities and Infrastructure Act of 2002 (the “PPEA”) Va. Code § 56-575.1 et. seq., as amended. PPEA grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use, if the public entities determine there is a need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The PPEA defines “responsible public entity” to include any public entity that “has the power to develop or operate the applicable qualifying project.” Loudoun Water is a responsible public entity under the PPEA. Individually negotiated interim or comprehensive agreements will define the respective rights and obligations of Loudoun Water and the private entity.

In order for a project to come under the PPEA, it must meet the definition of a “qualifying project.” The PPEA contains a broad definition of qualifying projects that includes utility infrastructure and any building or facility that meets a public purpose and is developed or operated by or for a public entity. PPEA establishes requirements that Loudoun Water must adhere to when reviewing and approving proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of the interim or comprehensive agreement detailing the relationship between Loudoun Water and the private entity.

Loudoun Water retains all rights granted to it under PPEA, as amended from time to time.

For any project for which Loudoun Water considers for development under the PPEA, it shall engage the services of qualified professionals, which may include, as applicable to the project, an architect, professional engineer, or certified public accountant, not otherwise employed by Loudoun Water, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any proposal by a private entity for approval of a qualifying project, unless Loudoun Water’s Board of Directors determines that such analysis of the proposal shall be performed by employees of Loudoun Water.

Loudoun Water retains all rights granted to it under PPEA, as amended from time to time. If these Guidelines are not amended prior to the effective date of the new law, these Guidelines shall be interpreted in a manner to conform to the new law.

Capitalized terms used in these Guidelines shall have the meanings given in § 56-575.1 of the PPEA.

II. GENERAL PROVISIONS

A. Proposal Submission

A proposal may be either solicited by Loudoun Water or delivered by a private entity on an unsolicited basis. Proposers may be required to follow a two-part proposal submission process, consisting of an initial conceptual phase and a detailed phase.

The initial phase of the proposal should contain the information specified in Section IV, paragraph A; however, the completeness of any initial proposal will be determined by Loudoun Water in its sole discretion.

The detailed proposal should contain the specified deliverables set out in Section IV, paragraph B.

The PPEA allows private entities to include innovative financing methods in their proposal; this can include the imposition of user fees or service payments, or connection fee credits. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations.

Proposals should be prepared simply and economically, providing a concise description of the proposer’s capabilities to complete the proposed qualifying project and the benefits to be derived from the project by Loudoun Water. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by Loudoun Water of the financial feasibility of the proposed project. Loudoun Water may require additional information from the proposer in order to provide clarification to the submission, so long as the same information is required from all proposers.

B. Affected Jurisdictions

Any private entity requesting approval from or submitting a conceptual or detailed proposal to Loudoun Water must provide Loudoun County, Virginia and any other Affected Jurisdiction with a copy of the private entity's request or proposal. Affected Jurisdictions shall have 60 days from the receipt of the request or proposal to submit written comments to Loudoun Water and to

indicate whether the proposed qualifying project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by Loudoun Water, and no negative inference shall be drawn from the absence of comment by an Affected Jurisdiction.

C. Proposal Review Fee

Loudoun Water shall seek the advice of appropriate internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity. No fee may be charged by Loudoun Water to process, review or evaluate any solicited proposal submitted under the PPEA. Loudoun Water may charge a \$2,500 fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal or competing unsolicited proposal submitted under the PPEA, including a fee to cover the costs of outside attorneys, consultants, and financial advisors. If the direct costs of review are less than the review fee charged, Loudoun Water shall refund the excess fee to the proposer. “Direct costs” may include (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the out-of-pocket costs of attorneys, consultants and financial advisors. Loudoun Water may, at its discretion, waive its review fees.

D. Freedom of Information Act

1. General Applicability

Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act (“FOIA”) Va. Code §2.2-3700 et. seq. except that subdivision 11 of § 2.2-3705.6 exempts certain documents from disclosure. FOIA exemptions, however, are discretionary, and Loudoun Water may elect to release some or all of the documents, except to the extent the documents are:

- a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.);
- b. Financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or

c. Other information submitted by the private entity, where, if the records were made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, Loudoun Water must comply with the provisions of such order.

2. Protection from mandatory disclosure for certain documents submitted by a private entity.

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to Loudoun Water at the time the documents are submitted, designating with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of three classes of records listed in Section II.D.1.

Upon receipt of the written request for protection of documents, Loudoun Water shall determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of Loudoun Water or the private entity in accordance with Section II.D.1. Loudoun Water shall make a written determination of the nature and scope of the protection to be afforded by Loudoun Water under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity shall be given an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in Section II.D.1.

Once a written determination has been made by Loudoun Water, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of Loudoun Water or any affected jurisdiction to which such documents are provided.

If a private entity fails to designate trade secrets, financial records, or other confidential and proprietary information from disclosure, such information, records or documents shall be subject to disclosure under FOIA.

3. Protection from mandatory disclosure for certain documents produced by Loudoun Water.

Loudoun Water may withhold from disclosure memoranda, staff evaluations, or other records prepared by Loudoun Water, its staff, outside advisors or consultants exclusively for the evaluation and negotiation of proposals where (i) if such records were made public prior to or after the execution of an interim or comprehensive agreement, the financial interest or bargaining position of Loudoun Water would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by Loudoun Water.

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

4. Loudoun Water may not withhold from public access:
 - a. Procurement records other than those subject to the written determination of Loudoun Water;
 - b. Information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into the Loudoun Water and the private entity;
 - c. Information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or
 - d. Information concerning the performance of any private entity developing or operating a qualifying project.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then Loudoun Water must comply with such order.

E. Use of Public Funds

Virginia constitutional and statutory requirements, as they apply to appropriation and expenditure of public funds, apply to any interim or comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or

obligation of public funds shall be incorporated into planning for any PPEA project or projects.

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of Loudoun Water to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act, Va. Code §2.2-4300 through §2.2-4377, as amended, (the "VPPA") is only as set forth in the PPEA.

III. PROPOSALS

A. Solicited Proposals

Loudoun Water may issue Requests for Proposals (RFPs), inviting proposals from private entities to develop or operate qualifying projects. Loudoun Water may use a two-part proposal process consisting of an initial conceptual phase and a detailed phase. An RFP may invite proposers to submit proposals on individual projects identified by Loudoun Water. In such a case Loudoun Water should set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA.

The RFP should specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The RFP should be posted in such public areas as are normally used for posting of Loudoun Water's notices, including Loudoun Water's website www.loudounwater.org. Notices should also be published in a newspaper or other publications of general circulation and advertised in Virginia's statewide e-procurement application ("eVa") located at <http://www.eva.state.va.us>. In addition, solicited proposals should be posted pursuant to Section III.C. The RFP should also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by Loudoun Water.

B. Unsolicited Proposals

The PPEA permits public entities to receive, evaluate and select for negotiations unsolicited proposals from private entities to develop or operate a qualifying project.

Loudoun Water may publicize its needs and may encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal.

1. Decision to Accept and Consider Unsolicited Proposal:
Notice

- a. Upon receipt of any unsolicited proposal or group of proposals and payment of any required, unwaived fee by the proposer or proposers, Loudoun Water will promptly determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration. If Loudoun Water determines not to accept the proposal and proceed to publication and conceptual-phase consideration, it should return the proposal, together with all fees and accompanying documentation, to the proposer.
- b. If Loudoun Water chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall post a notice in a public area regularly used by Loudoun Water for posting of public notices for a period of not less than 45 days. Loudoun Water shall also publish the same notice for a period of not less than 45 days in one or more newspapers or periodicals of general circulation in the jurisdiction to notify any parties that may be interested in submitting competing proposals. In addition, the notice should also be advertised in Virginia's statewide e-procurement application ("eVa") located at <http://www.eva.state.va.us>. The notice shall state that Loudoun Water (i) has accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the procedures adopted by Loudoun Water and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. Copies of unsolicited proposals shall be available

upon request, subject to the provisions of FOIA and § 56-575.4 G of the PPEA.

To ensure that sufficient information is available upon which to base the development of a serious competing proposal, representatives of Loudoun Water familiar with the unsolicited proposal and these Guidelines shall be made available to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. Loudoun Water shall conduct an analysis of the information pertaining to the proposal included in the notice to ensure that such information sufficiently encourages competing proposals. Further, Loudoun Water shall establish criteria, including key decision points and approvals to ensure proper consideration of the extent of competition from available private entities prior to selection.

C. Posting Requirements

1. All conceptual proposals, whether solicited or unsolicited, shall be posted by Loudoun Water within 10 working days after acceptance of such proposals on Loudoun Water’s website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on eVA, in Loudoun Water’s discretion.
2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by Loudoun Water so as to provide maximum notice to the public of the opportunity to inspect the proposals.
3. In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of Virginia Code Section 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by Loudoun Water and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

D. Initial Review by Loudoun Water at the Conceptual Stage

1. While only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation, and which are provided in an appropriate format, should be considered by Loudoun Water for further review at the conceptual stage, Loudoun Water may determine to evaluate any proposal it chooses.

Formatting suggestions for proposals at the conceptual stage are found at Section IV.A.

2. With respect to unsolicited proposals, Loudoun Water should determine at this initial stage of review whether it will proceed using:
 - a. Standard procurement procedures consistent with the VPPA; or
 - b. These Guidelines and a process consistent with procurement of other than professional services through “competitive negotiation” as that term is defined and described in the VPPA. Loudoun Water may proceed using such Guidelines only if it makes a written determination that doing so is likely to be advantageous to Loudoun Water and the public based upon either (i) the probable scope, complexity or priority of need; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt, or equity investments proposed by the private entity; or (iii) the increase in funding, dedicated revenue or other economic benefit that would otherwise not be available.
3. After reviewing the conceptual phase proposals, Loudoun Water may determine:
 - (i) not to proceed further with any proposal,
 - (ii) to proceed to the detailed phase of review with one proposal,
 - (iii) to proceed to the detailed phase with multiple proposals, or
 - (iv) to request modifications or amendments to any proposals, or
 - (v) to proceed directly to an interim or comprehensive agreement.

In the event that more than one proposal will be considered in the detailed phase of review, Loudoun Water will consider whether the unsuccessful proposer(s) should be reimbursed for costs incurred in the detailed phase of review, and such reasonable costs may be assessed to the successful proposer in the comprehensive agreement.

4. Discussions between Loudoun Water and private entities about the need for infrastructure improvements shall not limit the ability of Loudoun Water to later determine to use standard procurement procedures to meet its infrastructure needs. Loudoun Water retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement.

IV. PROPOSAL PREPARATION AND SUBMISSION

A. Format for Submissions at Conceptual Stage

Loudoun Water may consider and approve an initial proposal with whatever information it deems to be informative and consistent with its needs. It may also require that proposals at the conceptual stage contain information in the following areas: (i) qualifications and experience, (ii) project characteristics, (iii) project financing, (iv) anticipated public support or opposition, or both, (v) project benefit and compatibility and (vi) any additional information as Loudoun Water may reasonably request to comply with the requirements of the PPEA. Suggestions for formatting information to be included in proposals at this stage include:

1. Qualification and Experience

- a.** Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
- b.** Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engages of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties.
- c.** Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
- d.** Provide current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty (20) percent or greater.
- e.** Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Va. Code §2.2-3100 through §2.2-3131, as amended (the "VSLGICIA").

2. Project Characteristics

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by Loudoun Water.
- c. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
- e. Identify the projected positive social, economic and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- g. Propose allocation of risk and liability for work completed beyond the agreements completion date, and assurances for timely completion of the project.
- h. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on Loudoun Water’s use of the project.
- i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- j. List any other assumptions relied on for the project to be successful.
- k. List any other contingencies that must occur for the project to be successful.

3. Project Financing

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan should

- include appropriate staffing levels and associated costs.
Include support due diligence studies, analyses, or reports.
- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
 - d. Identify the proposed risk factors and methods for dealing with these factors.
 - e. Identify any local, state or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment.
 - f. Identify the amounts and the terms and conditions for any revenue sources.
 - g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.
- 4. Project Benefit and Compatibility**
- a. Identify who will benefit from the project, how they will benefit and how the project will benefit the overall community, region, or state.
 - b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
 - c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
 - d. Describe the anticipated significant benefits to the community, region or state including anticipated benefits to the economic condition of Loudoun Water and whether the project is critical to attracting or maintaining competitive industries and businesses to Loudoun Water or the surrounding region .
 - e. Describe compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget or other government spending plan.

B. Format for Submissions at Detailed Stage

If Loudoun Water decides to proceed to the detailed phase of review with one or more proposals, the following information should be provided by the private entity, unless waived by Loudoun Water:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
3. A statement and strategy setting out the plans for securing all necessary property;
4. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties;
5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses;
6. A detailed discussion of assumptions about user fees or rates, and usage of the projects;
7. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications;
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;
9. Explanation of how the proposed project would impact local development plans of each Affected Jurisdiction;
10. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, any known conflicts of interest or other disabilities that may impact Loudoun Water’s consideration of the proposal, including the identification of any persons known to the proposer who would be

obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the VSLGCIA;

11. Description of the types of sureties proposed to insure completion of the project;
12. Additional material and information as Loudoun Water may reasonably request.

V. PROPOSAL EVALUATION AND SELECTION CRITERIA

The following are some of the factors that may be considered in the evaluation and selection of PPEA proposals.

A. Qualifications and Experience

Factors to be considered in either phase of Loudoun Water’s review to determine whether the proposer possesses the requisite qualifications and experience should include:

1. Experience with similar projects;
2. Demonstration of ability to perform work;
3. Leadership structure;
4. Project managers’ experience;
5. Management approach;
6. Financial condition; and
7. Project ownership.

B. Project Characteristics

Factors to be considered in determining the project characteristics include:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology, technical feasibility;
5. Conformity to laws, regulations, and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and

9. Maintenance of the project.

C. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include:

1. Cost and cost benefit to Loudoun Water;
2. Financing and the impact on the debt or debt burden of Loudoun Water;
3. Financial plan including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries of studies
4. Opportunity costs assessment;
5. Estimated cost;
6. Life-cycle cost analysis;
7. The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable; and
8. Such other items as Loudoun Water deems appropriate.

In the event that any project is financed through the issuance of obligations that are deemed to be tax-supported debt of Loudoun Water, or if financing such a project may impact Loudoun Water's debt rating or financial position, Loudoun Water may select its own finance team, source, and financing vehicle.

D. Project Benefit and Compatibility

Factors to be considered in determining the proposed projects compatibility with the appropriate local or regional comprehensive or development plans include:

1. Community benefits;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities; and
5. Compatibility with local, regional, and state economic development efforts.

E. Other Factors.

Other factors that may be considered by Loudoun Water in the evaluation and selection of PPEA proposals include:

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review and selection;
5. Local citizen and government comments;
6. Benefits to the public, including financial and non financial;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents; and
9. Other criteria that Loudoun Water deems appropriate.

After review and evaluation of the proposals, selection shall be made of two or more proposers deemed to be fully qualified and best suited to the needs and objectives of Loudoun Water among those submitting proposals, on the basis of the factors involved in the notice, including price if so stated in the notice. Negotiations shall then be conducted with each of the proposers so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each proposer so selected, the public body shall select the proposer which, in its opinion, has made the best proposal for the interests of Loudoun Water, and shall award the contract to that proposer. Should Loudoun Water determine in its sole discretion that only one proposer is fully qualified, or that one proposer is clearly more highly qualified than the others under consideration, it must document this in writing and a contract may be negotiated and awarded to that proposer.

VI. INTERIM AND COMPREHENSIVE AGREEMENTS

Prior to developing or operating the qualifying project, the private entity shall enter into a comprehensive agreement with Loudoun Water. Prior to entering into a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. Loudoun Water may designate a working group to be responsible for negotiating the interim or comprehensive agreement. Each interim or comprehensive agreement shall define the

rights and obligations of Loudoun Water and the selected proposer with regard to the project.

A. Interim Agreement Terms

The scope of an interim agreement may include, but is not limited to:

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

B. Comprehensive Agreement Terms

The terms of the comprehensive agreement shall include but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;
2. The review of plans and specifications for the qualifying project by Loudoun Water;
3. The rights of Loudoun Water to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the private entity by Loudoun Water to ensure proper maintenance;
6. The terms under which the private entity will reimburse Loudoun Water for services provided;
7. The policy and procedures that will govern the rights and responsibilities of Loudoun Water and the private entity in the

- event that the comprehensive agreement is terminated or there is a material default by the private entity including the conditions governing assumption of the duties and responsibilities of the private entity by Loudoun Water and the transfer or purchase of property or other interests of the private entity by Loudoun Water;
8. The terms under which the private entity will file appropriate financial statements on a periodic basis;
 9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project;
 - a. A copy of any service contract shall be filed with Loudoun Water.
 - b. A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.
 - c. Classifications according to reasonable categories for assessment of user fees may be made.
 10. The terms and conditions under which Loudoun Water may contribute resources, if any, for the qualifying project;
 11. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
 12. The terms and conditions under which Loudoun Water will be required to pay money to the private entity and the amount of any such payments for the project;
 13. Other requirements of the PPEA or other applicable law; and
 14. Such other terms and conditions as Loudoun Water may deem appropriate.

Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the comprehensive agreement by written amendment. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

C. Public Hearings, Notices, and Posting Requirements

1. At some point during the proposal review process, but at least 30 days prior to entering into an interim or comprehensive agreement, Loudoun Water shall hold a public hearing on the proposals that have been received.
2. Once the negotiation phase for the development of an interim or comprehensive agreement is complete and a decision to award has been made by Loudoun Water, Loudoun Water shall post the proposed agreement on Loudoun Water’s website or by publication, in a newspaper of general circulation in the area in which the contract work is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on eVA, in the discretion of Loudoun Water.
3. Once an interim agreement or comprehensive agreement has been entered into, Loudoun Water shall make procurement records available for public inspection, upon request.
 - a. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have an adverse effect on the financial interest or bargaining position of Loudoun Water or the private entity in accordance with Section II.D.
 - b. Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code § 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

To the extent access to procurement records are compelled or protected by a court order, then Loudoun Water must comply with such order.

4. Loudoun Water shall electronically file a copy of all interim and comprehensive agreements and any supporting documents with the Auditor of Public Accounts. Such agreements and supporting documents should be provided within 30 days of the execution of the interim or comprehensive agreement.

VII. GOVERNING PROVISION

In the event of any conflict between these Guidelines and the PPEA, the terms of the PPEA shall control.