

ORDINANCE NO. 5100

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.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 3-3-5 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by deleting the text shown in strikethrough:

~~Sec. 3-3-5—Public improvement and public works contracts.~~

~~The city council reserves unto itself the authority to let all public improvement or public works contracts.~~

Section 2. That Section 3-3-39 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 nontransportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Section 33.1-12 of the Code of Virginia, 1950, as amended, that are in excess of \$250,000 and partially or wholly funded by the Commonwealth 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 or offeror will enter into the contract for the work mentioned in the bid or proposal. The amount of the bid bond shall not exceed five percent of the amount bid.

(b) For nontransportation-related 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. However, the city may waive the requirement for prequalification of a bidder with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance that waiving the requirement is in the best interests of the city. The city shall not enter into more than 10 such contracts per year.

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

(d) Nothing in this section shall preclude the city from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under Section 33.1-12 of the Code of Virginia, 1950, as amended, and partially or wholly funded by the Commonwealth.

Section 3. That Section 3-3-40 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. 3-3-40 - Bonds for other than construction contracts.

(a) At the discretion of the purchasing agent, bidders may be required to submit with their bid a bid bond, or a certified check, in an amount to be determined by the purchasing agent and specified in the invitation to bid, which shall be forfeited to the city as liquidated damages upon the bidder's failure to execute within ~~105~~ days a nonconstruction contract awarded to him or upon the bidder's failure to furnish any required performance or payment bonds in connection with a contract awarded to him.

(b) The purchasing agent may require successful bidders to furnish a performance bond and/or a payment bond at the expense of the successful bidder, in amounts to be determined by the purchasing agent and specified in the invitation to bid, to ensure the satisfactory completion of the work for which a contract or purchase order is awarded.

Section 4. 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 \$350,000 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 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 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~~ performance and payment bond requirements are waived, prospective bidders or offerors shall be prequalified for each individual project in accordance with section 3-3-35. However, the city may waive the requirement for prequalification of a bidder with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance that waiving the requirement is in the best interests of the city. The city shall not enter into more than 10 such contracts per year.

(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 \$350,000 for transportation-related projects authorized under 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 5. That Section 3-3-62 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 purchasing agent 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. Notwithstanding the foregoing, upon a determination made in advance by the purchasing agent that the procurement of insurance by competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed broker or agent selected through competitive negotiation. The basis for this determination shall be documented in writing.

(b) Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances:

(1) upon a determination made in advance by the purchasing agent 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; and

(+2) for the construction of highways, streets and alleys;

(2) for the draining, dredging, excavation or grading of, or similar work upon, real property; or

~~(3) for construction contracts on a fixed price or not to exceed price design-build or construction management basis and otherwise in compliance with Sections 2.2-4303 and 2.2-4308 of the Code of Virginia, 1950, as amended, and other applicable law governing design-build or construction management contracts for public bodies; or~~

(4) as otherwise provided in section 3-3-70.

Section 6. That Section 3-3-70 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. 3-3-70 - Design-build and construction management contracts.

~~(a) While the competitive sealed bid process remains the preferred method of construction procurement for the city, the city may enter into a contract for construction on a fixed price or not to exceed price design-build or construction management basis, provided the city complies with the requirements of this section.~~

~~(b) Prior to making a determination as to the use of design-build or construction management for a specific construction project, the city shall employ or contract with a licensed architect or engineer with professional competence appropriate to the project to advise the city regarding the use of design-build or construction management for that project and to assist in the preparation of the request for qualifications and the request for proposals and the evaluation of such proposals.~~

~~(c) The following procedures shall be followed in the selection and evaluation of offerors and award of design-build and construction management contracts:~~

~~(1) Prior to the issuance of a request for qualifications, the purchasing agent shall determine that a design-build or construction management contract is more advantageous for the construction project than a competitive sealed bid construction contract, that there is benefit to the city in using a design-build or construction management contract, and that competitive sealed bidding is not practical or fiscally advantageous. The basis for this determination shall be documented in writing.~~

~~(2) The purchasing agent shall appoint an evaluation committee of not less than three members, one of whom shall be the architect or professional engineer employed by or under contract with the city pursuant to subsection (b).~~

~~(3) Prequalification of potential offerors:~~

~~(i) The purchasing agent shall issue a notice of request for qualifications from potential offerors by posting on a public bulletin board and advertising in two newspapers of daily circulation in the city at least 10 days preceding the last day set for the receipt of qualifications. In addition, qualifications may be solicited directly from potential offerors. The request for qualifications shall indicate in general terms that which is sought to be procured, specifying the criteria which will be used in evaluating the potential offerors' qualifications, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of offerors. The request for qualifications shall request of potential offerors only such information as is appropriate for an objective evaluation of all potential offerors pursuant to such criteria. The purchasing agent shall receive and consider comments concerning specifications or other provisions in the request for qualifications, prior to the time set for receipt of qualifications.~~

~~(ii) The evaluation committee shall evaluate each responding potential offeror's qualifications submittal and any other relevant information, and shall select a minimum of two offerors deemed fully qualified and best suited on the basis of the criteria contained in the request for qualifications. An offeror may be denied prequalification only upon those grounds specified in section 3-3-35(f). At least 30 days prior to the date established for the submission of proposals, the purchasing agent shall advise in writing each potential offeror whether that offeror has been selected. In the event that a potential offeror is not selected, the written notification to such potential offeror shall state the reasons therefor.~~

~~(4) Request for proposals:~~

~~(i) The purchasing agent shall issue a request for proposals to the selected offerors at least 10 days prior to the date set for receipt of proposals. The request for proposals shall indicate in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and~~

~~conditions, including any unique capabilities or qualifications that will be required of the contractor. The request for proposals shall include and define the requirements of the specific construction project in areas such as site plans, floor plans, exterior elevations, basic building envelope materials, fire protection information plans, structural, mechanical (HVAC) and electrical systems, and special telecommunications. The request for proposals may also define such other requirements as the purchasing agent deems appropriate for the construction project. In the case of a construction management contract, the request for proposals shall also define the pre design, design phase, bid phase and/or construction phase services to be performed by the construction manager. The request for proposals shall specify the evaluation criteria to be used by the evaluation committee to evaluate proposals. The purchasing agent shall receive and consider comments concerning specifications or other provisions in the request for proposals, prior to the time set for receipt of proposals.~~

~~(ii) Each selected offeror shall submit a cost proposal and a technical proposal. Cost proposals shall be sealed separately from technical proposals and, in the case of a construction management contract, shall include the offeror's lump sum price for all requested pre construction phase services. A lump sum price or guaranteed maximum price shall be established for all requested construction services. Upon receipt of an offeror's technical and cost proposals, the offeror's cost proposal shall be secured by the purchasing agent and kept sealed until evaluation of all technical proposals is completed.~~

~~(iii) The evaluation committee shall evaluate each technical proposal based on the criteria set forth in the request for proposals. As a part of the evaluation process, the evaluation committee shall grant each of the offerors an equal opportunity for direct and private communication with the evaluation committee. Each offeror shall be allotted the same fixed amount of time. In its conversations with offerors, the evaluation committee shall exercise care to discuss the same owner information with all offerors. Based upon its review of each offeror's technical proposal, the evaluation committee shall determine whether any changes to the request for proposals should be made to correct errors or omissions or to clarify ambiguities in the request for proposals, or to incorporate project improvements or additional details identified by the committee during its review. Any such changes shall be set out in an addendum to the request for proposals. Each offeror shall be provided an opportunity to amend or supplement its technical proposal to address the changes.~~

~~(iv) Based on final technical proposals, the evaluation committee shall conduct negotiations with the offerors. After negotiations have been conducted, offerors may submit sealed additive and/or deductive modifications to their cost proposals.~~

~~(v) Following receipt of the cost proposal modifications, the evaluation committee shall publicly open, read aloud and tabulate the cost proposals including any modifications submitted by an offeror.~~

~~(5) Final selection of design-builder.~~

~~(i) Following opening of cost proposals, the evaluation committee shall make its recommendation to the purchasing agent based upon its evaluation and negotiations.~~

~~(ii) Following receipt of the recommendation of the evaluation committee, the purchasing agent shall award the contract to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the request for proposal.~~

~~(6) Final selection of construction manager.~~

~~(i) Following the opening of cost proposals, the evaluation committee shall make its recommendation to the purchasing agent based on its evaluation and negotiations. In making its recommendation, price shall be considered, but need not be the sole determining factor.~~

~~(ii) Following receipt of the recommendation of the evaluation committee, the purchasing agent shall award the contract to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the request for proposal. Should the purchasing agent determine in writing that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the other offerors under consideration, a contract may be negotiated and awarded to that offeror.~~

~~(iii) For any guaranteed maximum price construction management contract, the contract shall provide that not more than 10 percent of the construction work (measured by the cost of the work) shall be performed by the construction manager with its own forces, that the remaining 90 percent of the construction work shall be performed by subcontractors of the construction manager, and that the construction manager shall procure such work by competitive sealed bidding or competitive negotiation.~~

~~(7) Trade secrets or proprietary information provided by an offeror in response to a request for qualifications or a request for proposals shall not be disclosed to the public or to competitors, provided the offeror has invoked protection pursuant to section 3-3-33.~~

~~(d) Subject to the approval of the city manager, the purchasing agent may promulgate such additional procedures, not inconsistent with the provisions of this section or the applicable rules and regulations of the review board, and consistent with the procedures for the procurement of nonprofessional services through competitive negotiation, as he deems necessary and appropriate to effect the selection and evaluation of offerors and the award of design-build and construction management contracts.~~

(a) The city may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis, provided that the city (1) complies with the requirements of this section and (2) has by this ordinance implemented procedures consistent

with the procedures adopted by the Secretary of Administration of the Commonwealth of Virginia for utilizing construction management or design-build contracts.

(b) Prior to making a determination as to the use of construction management or design-build for a specific construction project, the city shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (1) advise such the city regarding the use of construction management or design-build for that project and (2) assist the city with the preparation of the request for proposal and the evaluation of such proposals.

(c) A written determination shall be made in advance by the city that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize construction management or design-build. The determination shall be included in the request for qualifications and be maintained in the procurement file.

(d) Procedures adopted by the city for construction management pursuant to this article shall include the following requirements:

(1) Construction management contracts may be utilized for projects where the project cost is expected to be more than \$10 million;

(2) Construction management may be utilized on projects where the project cost is expected to be less than \$10 million, provided that (i) the project is a complex project and (ii) the project procurement method is approved by the city council. The written approval of the city council shall be maintained in the procurement file;

(3) Public notice of the request for qualifications is posted on the Department of General Service of the Commonwealth of Virginia's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

(4) The construction management contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

(5) Prior construction management or design-build experience or previous experience with the Department of General Services of the Commonwealth of Virginia's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the city may consider the experience of each contractor on comparable projects;

(6) Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable;

(7) The procedures allow for a two-step competitive negotiation process; and

(8) Price is a critical basis for award of the contract.

(e) Procedures adopted by the city for design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established for state public bodies by the Division of Engineering and Buildings of the Department of General Services for the Commonwealth of Virginia.

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

ALLISON SILBERBERG  
Mayor

Final Passage: January 20, 2018