

EXHIBIT NO. _____

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14
1-21-06

~~14~~
~~1-10-06~~

City of Alexandria, Virginia

MEMORANDUM

DATE: JANUARY 5, 2006

TO: THE HONORABLE MAYOR AND MEMBERS OF COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: AN ORDINANCE REVISING PROCEDURES FOR DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTS

ISSUE: Consideration of an ordinance revising the City Code section relating to the use of Design-Build and Construction Management contracts to conform them to changes in State Code.

RECOMMENDATION: That Council introduce the ordinance amending the City Code section establishing procedures for Design-Build and Construction Management contracts. Pass it on first reading January 10, and schedule it for public hearing, second reading and final passage on Saturday, January 21, 2006.

BACKGROUND: Council adopted City Code Section 3-3-70 establishing procedures for Design-Build and Construction Management contracts in 1998. Since that time, minor changes have been made to the Virginia Public Procurement Act section 2.2-4308 and related regulations authorizing use of these contracting techniques. Because these techniques have been demonstrated as being more likely to control cost and schedule changes and reduce the risk of the owner for unexpected design changes, the federal government and private firms increasingly use these techniques.

A City project team has been established and is proceeding toward the solicitation of a Design-Build construction contract for the proposed DASH Bus Operations and Maintenance Facility on Business Center Drive. The team plans to submit this project in the next few months to the Commonwealth Design-Build/Construction Management Review Board as required by the Virginia Public Procurement Act. In order to assure compliance with the Board's regulations, it is necessary to conform the City Code provisions to changes in State Code.

ATTACHMENT: Proposed Ordinance

STAFF:

Jack T. Pitzer, Ph.D., CPPO, Purchasing Agent
Roderick Williams, Esq., Assistant City Attorney

Introduction and first reading:	1/10/06
Public hearing:	1/21/06
Second reading and enactment:	1/21/06

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Section 3-3-70 (DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTS), of Division 2 (COMPETITIVE NEGOTIATION), Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION), Chapter 3 (PURCHASES AND CONTRACTUAL SERVICES), Title 3 (FINANCE, TAXATION AND PROCUREMENT) of the Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

The proposed ordinance amends the design-build and construction management contract provisions of the City Code, to comport with recent state law changes.

Sponsor

Staff

Jack T. Pitzer, Ph.D., CPPO, Purchasing Agent
Roderick Williams, Assistant City Attorney

Authority

Virginia Code § 2.2-4308
1 Virginia Administrative Code 17-20-10 et seq.
Alexandria City Charter §§ 5.12 and 5.13

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Section 3-3-70 (DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTS), of Division 2 (COMPETITIVE NEGOTIATION), Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION), Chapter 3 (PURCHASES AND CONTRACTUAL SERVICES), 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 3-3-70 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 and has obtained the approval of the Commonwealth of Virginia Design-Build/Construction Management Review Board (the Review Board) pursuant to section ~~11-41.2:5~~ 2.2-2406 of the Code of Virginia (1950), as amended. Provided, however, that projects undertaken pursuant to subdivision D 2 of section 2.2-4303 of the Code of Virginia (1950), as amended, shall be exempt from approval of the Review Board.

(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:

(i) 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; and

(ii) obtain approval by the review board of the use of a design-build or

1 construction management contract for the construction project.

2
3 (2) Upon approval by the review board of the use of a design-build or construction
4 management contract for the specific construction project presented to the Review Board,
5 the purchasing agent shall appoint an evaluation committee of not less than three
6 members, one of whom shall be the architect or professional engineer employed by or
7 under contract with the city pursuant to subsection (b).

8
9 (3) Prequalification of potential offerors:

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

25
26 (ii) The evaluation committee shall evaluate each responding potential
27 offeror's qualifications submittal and any other relevant information, and shall
28 select a minimum of two offerors deemed fully qualified and best suited on the
29 basis of the criteria contained in the request for qualifications. An offeror may be
30 denied prequalification only upon those grounds specified in section 2.2-4317 of
31 the Code of Virginia (1950), as amended. At least 30 days prior to the date
32 established for the submission of proposal ~~Within 30 days of the date established~~
33 ~~for the submission of qualifications,~~ the purchasing agent shall advise in writing
34 each potential offeror whether that offeror has been selected. In the event that a
35 potential offeror is not selected, the written notification to such potential offeror
36 shall state the reasons there for.

37
38 (4) Request for proposals.

39
40 (i) The purchasing agent shall issue a request for proposals to the selected
41 offerors at least 10 days prior to the date set for receipt of proposals. The request
42 for proposals shall include and define the requirements of the specific
43 construction project in areas such as site plans, floor plans, exterior elevations,

1 basic building envelope materials, fire protection information plans, structural,
2 mechanical (HVAC) and electrical systems, and special telecommunications. The
3 request for proposals may also define such other requirements as the purchasing
4 agent deems appropriate for the construction project. In the case of a construction
5 management contract, the request for proposals shall also define the pre-design,
6 design phase, bid phase and/or construction phase services to be performed by the
7 construction manager. The request for proposals shall specify the evaluation
8 criteria to be used by the evaluation committee to evaluate proposals. The
9 purchasing agent shall receive and consider comments concerning specifications
10 or other provisions in the request for proposals, prior to the time set for receipt of
11 proposals.

12
13 (ii) Each selected offeror shall submit a cost proposal and a technical proposal.
14 Cost proposals shall be sealed separately from technical proposals and, in the case
15 of a construction management contract, shall include the offeror's lump sum price
16 for all requested pre-construction phase services. A lump sum price or guaranteed
17 maximum price shall be established for all requested construction services. Upon
18 receipt of an offeror's technical and cost proposals, the offeror's cost proposal
19 shall be secured by the purchasing agent and kept sealed until evaluation of all
20 technical proposals is completed.

21
22 (iii) The evaluation committee shall evaluate each technical proposal based on
23 the criteria set forth in the request for proposals. As a part of the evaluation
24 process, the evaluation committee shall grant each of the offerors an equal
25 opportunity for direct and private communication with the evaluation committee.
26 Each offeror shall be allotted the same fixed amount of time. In its conversations
27 with offerors, the evaluation committee shall exercise care to discuss the same
28 owner information with all offerors. In addition, the evaluation committee shall
29 not disclose any trade secret or proprietary information for which the offeror has
30 invoked protection pursuant to section 2.2-4342 F of the Code of Virginia. Based
31 upon its review of each offeror's technical proposal, the evaluation committee
32 shall determine whether any changes to the request for proposals should be made
33 to correct errors or omissions or to clarify ambiguities in the request for proposals,
34 or to incorporate project improvements or additional details identified by the
35 committee during its review. Any such changes shall be set out in an addendum to
36 the request for proposals. Each offeror shall be provided an opportunity to amend
37 or supplement its technical proposal to address the changes.

38
39 (iv) Based on final technical proposals, the evaluation committee shall conduct
40 negotiations with the offerors. After negotiations have been conducted, offerors
41 may submit sealed additive and/or deductive modifications to their cost proposals.

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43 (v) Following receipt of the cost proposal modifications, the evaluation

1 committee shall publicly open, read aloud and tabulate the cost proposals
2 including any modifications submitted by an offeror.

3
4 (5) Final selection of design-builder.

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

9
10 (ii) Following receipt of the recommendation of the evaluation committee, the
11 purchasing agent, ~~unless otherwise specified in the request for proposals,~~ shall
12 award the design-build contract, as specified in the request for proposals, to (a) the
13 offeror which has submitted an acceptable technical proposal at the lowest cost,
14 (b) the offeror which, in the opinion of the purchasing agent, has made the best
15 proposal, or (c) the offeror meeting the criteria otherwise specified in the request
16 for proposals.

17
18 (6) Final selection of construction manager.

19
20 (i) Following the opening of cost proposals, the evaluation committee shall
21 make its recommendation to the purchasing agent based on its evaluation and
22 negotiations. In making its recommendation, price shall be considered, but need
23 not be the sole determining factor. ~~Notwithstanding the foregoing, if prior to~~
24 ~~receipt of the recommendation from the evaluation committee, the purchasing~~
25 ~~agent determines in writing that only one offeror is fully qualified, or that one~~
26 ~~offeror is clearly more highly qualified than the other offerors under~~
27 ~~consideration, a contract may be negotiated and awarded to that offeror.~~

28
29 (ii) Following receipt of the recommendation of the evaluation committee, the
30 purchasing agent shall select the offeror which, in ~~his~~ the opinion of the
31 purchasing agent, has made the best proposal, and shall award the contract to that
32 offeror. Should the purchasing agent determine in writing that only one offeror is
33 fully qualified, or that one offeror is clearly more highly qualified than the other
34 offerors under consideration, a contract may be negotiated and awarded to that
35 offeror.

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

1 (7) Trade secrets or proprietary information provided by an offeror in response to a
2 request for qualifications or a request for proposals shall not be disclosed to the public or
3 to competitors, provided the offeror has invoked protection pursuant to section 3-3-33.
4

5 (8) The city shall submit information for post-project evaluation when requested by
6 the Review Board.
7

8 (d) Subject to the approval of the city manager, the purchasing agent may promulgate such
9 additional procedures, not inconsistent with the provisions of this section or the rules and
10 regulations of the Review Board, and consistent with the procedures for the procurement of
11 nonprofessional services through competitive negotiation, as he deems necessary and appropriate
12 to effect the selection and evaluation of offerors and the award of design-build and construction
13 management contracts.
14

15 Section 2. That this ordinance shall become effective upon the date and at the time of its
16 final passage.
17

18 WILLIAM D. EUILLE
19 Mayor
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21 Introduction: 1/10/06
22 First Reading: 1/10/06
23 Publication:
24 Public Hearing:
25 Second Reading:
26 Final Passage:
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ORDINANCE NO. 4435

AN ORDINANCE to amend and reordain Section 3-3-70, Division 2 (COMPETITIVE NEGOTIATION) of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION) 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 Division 2 (Competitive Negotiation) of Article D (Contract Formation and Methods of Source Selection) 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, be, and the same hereby is, amended by enacting an amended Section 3-3-70, 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 and has obtained the approval of the Commonwealth of Virginia Design-Build/Construction Management Review Board (the Review Board) pursuant to section 2.2-2406 of the Code of Virginia (1950), as amended. Provided, however, that projects undertaken pursuant to subdivision D 2 of section 2.2-4303 of the Code of Virginia (1950), as amended, shall be exempt from approval of the Review Board.
- (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:
 - (i) 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; and

- (ii) obtain approval by the review board of the use of a design-build or construction management contract for the construction project.
- (2) Upon approval by the review board of the use of a design-build or construction management contract for the specific construction project presented to the Review Board, 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 a newspaper of general 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 2.2-4317 of the Code of Virginia (1950), as amended. 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 there for.
- (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 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. In addition, the evaluation committee shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to section 2.2-4342 F of the Code of Virginia. 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 design-build contract, as specified in the request for proposals, to (a) the offeror which has submitted an acceptable technical proposal at the lowest cost, (b) the offeror which, in the opinion of the purchasing agent, has made the best proposal, or (c) the offeror meeting the criteria otherwise specified in the request for proposals.
- (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 select the offeror which, in the opinion of the purchasing agent, has made the best proposal, and shall award the contract to that offeror. 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.

(8) The city shall submit information for post-project evaluation when requested by the Review Board.

(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 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.

Section 2. That this ordinance shall become effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Final Passage: January 21, 2006