Legislation Details (With Text)

File #:	18-6971	**Name:**	
Type:	Ordinance	**Status:**	Agenda Ready
File created:	10/11/2017	**In control:**	City Council Legislative Meeting
On agenda:	1/9/2018	**Final action:**	
Title:	Introduction and First Reading. Consideration. Passage on First Reading of an Ordinance to amend and reordain Section 3-3-5 (PUBLIC IMPROVEMENT AND PUBLIC WORKS CONTRACTS), of Article A (GENERAL PROVISIONS); to amend and reordain Section 3-3-39 (BID BONDS ON CONSTRUCTION CONTRACTS), Section 3-3-40 (BONDS FOR OTHER THAN CONSTRUCTION CONTRACTS, and Section 3-3-52 (PERFORMANCE AND PAYMENT BONDS), of Division 1 (COMPETITIVE SEALED BIDDING), of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION); and to amend and reordain Section 3-3-62 (CONDITIONS FOR USE) and Section 3-3-70 (DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTS), of Division 2 (COMPETITIVE NEGOTIATION), of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION), all 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.		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	1. 18-6971_cover sheet, 2. 18-6971_ordinance		

Date	Ver.	Action By	Action	Result

City of Alexandria, Virginia

MEMORANDUM

DATE: JANUARY 3, 2018

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: MARK B. JINKS, CITY MANAGER /s/

DOCKET TITLE:
Introduction and First Reading. Consideration. Passage on First Reading of an Ordinance to amend and reordain Section 3-3-5 (PUBLIC IMPROVEMENT AND PUBLIC WORKS CONTRACTS), of Article A (GENERAL PROVISIONS); to amend and reordain Section 3-3-39 (BID BONDS ON CONSTRUCTION CONTRACTS), Section 3-3-40 (BONDS FOR OTHER THAN CONSTRUCTION CONTRACTS, and Section 3-3-52 (PERFORMANCE AND PAYMENT BONDS), of Division 1 (COMPETITIVE SEALED BIDDING), of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION); and to amend and

reordain Section 3-3-62 (CONDITIONS FOR USE) and Section 3-3-70 (DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTS), of Division 2 (COMPETITIVE NEGOTIATION), of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION), all 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.

ISSUE: The amendments to the City Code adopt recent General Assembly changes to the Code of Virginia and change a provision of the City Code to extend the deadline for a contractor to execute a non-construction contract before a bid bond is forfeited from 10 to 15 days to allow additional time for contract execution.

RECOMMENDATION: That City adopt the proposed ordinance to amend certain of the City Code's purchasing provisions on first reading and schedule it for second reading, public hearing and adoption on Saturday, January 20, 2018.

BACKGROUND: In its last session the General Assembly amended the Virginia Public Procurement Act ("VPPA") and made a number of changes. The City Code needs to be amended to reflect the changes in State law. In addition, although not part of the State mandated new procurement laws, staff would like to extend the deadline for a contractor to execute a non-construction contract before a bid bond is forfeited from 10 to 15 days to allow additional time for contract execution. Further, to clarify the role of the City Council and Purchasing Agent in procurement transactions staff proposes to delete Section 3-3-5 of the City Code.

DISCUSSION:

A. VPPA Amendments:

The ordinance would amend the City Code to adopt recent General Assembly changes to the Code of Virginia as follows.

- City Code §§ 3-3-39 and 3-3-52 are to be amended consistent with Code of Virginia §§ 2.2-4336 and 2.2-4337. Currently the City is allowed to waive the requirements for bid, performance, and payment bonds on certain projects so long as the bidder is prequalified. The Code of Virginia was amended to allow localities, for non-transportation related construction contracts of between $100,000 and $300,000, to waive prequalification for bidders with Class A contractor's licenses, after a written determination is made that waiving the requirement is in the best interest of the City. Only 10 such contracts can be entered per year.

- City Code § 3-3-62 is being amended to reflect the revisions to the Code of Virginia related to construction management and design-build contracts but makes no substantive changes.

- City Code Section § 3-3-70 is being amended for consistency with the new provisions of the Code of Virginia related to the use of construction management and design-build contracts. While the City Code was previously aligned with the earlier versions of the Code of Virginia, it was determined that it would be easier to align the City Code with the recent Code of Virginia amendments by striking and rewriting all of Section 3-3-70. Following are the only changes to City law and/or practice made by these revisions:
    i. Requires extending the amount of time advertising must occur from 10 days to 30 days prior to

date set for receipt of qualification proposals.

ii. Requires the written determination, made in advance by the City, that competitive sealed bidding is not practicable or fiscally advantageous, and the basis for the determination be included in the Request for Qualifications.

iii. Requires approval by City Council of the use of construction management contracts for projects where the cost is expected to be less than $10 million, provided that the project is complex.

- Minor adjustments to the staff produced City Purchasing Manual to more closely reflect the new law requirements.

The above changes would bring the City Code into alignment with the Code of Virginia; however, since the July 1 effective date, the City has been complying with these provisions.

B. City Code Section 3-3-40 Amendments:

Also, the Finance Department desires to amend City Code § 3-3-40 to extend the deadline for a contractor to execute a non-construction contract before a bid bond is forfeited from 10 to 15 days to allow additional time for contract execution.

The City's best interest is served by these changes, other than complying with Commonwealth law, in allowing more time for potential contractors to compete for the City's projects and streamlining the solicitation process in specific instances. By increasing competition, the City enables itself to achieve lower costs while continuing to provide for the best value to the taxpayers.

C. City Code Section 3-3-5 Amendment:

City Council has delegated authority for the purchase of goods, services, insurance and construction to the Purchasing Agent consistent with the State procurement law. However, in Resolution 1453 and in City Council Section 3-3-5, City Council reserved unto itself the authority to approve and authorize the execution of "public improvement and public works contracts". It is unclear from the resolution or the code what the difference is between all contracts for goods and services and public improvement and public works contracts. Therefore, there is ambiguity that needs to be resolved.

Currently, City Council approves the Capital Improvement Plan authorizing the funding for all projects which is updated through monthly reports to City Council. City Council approves the funding for the project which authorizes the project to move forward. The Purchasing Agent then goes through a process for contracting out the project that is regulated by the state and local procurement law and has very little discretion. Since City Council has the authority to fund or not fund the project, it still holds the ultimate authority regarding whether the project proceeds. Council also establishes policies and plans that form the policy basis for many major construction projects, as well as major vertical construction projects (recreation centers, fire stations, etc.) often require Council approved Development Special Use Permits (DSUPs).

Therefore, we recommend deleting Section 3-3-5 of the City Code.

FISCAL IMPACT: None.

ATTACHMENTS: Ordinance and cover sheet.

STAFF:
Randy Burns, Purchasing Agent, Finance Department
Christina Zechman Brown, Assistant City Attorney, City Attorney's Office