

McGUIREWOODS

Alexandria Renew Enterprises Board Governance Training

Board of Directors Meeting

October 17, 2017

Corporate Charter

City of Alexandria, Virginia Sanitation Authority doing business as
Alexandria Renew Enterprises

- Created by ordinance of Alexandria City Council in December 1952
- Chartered in January 1953 by the Virginia State Corporation Commission
- Public body politic and corporate
- Political subdivision of the Commonwealth of Virginia
- The purposes for which the Authority was created are the acquisition, construction, improvement, extension, operation and maintenance of a sewer system, and sewage disposal system

Dillon's Rule

- Dillon's Rule narrowly defines the power of local governments (and Authorities). It also states that if there is any reasonable doubt whether a power has been conferred on a local government, then the power has NOT been conferred.



Prominent federal Judge appointed by U.S. Grant. Authored famous treatise on municipal government.

Virginia Water and Waste Authorities Act

Authorities Act determines organization, powers, and rules for Alexandria Renew

- Powers exercised by Authority Board
- Board appoints CEO
- 50 year renewable existence (extended to 2050)

Virginia Water and Waste Authorities Act

Authority Powers include

- Fix, charge, and collect rates and charges
- Borrow funds
- Eminent Domain
- Acquire, purchase, lease as lessee, construct, reconstruct, improve, extend, operate and maintain any stormwater control system or water or waste system or any combination of such systems within, outside, or partly within and partly outside one or more of the localities which created the authority.

Other Laws

- Clean Water Act
- Other sections of Code of Virginia
 - Public Procurement Act
 - Conflict of Interest Act
 - Public Records Act
 - Freedom of Information Act

By-Laws

- Governs conduct of meetings, election of officers, appointment of committees, fiscal year, etc.
- May be amended by majority vote of Board

Policies

- Policies guide the actions of the Board and CEO
- Adopted Policies include:
 - Community benefits
 - Compensation
 - Ethics
 - Financial
 - Investment
 - Media Relations
 - Construction Management and Design-Build
- Policies may be amended by the Board without notice.

VFOIA – The Basics

- Compliance is not optional
- Local ordinances in conflict are void
- The default is always for disclosure and there has been continual move toward more not less open government; true whether dealing with records or meetings – OPENNESS is default
- There are penalties for willful and knowing violations

VFOIA and meetings

- General rule: three or more members (or fewer, if quorum is fewer) of a public body assembled and discussing, at any point, public business is a “meeting” under VFOIA
- “Work sessions” and “retreats” are also included
- Purely social events not included

Electronic communication meetings

- Cannot conduct meetings through “telephone, video, electronic or other communication means where the members are not physically assembled” (certain limited exceptions)
- The public, though, may participate through interactive audio or video

Required notice of meetings

- At least three working days before a meeting of a public body – “date, time and location” – no requirement for agenda unless it is typical for the body
- Posted in “a prominent public location” and other minimal requirements
- Individual notice to anyone who has asked to be notified of meetings

Voting

- Public bodies may not take a vote of ANY kind to authorize the transaction of any public business except at a public meeting lawfully called under VFOIA
- No voting by secret or written ballot
- Proxy voting not permitted

Closed meetings

- This is the proper term – not “executive session”
- Closed meetings only permitted if specific procedures followed and only if one of the specific exemptions from open meeting requirements is articulated (i.e. litigation, personnel matters, economic development, contracts, consultation with counsel)
- Motion must be clear
- “Certification” motion required after

Violations of VFOIA

- Petition for Mandamus or Injunction
- Burden of Proof on public body
- No criminal penalties
- Civil penalties
- Costs and attorneys' fees

Virginia Public Procurement Act

- Applies to acquisition of all goods and services by Alexandria Renew from any nongovernmental contractor
- Exemptions for:
 - Contracts for Legal Services
 - VML Insurance Pool
 - Public-Private Education Facilities and Infrastructure Act (PPEA)

Required Types of Contractor Selection

1. Competitive Sealed Bidding – IFB
2. Competitive Negotiation – RFP
3. Job Order Contracting
4. Design-build and Construction Management Procurements
5. Cooperative Procurement
6. Small Purchase Procedures
7. Emergency and Sole-Source

Construction Procurement Design – Bid – Build

- Design plans procured through competitive negotiation
- Bid package contains complete design plans
- Lowest responsive and responsible bidder must be awarded contract
- Advantages: transparent, fixed price, certainty(?)
- Disadvantages: Inflexible, all steps in process are sequential, no consideration for quality of contractor

Construction Procurement Construction Management

- 1st Step – some design
- 2nd Step – Selection of Contractor based on Qualifications and competitive negotiation
- 3rd Step – Negotiation of Guaranteed Maximum Price Contract(s)
- May be incentives for shared cost-savings
- Example: NMF and Environmental Center
- Advantages: shift burden of coordinating components to contractor; flexibility
- Disadvantages: Less transparent, risk of higher cost

Construction Procurement

Design- Build

- Single Procurement of Designer and Contractor
- Two step competitive negotiation process
 - Selection of Qualified Offerors
 - Selection of Design-Build Contractor and negotiation of cost
- Advantages: overlap design and construction to save time, gain ideas from bidders on how to best accomplish overall goals, may reduce construction claims
- Disadvantages: Less transparent, risk of higher cost

Questions?