

City of Alexandria, Virginia

MEMORANDUM

DATE: MARCH 10, 2021

TO: THE HONORABLE MAYOR & MEMBERS OF THE CITY COUNCIL

FROM: VICE MAYOR ELIZABETH BENNETT-PARKER & COUNCILMAN
JOHN TAYLOR CHAPMAN

SUBJECT: RESPONSIBLE CONTRACTOR AUTHORITY

Last year, a number of bills were passed by the General Assembly and signed into law by the Governor that increase the authority of localities with respect to contracting. We now have the authority to modify our processes to: include additional criteria in determining whether a bidder is responsible, such as participation in safety training and apprenticeship programs; provide preference for contractors who employ persons with disabilities; and require contractors and subcontractors to pay prevailing wages. Additionally, we can enhance micro-SWaM business participation in our procurement practices. We should take advantage of this additional authority in order to live up to our values and we would like staff to return with ordinances for consideration by the Council to amend Title 3, Chapter 3 of the City Code with respect to the following areas.

Responsible Bidder Criteria House Bill 1201 amended § 2.2-4302.1 and § 2.2-4359 of the Code of Virginia to allow a locality to include additional criteria that may be used to determine whether a bidder is responsible during a competitive sealed bidding process. These criteria may include a history or good faith assurances of (i) completion by the Bidder and any potential subcontractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) participation by the bidder and any potential subcontractors in apprenticeship training programs approved by state agencies or the U.S. Department of Labor; and (iii) maintenance by the Bidder and any potential subcontractors of records of compliance with applicable local, state, and federal laws, if Bidder is not prequalified by the Virginia Department of Transportation.¹

¹ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1089+pdf>

Last June, the Arlington County Board adopted amendments to their purchasing resolution incorporating these changes, which became effective last July. Their staff memo noted no issues identified as of the date of the staff report and no fiscal impact for this item.² Fairfax County also made these changes to their purchasing resolution last July.³

Employment of Persons with Disabilities House Bill 1078 amended §2.2-4302.2 of the Code to permit public bodies to include the proposer's employment of persons with disabilities as an evaluation factor during a competitive negotiation. However, this authority does not extend to contracts for architectural, professional engineering, transportation construction, or transportation-related construction services.⁴

Micro-business Participation House Bill 558 amended § 15.2-965.2 of the Code of Virginia to allow any locality to enact an ordinance to enhance micro-business participation in local government procurement practices. Such measures may include special designation of local micro-businesses, providing technical support to micro-businesses, setting target goals for micro-business participation in the local procurement process, and other reasonable measures intended to promote micro-business participation. A micro-business is defined as a small, women-owned, or minority-owned (SWaM) business with no more than 25 employees.⁵ Section 3-3-111 of our City Code requires our purchasing agent to establish programs to facilitate the participation of SWaM businesses in procurement transactions, but the definition of small business is "an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years."⁶

Prevailing Wage House Bill 833 amended § 2.2-4321.3 of the Code of Virginia to allow localities to require that contractors and subcontractors pay the prevailing wage rate on public works with a project cost greater than \$250,000.⁷ The effective date is May 1, 2021. Each employer subject to the provisions of this section shall keep,

² https://arlington.granicus.com/MetaViewer.php?view_id=2&clip_id=3758&meta_id=195529

³ See pages 245-322 <https://www.fairfaxcounty.gov/boardofsupervisors/sites/boardofsupervisors/files/assets/meeting-materials/2020/board/july-28-final-board-package.pdf>

⁴ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1158+pdf>

⁵ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1123+pdf>

⁶ https://library.municode.com/va/alexandria/codes/code_of_ordinances?nodeId=PTIITHCOGEOR_TIT3FITAPR_CH3PUCOSE_ARTHASSMDIBU_S3-3-111PASMBUBUQVWOMI

⁷ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1216+pdf>

maintain, and preserve (i) records relating to the wages paid to and hours worked by each individual performing the work of any mechanic, laborer, or worker and (ii) a schedule of the occupation or work classification at which each individual performing the work of any mechanic, laborer, or worker on the public works project is employed during each work day and week. The employer shall forward these payroll records on a biweekly basis to the awarding authority and shall certify that the records reflect the actual hours worked and the amount paid to its workers and shall preserve these records for a minimum of six years, among other provisions.

cc: Mark Jinks, City Manager
Laura Triggs, Deputy City Manager
Emily Baker, Deputy City Manager
Joanna Anderson, City Attorney