

NORTHERN VIRGINIA REGIONAL PARK AUTHORITY
PREQUALIFICATION PROCESS FOR CONSTRUCTION PROJECTS

Pursuant to Code of Virginia § 2.2-4317, the Northern Virginia Regional Park Authority (“NOVA Parks”) adopts the following as its prequalification process to prequalify prospective contractors to bid on selected construction projects:

1. The Executive Director or his designee may, in his discretion, when he believes it to be in the best interests of NOVA Parks, require prequalification of prospective contractors to bid on a specific construction project for NOVA Parks. The purpose of such prequalification shall be to limit prospective bidders for such construction project to contractors who show themselves to be qualified to construct the project. When the prequalification process is used for a project, only contractors who have complied with the prequalification process and been found qualified will be eligible to submit bids for the project.

2. The Executive Director or his designee shall develop the appropriate documentation for potential contractors to apply for prequalification. The Executive Director or his designee may prescribe in such documentation specific mandatory experience requirements contractors must meet in order to prequalify for a specific project.

3. In conducting prequalifications of potential contractors, the Executive Director or his designee shall follow this prequalification process and the requirements of Code of Virginia § 2.2-4317.

4. The documentation used in NOVA Parks’ prequalification process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The documentation shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The documentation shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor as part of its prequalification application shall be considered a trade secret or proprietary information subject to the provisions of subsection D of Code of Virginia § 2.2-4342.

5. In all instances in which NOVA Parks 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 prequalification process to be accomplished.

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

7. A decision by the Executive Director or his designee under this prequalification process shall be final and conclusive unless the contractor appeals the decision as provided in Code of Virginia § 2.2-4357.

8. NOVA Parks may deny prequalification to any contractor only if NOVA Parks finds one of the following:

a. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

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

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

d. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with NOVA Parks without good cause. If NOVA Parks has not contracted with a contractor in any prior construction contracts, NOVA Parks 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. NOVA Parks may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

e. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367, *et seq.*) of the Virginia Public Procurement Act, (ii) the *Virginia Governmental Frauds Act* (§ 18.2-498.1, *et seq.*), (iii) Chapter 4.2 (§ 59.1-68.6, *et seq.*) of Title 59.1, or (iv) any substantially similar law of the United States or another state;

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

g. The contractor failed to provide NOVA Parks in a timely manner any information requested by NOVA Parks relevant to subdivision a. through f. of this paragraph 8.

9. In determining if a contractor has the "appropriate experience" to be prequalified, NOVA Parks may consider and use specific minimum experience requirements established by the Executive Director or his designee for the specific project. NOVA Parks may also consider the contractor's past performance on the projects that provide its past experience to determine if the projects provide the appropriate experience required.

10. To the extent any provision in this process is deemed to be inconsistent with Code of Virginia § 2.2-4317, whether due to amendment of that statutory provision or otherwise, then the provision of § 2.2-4317 shall control as to such inconsistency.

11. The provisions of this process and its implementation are intended to be severable, and if any provision is deemed invalid, this shall not be deemed to affect the validity of other provisions.

12. This prequalification process does not apply to any procurement done under the Public-Private Education Facilities & Infrastructure Act of 2002 ("PPEA"), Va. Code § 56-575.1, *et seq.*, and is in no way intended to limit NOVA Parks' discretion in the way it selects contractors under the PPEA.

13. A determination that a contractor is prequalified does not necessarily preclude NOVA Parks from determining that such contractor is not responsible following bid opening. Among other things, a change in circumstances or change in information, as well as the different criteria allowed to be considered for prequalification versus responsibility, may lead to a different result. For example, a prequalified contractor that becomes debarred between prequalification and bid opening, or a contractor who is subsequently discovered not to have been totally candid in answering its prequalification questionnaire, might be deemed nonresponsible.

14. Prequalification of a contractor to bid on one project does not prequalify that contractor to bid on a different project or mean that the contractor will necessarily be deemed to be a responsible bidder for a different project.

15. Neither this Prequalification Process nor its implementation by NOVA Parks shall be deemed to create any contract right in any prospective contractor or to give any prospective contractor any right beyond that conferred by Code of Virginia § 2.2-4317. All prospective contractors shall be responsible for their own expenses in applying for prequalification, and NOVA Parks shall have no liability for any such expenses.