

ORDINANCE NO. 5260

AN ORDINANCE to amend and reordain Article C (COOPERATIVE PROCUREMENT) Section 3-3-24 (PURCHASES UNDER CONTRACTS COMPETITIVELY ENTERED BY OTHER PUBLIC BODIES), Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION), Division 1 (COMPETITIVE SEALED BIDDING); Section 3-3-33 (PUBLIC ACCESS TO PROCUREMENT INFORMATION), Section 3-3-39 (BID BONDS ON CONSTRUCTION CONTRACTS), Division 2 (COMPETITIVE NEGOTIATION); Section 3-3-64 (PUBLIC NOTICE), Section 3-3-69 (CONTRACTING FOR PROFESSIONAL SERVICES BY COMPETITIVE NEGOTIATION), Division 3 (MISCELLANEOUS PROVISIONS); Section 3-3-72 (SMALL PURCHASES), 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 3-3-24 of Article C 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 and adding the text shown in underline as follows:

Sec. 3-3-24 - Purchases under contracts competitively entered by other public bodies.

(a) Notwithstanding any other provision of this chapter to the contrary, except as listed under subsection (b), the city may purchase from another public body's contract even if the city did not participate in the request for proposal or invitation to bid. Prior to any city purchase under a contract entered by another public body, the purchasing agent shall find that the process pursuant to which the contract was entered generally complied with the policies and procedures established by this chapter.

(b) The city may not purchase:

(1) from another public body's contract for architectural or engineering services or

(2) for construction ~~in excess of \$200,000, from the contract of another local public body that is more than a straight line distance of 75 miles from the territorial limits of the city.~~ The installation of artificial turf or other athletic surfaces shall not be subject to the limitations prescribed in this subsection. Nothing in this subsection shall be construed to prohibit sole source or emergency procurements awarded pursuant to section 3-3-71 or 3-3-73.

Section 2. That Section 3-3-33 of Article D 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 and adding the text shown in underline 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. *A bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information, or (c) line item prices or total bid, proposal, or prequalification application prices.*

Section 3. That Section 3-3-39 of Article D 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 and adding the text shown in underline 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~~ Article 2 (Section 33.2-208 et seq.) of Chapter 2 of Title 33.2 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~~ Article 2 (Sec. 33.2-28 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.

Section 4. That Section 3-3-64 of Article D 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 and adding the text shown in underline 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.~~ Notice may also be published 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 Article D 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 and adding the text shown in underline 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~~ the amounts set by the City Manager not exceed the stated thresholds of the VPPA; 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.

- (e) ~~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.~~
- (dc) 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.
- (ed) Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on 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 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 Section 3-3-72 of Article D 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 and adding the text shown in underline as follows:

Sec. 3-3-72 - Small purchases.

- (a) Any contract for goods, non-professional services, or for professional services for an amount set by the City Manager and not exceeding the amounts established for small purchases not requiring competitive sealed bids or competitive negotiation set forth in the Virginia Public Procurement Act, whichever is applicable, may be made in accordance with small purchase procedures promulgated by the purchasing agent; provided, however, that contract requirements shall not be artificially divided so as to constitute a small purchase under this section.
- (b) The small purchase procedures promulgated pursuant to subsection (a) of this section shall provide for competition wherever practicable.

Section 7. That Article C, as amended in Section 1 above, and Article D, as amended in Sections 2, 3, 4, 5, and 6 above, of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, reordained as part of the City of Alexandria City Code.

Section 8. That this ordinance shall become effective upon the date and at the time of its final passage.

JUSTIN M. WILSON
Mayor

ATTEST:

Gloria A. Sitton, CMC City Clerk

Final Passage: December 14, 2019