FAIRFAX COUNTY ECONOMIC DEVELOPMENT AUTHORITY PROCUREMENT GUIDELINE

The Fairfax County Economic Development Authority ("FCEDA") is an independent political subdivision of the Commonwealth of Virginia, as created by the General Assembly's enactment of Chapter 643 of the Acts of Assembly of 1964, as amended. The FCEDA operates under the direction and supervision of the FCEDA Commissioners (the "Board"). The purchasing function and contract administration of FCEDA procurement are regulated by common law, federal and state statutes, and local resolutions. The operation of FCEDA procurement is conducted primarily under the Virginia Public Procurement Act and according to provisions contained in this Guideline.

The purpose of this Guideline is to set forth a general outline of the purchasing procedures that pertain to the FCEDA's procurement of goods and services. Members of the public are advised to additionally review the Virginia Public Procurement Act contained in Section 2.2-4300, et. seq. of the Virginia Code for more detailed information.

ARTICLE I

GENERAL PROVISIONS

Section 1. Purpose

Pursuant to the Virginia Public Procurement Act (hereinafter the "VPPA"), all FCEDA contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction shall be awarded after competitive sealed bidding or competitive negotiation, as provided for in this Guideline or by law, unless other methods are permitted by this Guideline or by law.

The purpose of the VPPA is to enunciate the public policies pertaining to governmental procurement from nongovernmental sources, to include governmental procurement which may or may not result in monetary consideration for either party. The VPPA applies whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.

Section 2. Definitions

A. Best value: as predetermined in the solicitation, means the overall combination of quality, price and various elements of required services that in total are optimal relative to a public body's needs.

B. Competitive sealed bidding: a formal method of procurement where the FCEDA selects the lowest responsive and responsible bidder. It includes the issuance of an Invitation to Bid, public notice, a public bid opening and evaluation based on the requirements set forth in the invitation. Upon implementation of methods prescribed by the FCEDA Vice President of Operations for conducting transactions electronically, an Invitation to Bid may be issued directly to vendors electronically, or bids in response thereto may be submitted electronically if specifically authorized in the Invitation to Bid.

C. Competitive negotiation: a formal method of procurement where the FCEDA selects the top-rated offeror. It includes the issuance of a Request for Proposal, public notice, evaluation based on criteria set forth in the Request for Proposal and negotiation with the top-rated offerors. Upon implementation of methods prescribed by the FCEDA Vice President of Operations for conducting transactions electronically, a Request for Proposal may be issued directly to vendors electronically, or proposals in response thereto may be submitted electronically if specifically authorized in the Request for Proposal.

D. Construction: the building, altering, repairing, improving or demolishing any structure, building, road, drainage, or sanitary facility, and any draining, dredging, excavation, grading or similar work upon real property.

E. Faith-based organizations: shall mean a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

F. Firm: any individual, partnership, corporation, association or other legal entity permitted by law to practice in the Commonwealth of Virginia; or any other individual, firm, partnership, corporation, association or other legal entity qualified to perform professional services.

G. Goods: all material, equipment, supplies, printing and automated data processing hardware and software.

H. Immediate family: a spouse, child, parent, brother, sister, and any other person living in the same household as the employee.

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

J. Nonprofessional services: any services not specifically defined as a professional service within the meaning of paragraph O of this Section.

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

L. Pecuniary interest arising from procurement: a personal interest in a contract, as defined by the State and Local Government Conflict of Interests Act.

M. Potential bidder or offeror: a person who, at the time the FCEDA negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform the contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

N. Procurement transaction: all functions that pertain to the obtaining of any goods, services or construction, including descriptions of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

O. Professional services: means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, dentistry, geology, land surveying, landscape architecture, law, medicine, optometry, pharmacy, professional engineering, or licensed investment advisor, financial advisor, or insurance broker procured by the Department of the Treasury.

P. Public body: any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this Guideline.

Q. Public contract: an agreement between a public body and a nongovernmental source.

R. Public or county employee: any person employed by the County of Fairfax or the FCEDA, including elected officials or appointed members of governing bodies.

S. Responsible bidder or offeror: a person, firm or other organization who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance and who has been prequalified, if required.

T. Responsive bidder: a person, firm or other organization who has submitted a bid or proposal which conforms in all material respects to the Invitation to Bid.

U. Services: any work performed by an independent contractor where the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

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

W. Information technology goods and services: means communications, telecommunications, automated data processing, applications, databases, data networks, management information systems, and other related goods and services.

X. Forced or indentured child labor: means all work or service (i) exacted from any person younger than 18 years of age under the menace of any penalty for the nonperformance of such work or service and for which such person does not offer himself voluntarily or (ii) performed by any person younger than 18 years of age pursuant to a contract the enforcement of which can be accomplished by process or penalties.

ARTICLE II

PURCHASING POLICIES

Section 1. General

A. Unless otherwise authorized by law or this Guideline, all FCEDA contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance or construction shall be awarded after competitive sealed bidding or competitive negotiation.

B. Professional services: The eleven areas of professional services as defined by the VPPA, and in Article I, Section 2 O of this Guideline, shall be procured by competitive negotiation in accordance with Sections 2.2-4302.2 and 2.2-4303 of the Code of Virginia, except as otherwise provided in this Guideline. As part of this competitive negotiation process, the FCEDA President will appoint a Selection Advisory Committee to review and evaluate proposals submitted by prospective offerors. Small purchase procedures may be used for the procurement of single or term contracts for professional services as long as the aggregate or sum of all phases is not expected to exceed the sum of $80,000.

C. Nonprofessional services: As provided for in this Guideline, the FCEDA may procure non-professional services, such as advertising services and public relations services, through competitive negotiation in accordance with Sections 2.2-4302.2 and 2.2-4303 of the Code of Virginia, except as otherwise provided in this Guideline. Cost may be requested in the Request for Proposal and considered as a factor in the process. Small purchase procedures may be used for the procurement of single or term contracts for non-professional services as long as the aggregate or sum of all phases is not expected to exceed the sum of $200,000.

D. Goods, nonprofessional services or insurance may be procured by competitive sealed bidding or competitive negotiation. Upon a written determination made in advance by

the governing body that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services. The basis for this determination shall be documented in writing.

E. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances: (1) on a fixed price design-build basis or construction management basis as provided in Virginia Code Chapter 43.1 (§ 2.2-4378 et seq.); or (2) for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made in advance by the public body and set 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.

F. Paper and paper products: these goods shall be procured through the Fairfax County Department of Procurement and Material Management using the Fairfax County procurement policies.

G. Joint and cooperative procurement: The FCEDA may participate in, sponsor, conduct, or administer a joint procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, the U.S. General Services Administration or the Metropolitan Washington Council of Governments, for the purpose of combining the requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services or construction. In addition, the FCEDA may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies, except for (1) contracts for architectural or engineering services; or (2) construction (except that construction of (a) the installation of artificial turf and track surfaces, (b) stream restoration, (c) storm water management practices, including all associated and necessary construction and maintenance, (d) the installation of playground equipment, including all associated and necessary construction and maintenance, or (e) roofing, maintenance, repair, restoration, and component replacement of existing facilities that do not involve modification to the structure, which are permitted under this provision). Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

H. Best value concepts may be considered when procuring goods, insurance and nonprofessional services, but not for construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

I. Certification of sufficient funds: no order for delivery on a contract for supplies, materials, equipment, professional or consultant services or contractual services for the FCEDA shall be awarded until the FCEDA President has certified that the balance in the County appropriation is sufficient to defray the cost of the order.

J. The FCEDA may enter into contracts with faith-based organizations on the same basis as any other nongovernmental source subject to the requirements of the Virginia Public Procurement Act, 2.2-4343.1.

ARTICLE III

CONTRACT FORMATION AND ADMINISTRATION

Section 1. Methods of Procurement

A. Competitive Sealed Bidding

Competitive sealed bidding is a method of contractor selection in which the contract is awarded to the lowest responsive and responsible bidder.

Competitive sealed bidding includes the following:

1. Issuance of Invitation to Bid. The FCEDA will issue a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the FCEDA has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any required qualifications of potential contractors. No Invitation to Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. When it is impractical to initially prepare a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers, to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Notice. The FCEDA shall give public notice of the Invitation to Bid at least (10) ten days prior to the date set for receipt of bids by posting on the Department of General Services central electronic procurement website or other appropriate websites, such as the FCEDA website, or publication in a newspaper of general circulation, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity.

3. Receipt of Bids. Bids are due on or before the date and time specified in the notice. Bids will not be accepted after the date and time specified in the notice and any received after such date and time shall not be considered for contract award.

   The FCEDA uses a Bonfire portal for accepting and evaluating bids digitally. Bidders must register in the Bonfire procurement portal in order to submit a bid in response to an Invitation to Bid. Submitting bids via the Bonfire portal is mandatory. Bids can be submitted at https://fairfaxcountyeda.bonfirehub.com/opportunities. The FCEDA will not accept bids submitted by paper, telephone, facsimile (“FAX”) transmission, or electronic mail (e-mail) in response to an Invitation to Bid. Assistance is available at Support@GoBonfire.com.

The FCEDA strongly encourages bidders to submit bids well in advance of the bid submission deadline. A bid submission is not considered successful unless all necessary files have been uploaded and the 'Submit and Finalize' step has been completed. Bidders are responsible for the consequences of any failure to plan ahead in the submission of their bid. Changes and addenda to solicitations may occur prior to bid closing and bidders should check the listing frequently.

4. Public opening and announcement of bids. The FCEDA will publicly open and announce all bids received. The exact time and location of the public opening will be specified in the Invitation to Bid.

5. Evaluation of bids. The FCEDA will evaluate the bids based upon the requirements set forth in the Invitation to Bid, which may include special qualifications of potential contractors, lifecycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose, which are helpful in determining acceptability. At the same time that the FCEDA evaluates the bids, it will also determine whether the apparent low bidder is responsible. If the FCEDA determines that the low bidder is responsible, it may proceed with an award to that bidder. In determining the responsibility of a bidder, the following criteria should be considered:

   a. The ability, capability and skill of the bidder to perform the contract or provide the services required;

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

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

   d. The quality of performance on previous contracts with the FCEDA or services;

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

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

   g. The quality, availability and adaptability of the goods or services to the particular use required;

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

i. The number and scope of the conditions attached to the bid;

j. Whether the bidder is in arrears to the FCEDA or Fairfax County on a debt or contract or is in default on a surety to the FCEDA or Fairfax County;

k. Such other information as may be secured by the FCEDA President having a bearing on the decision to award the contract. If an apparent low bidder appears to be nonresponsible, the FCEDA Procurement Manager will proceed as set forth in Guideline Article IV, Section 4.

6. Contract award. Award of contract to the lowest responsive and responsible bidder(s). The FCEDA may make multiple awards to fulfill its needs when so specified in the Invitation to Bid. The successful bidder will be notified in writing of the contract award and will be sent a contract prepared by FCEDA and its legal counsel for execution.

7. Negotiation. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds and the Invitation for Bid so provides, the FCEDA may negotiate with the apparent low bidder to obtain a contract price within available funds. The FCEDA's process for negotiation shall include:

a. The requesting department shall provide the Vice President of Operations with a written determination that the apparent low bid exceeds available funds, which shall be confirmed in writing by the Vice President of Operations or his designee. The requesting department shall also provide the Vice President of Operations with a suggested reduction in scope or other suggested bid modification(s) to obtain a contract price within available funds.

b. The Vice President of Operations or designee shall advise the lowest responsible bidder in writing that the proposed purchase exceeds available funds and shall suggest a reduction in scope or other bid modification(s) for the proposed purchase and invite the lowest responsible bidder to amend its bid based upon the proposed reduction in scope or other bid modification(s).

c. The FCEDA shall begin informal discussions with the low bidder, and repetitive informal discussions for the purposes of obtaining a contract within available funds shall be permissible.

d. The low bidder shall submit an addendum to its bid, which addendum shall include the change in scope for the proposed purchase, the reduction in price and the new contract value. If the addendum is acceptable to the FCEDA, it may award a contract within funds available to the lowest responsible bidder based upon the bid and addendum.

e. The FCEDA reserves the right to infuse additional funds during or subsequent to negotiations to meet a negotiated price.

f. If the FCEDA and the lowest responsible bidder cannot negotiate a contract within available funds, all bids shall be rejected.

B. Competitive Negotiation

Competitive negotiation is a method of contractor selection that may be used for the procurement of goods and both non-professional and professional services, and construction, where authorized, with the goal of looking at the best combination of quality and price.

Competitive negotiation includes the following:

1. Request for Proposal. The FCEDA will issue a Request for Proposal (hereinafter "RFP"), indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the RFP or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No RFP for construction shall condition a successful offeror's eligibility on having a specified experience modification factor.

2. Notice. The FCEDA must give public notice of the RFP at least (10) ten days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement web site or other appropriate web sites such as the FCEDA web site and may also include publication in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors. Posting on the Department of General Services' central electronic procurement website shall be required if FCEDA elects not to publish notice of the RFP in a newspaper of general circulation in the area in which the contract is to be performed. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity.

3. Receipt of proposals. Proposals are due on or before the date and time specified in the notice. Proposals will not be accepted after the date and time specified in the notice and any received after such date and time shall not be considered for contract award. The names of the offerors and the amounts of their

offers/proposals are not announced at the time of receipt or opening as bids are in the competitive sealed bidding process.

The FCEDA uses a Bonfire portal for accepting and evaluating proposals digitally. Offerors must register in the Bonfire procurement portal in order to submit a response to an RFP. Submitting proposals via the Bonfire portal is mandatory. Proposals can be submitted at https://fairfaxcountyeda.bonfirehub.com/opportunities. The FCEDA will not accept proposals submitted by paper, telephone, facsimile ("FAX") transmission, or electronic mail (e-mail) in response to an RFP. Assistance is available at Support@GoBonfire.com.

The FCEDA strongly encourages offerors to submit proposals well in advance of the proposal submission deadline. A proposal submission is not considered successful unless all necessary files have been uploaded and the 'Submit and Finalize' step has been completed. Offerors are responsible for the consequences of any failure to plan ahead in the submission of their proposal. Changes and addenda to solicitations may occur prior to bid closing and offerors should check the listing frequently.

4. Selection Advisory Committee. When selecting a firm for professional or nonprofessional services where the compensation for such services is estimated to exceed $100,000, the FCEDA President will designate a Selection Advisory Committee (hereinafter "SAC") to review and evaluate the proposals submitted in response to the RFP.

5. Procurement of Professional Services.

   a. The SAC will evaluate the proposals on the basis of the statement of qualifications, and other information provided in the proposal. The SAC shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. Offerors shall be informed of any ranking criteria that will be used in addition to the review of the professional competence of the offeror. The RFP shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the SAC may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with Virginia Code § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the SAC shall not request or require offerors to list any

exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132, until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the RFP and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

b. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the FCEDA can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the public body, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

c. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the RFP, the SAC may award contracts to more than one offeror.

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

6. Procurement of Nonprofessional Services.

a. The SAC will evaluate the proposals on the basis of the statement of qualifications, and other information provided in the proposal. Based on such review, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the RFP, including price if so stated in the RFP.

b. The SAC shall then conduct negotiations with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the RFP in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the SAC shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror.

c. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.

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

7. Contract Award. The successful offeror will be notified in writing of the contract award and will be sent a contract prepared by the FCEDA and its legal counsel for execution. The FCEDA may make multiple awards to fulfill its needs when so specified in the Request for Proposal.

C. Sole Source

Upon a written determination by the FCEDA that there is only one source practicably available to supply that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. This method of contracting may be used when dealing with a unique good or service. A written record documenting the basis for this determination shall be included in the appropriate contract file. In addition, a notice shall be posted on the Department of General Services' central electronic procurement web site or other appropriate web sites such as the FCEDA web site on the day the FCEDA awards or announces its decision to award the contract, whichever occurs first.

D. Emergency Situation

In case of an emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement must be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the appropriate contract file. In addition, FCEDA shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement web site or other appropriate web sites, such as the FCEDA website, on the day the FCEDA awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

E. Small Purchase Procedures

Any FCEDA contract for the purchase or lease of the following will not require competitive sealed bids or competitive negotiation for single or term contracts for: (1) goods and services other than professional services, if the aggregate or the sum of all phases is not expected to exceed $200,000; (2) non-transportation-related construction, if

the aggregate or the sum of all phases is not expected to exceed $300,000; and (3) transportation-related construction, if the aggregate or sum of all phases is not expected to exceed $25,000. These procedures also allow for procurement of single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed $80,000. To the extent that these procedures apply to construction, they do not waive, and shall not be deemed to waive, compliance with the Uniform State Building Code.

However, to provide for competition wherever practicable, even for small purchases, the FCEDA requires the following steps and procedures be followed.

The FCEDA will issue a Request for Quotes to bidders or offerors it reasonably believes are capable of performing the contract. Purchases that are expected to exceed $25,000 shall require the written informal solicitation of at least four bidders or offerors.

Selection may be made without public announcement; however, the FCEDA whenever possible, may utilize available lists and other known sources. Quotes will be analyzed by ranking and selection of the offeror that has submitted the most favorable quote. A Selection Advisory Committee is not used. The FCEDA's goal is to obtain the best combination of price and quality. *See also* The Public Procurement Guideline, Article III, Section 3 for other procedures to be observed with small purchases.

Purchases that are expected to be less than $25,000 shall not require competition.

Section 2. Exceptions to Requirement for Competitive Procurement

A. The FCEDA may enter into contracts, without competition, for goods or services which are performed by persons or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or which are performed or produced by nonprofit employment services which offer transitional or supported employment services serving persons with disabilities.

B. The FCEDA may enter into contracts without competition for: legal services or expert witnesses and other services associated with litigation or regulatory proceedings.

C. The FCEDA may enter into contracts without competitive sealed bidding or competitive negotiation for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided that such association has procured the insurance or utility services by use of competitive principles, and provided that the FCEDA has made an advance written determination, after reasonable notice to the public, that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public.

Section 3. Contract Administration and General Purchasing Provisions

A. Competitive Solicitation

1. Subject to other provisions of this Guideline, the FCEDA Procurement Manager may solicit bids from all prospective vendors who are registered on Fairfax County vendor lists and/or who have registered on the Commonwealth of Virginia's eVA central vendor registration system for all solicitations using competitive sealed bidding or competitive negotiation. These vendor lists may also be used for small purchase transactions. Other potential vendors may be solicited at the discretion of the FCEDA Procurement Manager.

2. The FCEDA shall encourage open and competitive contracting by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation or small purchase methods of procurement. In submitting a bid, proposal or quote, each offeror shall, by virtue of submitting a bid, proposal or quote, guarantee that the offeror has not been party with other offerors to an agreement to offer a fixed or uniform price. Violation of this implied guarantee shall render void the offer of such offerors. Any disclosure to or acquisition by a competitive offeror, in advance of the opening of the bids, proposals or quotes, of the terms and conditions of the bid, proposal or quote submitted by another offeror shall render the entire proceedings void and shall require a termination of such procurement and a restart to the procurement process for that good, service or construction.

3. All formal bids and proposals shall contain the following provisions:

   a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge, no FCEDA official or employee having official responsibility for the procurement transaction, or a member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in disqualification or a determination of ineligibility to participate in the procurement in process, suspension or debarment from future procurements, or rescission of the contract made.

   b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph (a) has been or will be received in connection with a bid, proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the FCEDA President, as a prerequisite to payment pursuant to the contract, or at any other time, may

require the contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.

B. Use of Brand Names

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

C. Prequalification of Bidders, Offerors and Contractors

1. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals may be limited to prequalified contractors. The FCEDA hereby establishes the following written prequalification procedure.

2. Any prequalification of prospective contractors for construction by the FCEDA shall be pursuant to a prequalification process outlined below:

   a. The application form used for such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. Such form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this provision shall be considered a trade secret or proprietary information subject to the provisions of subsection D of §2.2-4342 of the VPPA, and Article III, Section 3.P of this Guideline.

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

   c. At least thirty (30) days prior to the date set for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the FCEDA shall advise in writing each contractor which submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification,

the written notification shall state the reasons for such denial of prequalification and the factual basis of such reasons.

d. The FCEDA's decision denying prequalification shall be final and conclusive unless the contractor appeals the decision as provided in §2.2-4357 of the VPPA.

e. The FCEDA may deny prequalification to any contractor only if the FCEDA finds one of the following:

i. The contractor does not have sufficient financial ability to perform the contract. If a bond is required to ensure the performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the U.S. Treasury list of acceptable surety corporations in the amount and type required by the FCEDA shall be sufficient to establish the financial ability of such contractor to perform the contract.

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

iii. The contractor, or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contractors for governmental or nongovernmental construction, including, but not limited to, design-build or construction management.

iv. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the FCEDA without good cause. If the FCEDA has not contracted with a contractor in any prior construction projects, the FCEDA 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. In all instances, the facts underlying the substantial noncompliance must be documented in writing in the prior construction file, and such information relating thereto given to the contractor at that time, with the opportunity to respond.

v. The contractor or any officer, director, owner, project manager, procurement manager or chief financial officer of the contractor 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 (1) Article 6 (§ 2.2-4367 et seq.) of the VPPA, (2) the Virginia Governmental Frauds Act (Virginia Code § 18.2-498.1 et seq.), (3) Chapter 4.2 (Virginia

Code § 59.1-68.6 et seq.) of Title 59.1, or (4) any substantially similar law of the United States or another state.

vi. 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.

vii. The contractor failed to provide to the FCEDA in a timely manner any information requested by the FCEDA relevant to the above six subsections.

3. If a public body has a prequalification ordinance that provides for minority participation in municipal construction projects, that the public body may also deny prequalification based on minority participation criteria, provided, however, that nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.

D. Withdrawal of Bids Due to Error

1. A bidder for a public construction project, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith. Furthermore, the mistake must be a clerical mistake as opposed to a judgment mistake, and actually due to an unintentional arithmetic error or unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which can be shown by objective evidence drawn from the inspection of original work papers, documents and materials used in the preparation of the bid. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.
One of the following procedures for withdrawal of bids must be selected by the FCEDA and stated in the advertisement for bids:

a. The bidder shall give notice in writing to the FCEDA of his or her claim or right to withdraw his or her bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

b. Where FCEDA opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the FCEDA or designated official his original work papers, documents and materials used in the preparation of the bid at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail. The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed.

c. Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of VPPA subsection F of § 2.2-4342.

2. A bidder for a contract other than for public construction may request withdrawal of his or her bid under the following circumstances:

a. Requests for withdrawal of bids prior to opening of such bids shall be transmitted in writing to the FCEDA or processed automatically on the Bonfire system, if applicable to the procurement.

b. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted in writing to the FCEDA, accompanied by full documentation to support the request. If the request is based on a claim of error, the documentation must show the basis for the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the FCEDA may exercise its right of collection.

3. If a bid is withdrawn, the lowest remaining bid shall be deemed to be the low bid.

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

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

6. The FCEDA shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. At the same time that

the notice is provided, the public body shall return all work papers and copies thereof that have been submitted by the bidder. If the FCEDA denies the withdrawal of a bid under this section, it shall state in such notice the reasons for its decision and award the contract to that bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the public body shall return all work papers and copies thereof that have been submitted by the bidder.

E. Debarment from Contracting

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance, or construction, for specified periods of time. The debarment procedures are set forth under Article IV, Section 2 of this Guideline.

F. Bid or Proposal Specification

The FCEDA shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract. This may take the form of a pre-bid conference or a pre-proposal conference, or submittal of written questions and/or comments and with written responses to be provided by FCEDA.

G. Contract Award Process

1. The FCEDA has the authority to cancel an Invitation to Bid, Request for Proposal or any other solicitation, and to cancel or reject any and all bids or proposals The reasons for the cancellation or rejection shall be made part of the contract file. The FCEDA may also waive informalities in bids.

2. In the case of a tie bid, preference shall first be given to goods produced in Virginia and preference shall then be given to goods produced in the United States; otherwise the tie shall be decided by lot. In the case of procurement of goods by manufacturers, if (i) the lowest responsive and responsible bidder is not a resident of Virginia and (ii) bid of any Virginia resident is within 10 percent of such bid, the lowest responsive and responsible bidder that is a Virginia resident shall be granted the option to match the price of the lowest responsive and responsible bidder; if the lowest responsive and responsible bidder is a resident of a state other than Virginia and such state under its laws allows a resident of that state a percentage preference or price-matching preference for the procurement of goods, a like preference shall be granted to responsive and responsible bidders who are residents of Virginia; an eligible bidder that is a Virginia resident shall be granted the greater of either preference pursuant to this provision. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be granted to the lowest responsive and

responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be granted to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. Reference should be made to the Department of General Services' updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, FCEDA may rely upon the accuracy of the information posted on this website. Notwithstanding the preceding, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content. For the purposes of this provision, a Virginia firm or corporation shall be deemed to be a resident of Virginia if such firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia. To the extent that this section conflicts with federal law or regulations and application of this section to a project or procurement would render a public body ineligible to receive federal funds for such project or procurement, such project or procurement shall be exempt from the provisions of this section.

3. In the course of procuring goods, if FCEDA receives two or more bids for products that are Energy Star certified, meet Federal Energy Management Program ("FEMP")-designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are WaterSense certified, FCEDA may only select among those bids unless, before selecting a different bid, FCEDA provides a written statement that demonstrates the cost of the products that are Energy Star certified, meet FEMP-designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are WaterSense certified was unreasonable.

4. All contracts shall be approved as to form by the FCEDA President and the FCEDA legal counsel.

H. Retainage on Construction Contracts

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

I. Bid Bonds

1. Except in cases of emergency, all bids or proposals for non-transportation construction contracts in excess of $500,000 or transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia that are in excess of $50,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid or proposal. The amount of the bid bond shall not exceed five percent of the amount of the bid.

2. Not Used.

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

4. Nothing in this section shall preclude the FCEDA from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than $500,000 for non-transportation-related projects or $350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia and partially or wholly funded by the Commonwealth.

J. Performance and Payment Bonds

1. Except as provided below, upon the award of any (i) nontransportation-related public construction contract exceeding $500,000 awarded to any prime contractor; or (ii) transportation-related project authorized pursuant to Article 2 of Chapter 2 of Title 33.2 of the Code of Virginia exceeding $350,000 that is partially or wholly funded by the Commonwealth of Virginia, the contractor shall furnish to the public body the following bonds:

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

b. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

2. Not Used.

3. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

4. Required bonds shall be payable to the FCEDA.

5. Each of the bonds shall be filed with the FCEDA.

6. Nothing herein shall preclude the FCEDA from requiring payment or performance bonds for construction contracts below $500,000 for non-transportation-related projects or $350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia and partially or wholly funded by the Commonwealth.

7. Nothing herein shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

K. Modification of Contracts

An FCEDA contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the amount of the contract or $50,000, whichever is greater, without the advance written approval of the FCEDA Board. A contract may not, without adequate consideration, be increased for any purpose, including but not limited to relief of an offeror from the consequences of an error in its bid or offer. The FCEDA may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

L. Non Discrimination

In the solicitation or awarding of contracts, the FCEDA shall not discriminate because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

Every FCEDA contract over $10,000 shall contain the following provisions:

1. During the performance of the contract, the contractor agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places,

accessible to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contract, will state that such Contractor is an equal opportunity employer.

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

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

M. Compliance with Federal Immigration Law

The FCEDA shall include in all contracts the following provision:

The Contractor does not, and shall not during the performance of the contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

N. Drug-Free Workplace

The FCEDA shall include in all contracts over $10,000, the following provision:

The Contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or vendor. For purposes of this section, a "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the VPPA, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

O. Authorization by State Corporation Commission

The FCEDA shall include in all contracts the following provisions:

1. A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or as a registered limited liability partnership must be authorized to transact business as a domestic or foreign

business entity as required by the State Corporation Commission (SCC), if such is required by law. Such authorization must be maintained during the term of a contract.

2. Any competitive sealed bidding bidder or competitive negotiation offeror required to be authorized by the SCC must include in its bid or proposal the identification number issued to it by the SCC. Any bidder or offeror that is not required by law to be authorized to transact business in Virginia as a foreign business entity or otherwise as required by law must include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information about why it is not required to be authorized shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the President of the FCEDA. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

P. Disclosure of Information to the Public

1. Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to public inspection in accordance with the Virginia Freedom of Information Act, Virginia Code §2.2-3700, et seq.

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

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

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

5. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must (a) invoke these protections prior to or upon submission of the data or other materials, (b) identify the data or other materials to be protected and (c) state the reasons why the

protection is necessary. A bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (x) an entire bid, proposal, or prequalification application; (y) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (z) line item prices or total bid, proposal, or prequalification application prices.

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

Q. Audit by FCEDA

All contracts and amendments entered into by negotiation shall include a provision permitting the FCEDA or its agents to have access to and the right to examine any books, documents, papers and records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment, except that for fixed price contracts, no audit shall be required with respect to pricing or cost information. The contractor shall include these same provisions in all related subcontracts.

R. Contracts for the Acquisition of Information Technology Goods or Services

No term or provision in any public contract for the acquisition of information technology goods or services shall be valid or enforceable to the extent that it is in conflict with Virginia law. A public contract containing such a term or provision shall otherwise remain enforceable. Any term or provision in such a public contract that (i) makes the public contract subject to, governed by, or interpreted under the laws of another state or country or (ii) requires or permits any litigation or other dispute resolution proceeding arising from the public contract to be conducted in another state or country shall be void. Such public contract shall instead be deemed to provide for the application of the law of the Commonwealth of Virginia, without regard to such contract's choice of law provisions, and to provide for jurisdiction in the courts of the Commonwealth.

S. Forced or Indentured Child Labor

The FCEDA shall include in all contracts over $10,000, the following provision:

The Contractor agrees that it will not use forced or indentured child labor in the performance of this contract and that it will include such prohibition in every subcontract or purchase order that exceeds $10,000, so that the prohibition will be binding upon each subcontractor or vendor, under this contract.

ARTICLE IV

BIDDER, OFFEROR AND CONTRACTOR REMEDIES

Section 1. Ineligibility/Disqualification

A. Any bidder, offeror or contractor refused permission to participate or disqualified from participating in public contracts must be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the FCEDA shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents which relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

B. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The FCEDA shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information within five business days of the date the FCEDA received such rebuttal information.

C. If the evaluation reveals that the bidder, offeror or contractor should be allowed to participate in the public contract, the FCEDA shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the FCEDA shall so notify the bidder, offeror or contractor. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by instituting legal action in accordance with the Code of Virginia.

D. If, on appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes, or regulations, the sole relief shall be restoration of eligibility.

Section 2. Debarment

A. The Procurement Manager may, in the public interest and consistent with § 2.2-4321 of the VPPA, debar a prospective contractor (including a prospective subcontractor, supplier, insurer or surety) for any of the causes listed below, using procedures described below. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred. The seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision. When debarment occurs, such debarment shall be considered to be just cause for cancellation of any existing contracts held by the person or firm debarred.

B. Causes

The Procurement Manager may, after consulting with the FCEDA's attorney, debar a prospective contractor for any of the following causes:

1. Conviction of, or civil judgment establishing the contractor's:

    a. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract; or

    b. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or

    c. 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

    d. 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 Authority;

    e. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals; or

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

2. 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.

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

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

C. Debarment Procedures. The following procedures governing the debarment decision-making process are designed to be as informal as practicable, consistent with principles of fundamental fairness:

1. Notice: Debarment shall be initiated by advising the prospective contractor, by hand-delivery or by certified mail, return receipt requested, that debarment is being considered. Such notice shall include the reasons for the proposed debarment in terms sufficiently detailed to put the contractor on notice of the conduct or transaction(s) upon which the debarment is based, and shall identify

the specific period of debarment under consideration. Unless a response is received from the prospective contractor within ten (10) working days of the date of this notice, the Procurement Manager's decision shall be final. For the purposes of this subsection the "date of the notice" shall be deemed to be the date on which the notice is hand-delivered to the contractor or is deposited in the United States Mail.

2. Opportunity of contractor to respond: The prospective contractor or his authorized representative may submit to the Procurement Manager, in writing, and within ten (10) working days of the date of the notice described above, any information or argument that the contractor deems relevant to the proposed debarment, 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. Following timely receipt of information from the contractor, the Procurement Manager shall review the proposed debarment and shall, within ten (10) working days thereafter, render a final determination. During the ten-day review period, the prospective contractor shall provide the Procurement Manager with such additional information as he may request in order to complete his review of the proposed debarment.

D. Appeals. A decision to debar or suspend shall be final and conclusive, unless the debarred or suspended person or firm within five (5) working days after receipt of the final determination of the Procurement Manager protests the decision in writing to the FCEDA President. The FCEDA President shall issue a decision in writing within ten (10) working days after receipt of the protest stating the reasons for the action taken. This decision shall be final unless legal action as provided for in § 2.2-4364 Code of Virginia is taken within ten (10) working days of the FCEDA President's decision.

E. Notice of decision. A copy of the decision to debar or suspend shall be mailed or otherwise furnished immediately to the debarred or suspended person or firm, with a copy to the FCEDA President.

F. Period of debarment. A debarment shall be and remain effective for a period commensurate with the seriousness of the cause, as determined by the Procurement Manager in his discretion, but shall not exceed three (3) years or for the length of the contract upon which debarment is based, whichever is longer.

Section 3. Appeal of Denial of Withdrawal of Bid

A. A decision denying withdrawal of a bid as requested under Article III, Section 3, Subsection D, above shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by instituting legal action in accordance with the Code of Virginia.

B. If no bid bond was posted, a bidder refused withdrawal of a bid as requested under Article III, Section 3, Subsection D, above, prior to appealing, shall deliver to the FCEDA a certified check, a cashier's check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. This security will be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious, or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

Section 4. Determination of Nonresponsibility

A. Following public opening and announcement of bids received on an Invitation to Bid, the FCEDA will evaluate the bids in accordance with the provisions set forth in Article III, Section 1, above. At the same time, the FCEDA will determine whether the apparent low bidder is responsible. If the FCEDA determines that the apparent low bidder is not responsible, it will proceed as follows:

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

2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The FCEDA shall issue its written determination of responsibility based on all information in its possession, including any rebuttal information, within five business days of the date the FCEDA received such rebuttal information. At the same time, the FCEDA shall notify the bidder in writing of its determination via certified mail, return receipt requested. This notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by instituting legal action in accordance with the Code of Virginia.

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

4. If, upon appeal by the institution of legal action, it is determined that the FCEDA's decision was not (a) an honest exercise of discretion, but rather was arbitrary or capricious or (b) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in

question or a directed award of the contract to the bidder in accordance with the Invitation to Bid, or both. Where award of the contract has been made, but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the FCEDA may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

B. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section. A bidder cannot protest a decision to award or an award on the basis that the bidder was not responsible.

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

Section 5. Protest of Award or Decision to Award

A. Any bidder or offeror who wishes to protest the FCEDA's award or decision to award a contract must submit a protest in writing to the FCEDA, or an official designated by the FCEDA, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the FCEDA in a manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any bidder or offeror who wants to protest a decision to award or a contract awarded on a sole source or emergency basis must submit a protest in the same manner no later than ten days after posting or publication of the notice of the contract. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest must include the basis for the protest and the relief sought. If the protest depends in whole or in part on information contained in public records pertaining to the procurement transaction which are subject to inspection under the VPPA, then the time within which to submit the protest shall expire ten days after those records are available for inspection by the bidder or offeror. The FCEDA President shall issue a written decision within ten days stating the reasons for the action taken. This decision will be final unless the bidder or offeror appeals within ten days of the written decision by instituting legal action in accordance with the Code of Virginia and Article IV, Section 7 of this Guideline. Nothing in this section shall be construed to permit the bidder or offeror to challenge the validity of the terms or conditions of the Invitation to Bid or the Request for Proposal.

B. If, prior to an award, it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The FCEDA will cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as herein provided. Where award of the contract has been made, but performance has not begun,

the performance of the contract may be enjoined. Where the award has been made and performance has begun, the FCEDA may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest or legal action being timely filed, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

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

Section 6. Contractual Disputes

A. Any dispute concerning a question of fact which is not disposed of by agreement shall be decided by the FCEDA President. The contractor shall submit notice of the claim in writing, with supporting evidence, to the FCEDA President at the FCEDA mailing address or as otherwise indicated in the contract no later than sixty (60) days after final payment under the contract; however, written notice of contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. The FCEDA President shall reduce his decision to writing and send by certified mail or otherwise forward a copy thereof to the contractor at the contractor's address indicated for notices in the contract within sixty (60) days of receipt of contractor's claim. The decision of the FCEDA President shall be final and conclusive unless the contractor appeals within six (6) months of the date of receipt of the written decision by the FCEDA President by instituting legal action in the Circuit Court for Fairfax County or the Federal District Court in Alexandria, Virginia, which shall have exclusive jurisdiction over any disputes arising under or related to FCEDA contracts. A contractor may not institute legal action, prior to the receipt of the FCEDA President's decision on the claim, unless the FCEDA President fails to render such decision within the time specified.

B. Nothing shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Section 7. Legal Action

A. No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met.

B. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participating in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, as provided in the Code of Virginia. The FCEDA's decision will only be reversed if the petitioner establishes that the decision was not (i) an honest exercise of discretion but rather was arbitrary or capricious; or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of a denial of prequalification, the petitioner must establish that the decision to deny prequalification was not based on the FCEDA's criteria for the denial of prequalification as set forth in this Guideline. In the event the apparent low bidder, previously determined by the FCEDA to be not responsible, is found by the court to be a responsible bidder, the court may direct the FCEDA to award the contract to that bidder in accordance with the Invitation to Bid.

C. A bidder denied withdrawal of a bid may bring an action in the appropriate circuit court challenging the decision which will only be reversed if the bidder establishes that the FCEDA's decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

D. A bidder, offeror or contractor or potential bidder or offeror on a contract negotiated on a sole source or emergency basis, whose protest of an award or decision to award is denied by the FCEDA, may bring an action in the appropriate circuit court challenging the proposed award or award of a contract. The proposed award or award will be reversed only if the petitioner establishes that the proposed award or award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

E. If injunctive relief is granted, the court, upon the FCEDA's request, shall require the posting of reasonable security to protect the FCEDA.

F. Nothing herein shall be construed to prevent the FCEDA from instituting legal action against a contractor.

ARTICLE V

ETHICS IN CONTRACTING

Section 1. General

A. The provisions of this Article supplement, but do not supersede, other provisions of law, including but not limited to, the State and Local Government Conflict of Interest Act (Virginia Code § 2.2-3100 et. seq.), the Virginia Government Frauds Act (Virginia Code § 18.2-498.1 et. seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia. The provisions of this Article shall apply notwithstanding the fact that the conduct prescribed may not constitute a violation of the State and Local Conflicts of Interests Act.

Section 2. Participation by Employees

A. Except as may be specifically allowed by subdivisions B 1, 2, and 3 of Virginia Code § 2.2-3112, no FCEDA employee having official responsibility for a procurement transaction may participate in that transaction on behalf of the FCEDA when the employee knows that:

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

2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or

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

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

Section 3. Solicitation or Acceptance of Gifts

No FCEDA employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless

consideration of substantially equal or greater value is exchanged. The FCEDA may recover the value of anything conveyed in violation of this section.

Section 4. Disclosure of Subsequent Employment:

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

Section 5. Gifts

No bidder, offeror, contractor or subcontractor shall confer upon any FCEDA employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

Section 6. Kickbacks

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

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

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

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

Section 7. Participation in Bid Preparation

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

Section 8. Purchase of Building Materials from Architect or Engineer Prohibited

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

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

C. These provisions do not apply in cases of emergency.

Section 9. Misrepresentations

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

This Guideline was written as a guide only and was not intended to provide complete details of the FCEDA procurement policy or to convey all details of the Virginia Public Procurement Act. Interested persons are encouraged to review the Virginia Public Procurement Act for additional information.