

ORDINANCE NO. 4953

AN ORDINANCE to amend and reordain Section 3-3-6 (DEFINITIONS), of Article A (GENERAL PROVISIONS); to amend and reordain Section 3-3-52 (PERFORMANCE AND PAYMENT BONDS) and Section 3-3-55 (ALTERNATIVE FORMS OF SECURITY), all of Division 1 (COMPETITIVE SEALED BIDDING), of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION); to amend and reordain Section 3-3-64 (PUBLIC NOTICE) and Section 3-3-69 (CONTRACTING FOR PROFESSIONAL SERVICES BY COMPETITIVE NEGOTIATION), all of Division 2 (COMPETITIVE NEGOTIATION); and to add Section 3-3-80 (JOB ORDER CONTRACTING), of Division 3 (MISCELLANEOUS PROVISIONS); all of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION), of Chapter 3 (PURCHASES AND CONTRACTUAL SERVICES), of Title 3 (FINANCE, TAXATION AND PROCUREMENT), of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 3-3-6 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-6 - Definitions.

- (1) Best value: The overall combination of quality, price, and various elements of required services that in total are optimal relative to the city's needs. The best value process is used to select the most advantageous bid or offer by evaluating and comparing pre-established factors, including, but not limited to, quality, technical features, experience and past performance, in addition to cost or price.
- (2) Brand name specification: A specification limited to one or more items by manufacturers' names or catalogue numbers.
- (3) Brand name or equal specification: A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance and other salient characteristics needed to meet city requirements, and which provides for the submission of equivalent products.
- (4) City council: The city council of the City of Alexandria.
- (5) City purchasing agent, ~~or agent,~~ or purchasing agent: The purchasing agent of the City of Alexandria.
- (6) Construction management contract: A contract in which a party is retained by the city to coordinate and administer contracts for the provision of construction services by others, and which also provides for such party to furnish construction services to the city.
- (7) Construction: Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.
- (8) Contract: All types of agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.

- (9) Contract modification: Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties to the contract.
- (10) Contractor: Any person having a contract with the city or a using agency thereof.
- (11) Cost analysis: The valuation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid and costs to be reimbursed.
- (12) Cost data: Factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
- (13) Cost reimbursement contract: A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee or profit, if any.
- (14) Design-build contract: A contract in which the contractor agrees to both design and build a structure, roadway or other item specified in the contract.
- (15) Direct or indirect participation: Involvement through decision, approval, disapproval, recommendation, or preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.
- (16) Disadvantaged business: A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.
- (17) Employee: An individual drawing a salary or wages from the city whether elected or not; any noncompensated individual performing personal services for the city or any department, agency, commission, council, board or any other entity established by law.
- (18) Goods: All material, equipment, supplies, printing and automated data processing hardware and software.
- (19) Informality: A minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids, or the request for proposals, which does not affect the price, quality, quantity or delivery schedule for the goods, services, insurance or construction being procured.
- (20) Insurance: A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.
- (21) Invitation for bids: All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any invitation for bids.
- (22) Job order contracting: A method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The contractor may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of the City of Alexandria. A minimum amount of work may be specified in the contract.
- (223) Multiphase professional services contract: A contract for the provision of professional services in multiple phases where the total scope of work in the second or a subsequent phase of the contract cannot be specified without the results of the first or other phase of the contract.
- (234) Nominal value: So small, slight or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name, but in no case to be more than \$10.

(245) Nonprofessional services: Any services not specifically identified as professional services in the following definition.

(256) Professional services: Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.

(267) Person: Any business, individual, union, committee, club, other organization or group of individuals.

(278) Price analysis: The evaluation of pricing data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

(289) Pricing data: Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offer or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

(2930) Public body: Any legislative, executive or judicial body, agency, office, department, authority, commission, committee, institution, board, political subdivision or other entity created by law to exercise some sovereign power or to perform some governmental duty.

(301) Public contract: Any contract between the city and a nongovernmental source that is enforceable in a court of law.

(342) Qualified products list: An approved list of goods, services or construction items described by model or catalogue number, which prior to competitive solicitation, the city has determined will meet the applicable specification requirements.

(323) Request for proposals: All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(334) Responsible bidder or offeror: A person 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.

(345) Responsive bidder or offeror: A person who has submitted a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals.

(356) Services: Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials or the rental of equipment, materials and supplies.

(367) Small business: A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

(378) Specification: Any description of the physical or functional characteristics or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a good, service or construction item for delivery.

(389) Using agency: Any department, agency, commission, office, bureau or other unit in the city government requiring goods, services, insurance or construction.

Section 2. That Section 3-3-52 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-52 - Performance and payment bonds.

(a) Except as provided in subsection (h), Upon the award of any (i) public construction contract exceeding \$500,000 to any prime contractor; (ii) construction contract exceeding \$500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by a public body; (iii) construction contract exceeding \$500,000 in which the performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding \$2350,000 that are partially or wholly funded by the Commonwealth, such contractor shall furnish to the city the following bonds:

(1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects authorized under ~~Section 33.1-12~~Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia, 1950, as amended, such bond shall be in a form and amount satisfactory to the purchasing agent.

(2) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded or to any subcontractors in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. For transportation-related projects authorized under ~~Section 33.1-12~~Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia, 1950, as amended, such bond shall be in a form and amount satisfactory to the purchasing agent. Labor or materials shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

(b) For transportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective bidders or offerors shall be prequalified for each individual project in accordance with section 3-3-35.

(c) Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.

(d) The bonds shall be made payable to the city.

(e) Each of the bonds shall be filed with the purchasing agent.

(f) Nothing in this section shall preclude the purchasing agent from requiring payment or performance bonds for construction contracts below \$500,000 for nontransportation-related projects or \$2350,000 for transportation-related projects authorized under ~~Section 33.1-12~~Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia, 1950, as amended, and partially or wholly funded by the Commonwealth.

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

(h) The performance and payment bond requirements of subsection (a) for transportation-related projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by the

purchasing agent if the bidder provides evidence, satisfactory to the purchasing agent, that a surety company has declined an application from the contractor for a performance or payment bond.

Section 3. That Section 3-3-55 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-55 – Alternative forms of security.

(a) In lieu of a bid, payment or performance bond, a bidder may furnish a certified check, cashier's check, or cash escrow in the face amount required for the bond.

(b) If approved by the city attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the city equivalent to the corporate surety's bond.

(c) Purchase of owner-controlled insurance in construction projects.

(1) Notwithstanding any other provision of law to the contrary, the city may purchase at its expense an owner-controlled insurance program in connection with any public construction contract where the amount of the contract or combination of contracts is more than \$100 million, provided that no single contract valued at less than \$50 million shall be combined pursuant to this section. The city shall provide notice if it intends to use an owner-controlled insurance program, including the specific coverages of such program, in any request for proposal, invitation to bid, or other applicable procurement documents.

(2) The city shall not require a provider of architecture or professional engineering services to participate in the owner-controlled insurance program, except to the extent that the city may elect to secure excess coverage. No contractor or subcontractor shall be required to provide insurance coverage for a construction project if that specified coverage is included in an owner-controlled insurance program in which the contractor or subcontractor is enrolled.

(3) For the purposes of this subsection, "owner-controlled insurance program" means a consolidated insurance program or series of insurance policies issued to the city that may provide for some or all of the following types of insurance coverage for any contractor or subcontractor working on or at a public construction contract or combination of such contracts: general liability, property damage, workers' compensation, employer's liability, pollution or environmental liability, excess or umbrella liability, builder's risk, and excess or contingent professional liability.

Section 4. That Section 3-3-64 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-64 – Public notice.

A reasonable time prior to the date set for receipt of proposals, public notice shall be given by posting on the Commonwealth of Virginia's Department of General Services' central electronic

procurement website or other appropriate websites and by publication 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.

Section 5. That Section 3-3-69 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 3-3-69 - Contracting for professional services by competitive negotiation.

(a) Professional services shall be procured by competitive negotiation. The purchasing agent may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

(b) The purchasing agent 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. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project and to explore alternative concepts of performance of the contract. In addition, offerors shall be informed of any ranking criteria that will be used by the purchasing agent in addition to the review of professional competence of the offeror. The request for proposals shall not seek estimates of person hours or costs for services. However, these discussions may encompass nonbinding estimates of total project costs, including, but not limited to, where appropriate design, construction, life cycle costs and nonbinding estimates of price for services. Proprietary information from competitive offerors shall not be disclosed to the public or to competitors. At the conclusion of the discussions and on the basis of evaluation factors published in the request for proposals and all information developed in the selection process to this point, the purchasing agent shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the city can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations shall be conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request for proposal, the city may award contracts to more than one offeror. If, at the conclusion of the discussions, the purchasing agent determines in writing and in his 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. Once formally terminated, negotiations may not be reopened with any offeror.

(c) With respect to the procurement of legal services, the duties and responsibilities imposed upon the purchasing agent in subsection (b) above shall devolve upon the city attorney.

~~(d) A contract for architectural or professional engineering services relating to construction projects may be negotiated by the purchasing agent, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the request for proposals, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this subsection (d), whichever occurs first. Such contract may be renewable for four additional one year terms at the option of the city, as exercised by the purchasing agent. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed; (b) the sum of all projects performed in one contract term shall not exceed one million dollars; and (c) the project fee of any single project shall not exceed \$500,000. Any unused amounts from one contract term shall not be carried forward to a successive term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the request for proposals so states, and (2) the purchasing agent has established procedures for distributing multiple projects among the selected contractors during the contract term.~~ A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by the purchasing agent, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the request for proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum cost authorized in this subsection, whichever occurs first.

(1) Such contracts may be renewable for four additional one-year terms at the option of the purchasing agent. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

(2) The sum of all projects performed in a one-year contract term shall not exceed \$6 million.

(3) Competitive negotiations for such contracts may result in awards to more than one offeror provided (i) the request for proposal so states and (ii) the purchasing agent has established procedures for distributing multiple projects among the selected contractors during the contract term.

(4) The fee for any single project shall not exceed \$2.5 million.

(5) Any unused amounts from one contract term shall not be carried forward to any additional term.

~~(e) Multiphase professional services contracts for environmental, location, design and inspection work regarding construction of infrastructure projects~~ satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement entering into of any such contract, the purchasing agent shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of the city require awarding the contract.

Section 6. That Division 3, of Article D, of Chapter 3, of Title 3 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding Section 3-3-80 titled Job Order Contracting with the following new language:

Sec. 3-3-80 Job Order Contracting

(a) A job order contract may be awarded by the purchasing agent for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first. Contractors may be selected through either competitive sealed bidding or competitive negotiation.

(b) Such contracts may be renewable for two additional one-year terms at the option of the purchasing agent. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed \$5 million. Individual job orders shall not exceed \$500,000.

(c) Any unused amounts from one contract term shall not be carried forward to any additional term.

(d) Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection (b) is prohibited.

(e) No job order shall be issued or used, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in § 54.1-400 of the Code of Virginia, 1950, as amended. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term.

(f) Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass.

Section 7. That this ordinance shall become effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Final Passage: June 13, 2015