

ORDINANCE NO. 3225

AN ORDINANCE to amend and reordain subsection (a), Section 3-3-2, Article A; Sections 3-3-32, 3-3-33, 3-3-39, 3-3-42, subsections (a) and (e) of Section 3-3-52, Section 3-3-62 and subsection (b) of Section 3-3-69, Article D; and Section 3-3-111, Article H; all of Chapter 3, Title 3 of The Code of the City of Alexandria, Virginia, 1981, as amended; which Title 3 relates to FINANCE, TAXATION AND PROCUREMENT, which Chapter 3 relates to PROCUREMENT, which Article A relate to GENERAL PROVISIONS, which Article D relates to CONTRACT FORMATION AND METHODS OF SOURCE SELECTION, which Article H relates to ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES, which Section 3-3-2 relates to APPLICATION, which subsection (a) relates to CONTRACTS GOVERNED, which Section 3-3-33 relates to PUBLIC ACCESS TO PROCUREMENT INFORMATION, which Section 3-3-39 relates to BID BONDS ON CONSTRUCTION CONTRACTS, which Section 3-3-42 relates to BID OPENING, which Section 3-3-52 relates to PERFORMANCE AND PAYMENT BONDS, which subsections (a) and (e) thereof relate to CONTRACT AMOUNT, which Section 3-3-62 relates to CONDITIONS FOR USE, which Section 3-3-69 relates to CONTRACTING FOR PROFESSIONAL SERVICES BY COMPETITIVE NEGOTIATIONS, which subsection (b) thereof relates to PROCEDURES AND CRITERIA FOR SELECTION and which Section 3-3-111 relates to PARTICIPATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 3-3-2, Article A, Chapter 3, Title 3 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. 3-3-2. Application.

(a) This chapter applies to contracts for the procurement of goods, services, insurance and construction entered into by the city involving every expenditure for public purchasing irrespective of the source of funds.

(b) When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal laws or regulations which are not reflected in this chapter. Nothing in this chapter shall prevent any using agency from complying with the terms and conditions of any grant, gift or bequest which are otherwise consistent with law.

Section 2. That Section 3-3-32, Article D, Chapter 3, Title 3 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. 3-3-32. Competitive bidding on state aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of \$10,000 or more, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of the construction, addition or improvement shall be let except after competitive sealed bidding or competitive negotiation as provided under subsection (b) of Section 3-3-62. The procedure for the advertising for bids or the submission of proposals and the letting of the contract shall conform, mutatis mutandis, to this chapter. No person or firm shall be eligible to bid on or submit a proposal for any such contract nor to have the same awarded to him or it who or which has been engaged as architect or engineer for the same project under a separate contract.

Section 2. That Section 3-3-33, Article D, Chapter 3, Title 3 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. 3-3-33. Public access to procurement information.

(a) Except as otherwise provided in this section, all proceedings, contracts and other records relating to procurement transactions shall be open to the inspection of any interested person, firm or corporation in accordance with the Virginia Freedom of Information Act.

(b) Cost estimates relating to a proposed procurement transaction prepared by or for the city shall not be open to public inspection.

(c) Any competitive sealed bidding bidder shall, upon request, be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to contract award, except in the event that the city decides not to accept any of the bids and again to solicit bids. Otherwise, bid records shall be open to public inspection only after award of the contract.

(d) Any competitive negotiation offeror shall, upon request, be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to contract award, except in the event that the city decides not to accept any of the proposals and again to request proposals. Otherwise, proposal records

shall be open to public inspection only after award of the contract.

(e) Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

(f) Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public inspection or disclosures under the Virginia Freedom of Information Act; provided, however, that the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the trade secrets or proprietary information, must identify the data and other materials containing such secrets and information to be protected and must state the reasons why protection is necessary.

Section 5. That Section 3-3-39, Article D, Chapter 3, Title 3 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. 3-3-39. Bid bonds on construction contracts.

(a) Except in cases of emergency, all bids or proposals for construction contracts in excess of \$100,000 shall be accompanied by a bid bond from a surety company selected by the bidder or offeror which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder or offeror, the bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent (5%) of the amount bid.

(b) No forfeiture under a bid bond shall exceed the lesser of the difference between the bid or proposal for which the bond was written and the next low bid or proposal or the face amount of the bid bond.

Section 6. That Section 3-3-42, Article D, Chapter 3, Title 3 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. 3-3-42. Bid opening.

Bids shall be submitted sealed to the agent and shall be identified as bids on the envelope. Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as the purchasing agent deems appropriate, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection.

Section 7. That subsections (a) and (e), Section 3-3-52, Article D, Chapter 3, Title 3 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) Upon the award of any public construction contract exceeding \$100,000 to any prime contractor, 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.

(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. 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.

(e) Nothing in this section shall preclude the purchasing agent from requiring payment or performance bonds for construction contracts below \$100,000.

Section 8. That Section 3-3-62, Article D, Chapter 3, Title 3 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. 3-3-62. Conditions for use.

(a) Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

(b) Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to

the public, which writing shall document the basis for this determination:

(1) The alteration, repair, renovation or demolition of buildings when the contract is expected to equal or be less than \$500,000;

(2) The construction of highways, streets and alleys;

(3) The draining, dredging, excavation or grading of, or similar work upon, real property.

Section 9. That subsection (b), Section 3-3-69, Article D, Chapter 3, Title 3 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.

(b) The purchasing agent shall engage in individual discussions with all 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 staff expertise pertinent to the proposed project and to explore alternative concepts of performance of the contract. The request for proposal shall not seek estimates of person hours or costs for services. These discussions may encompass nonbinding estimates of total project costs, including where appropriate design, construction and life cycle costs. Methods to be utilized in arriving at the price for services may also be discussed. 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 (2) 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 shall be 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. If, at the conclusion of the discussions, the purchasing agent determines in writing and in his sole discretion that only one (1) offeror is fully qualified or that one (1) 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.

Section 10. That Section 3-3-111, Article H, Chapter 3, Title 3 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. 3-3-111. Participation of small businesses and businesses owned by women and minorities.

The purchasing agent shall establish programs consistent with all provisions of this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. Such programs shall be in writing and shall include cooperation with the state office of minority business enterprise, the United States Small Business Administration and other public or private agencies.

Section 11. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

JAMES P. MORAN, JR.
Mayor

Final Passage: June 13, 1987