EXHIBIT NO. 1

13
12-12-06

City of Alexandria, Virginia

MEMORANDUM

DATE: DECEMBER 7, 2006

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER

SUBJECT: ORDINANCE TO REVISE CITY PURCHASING CODE TO IMPLEMENT 2006 GENERAL ASSEMBLY CHANGES IN THE VIRGINIA PUBLIC PROCUREMENT ACT

ISSUE: Consideration of an ordinance to revise the City Purchasing Code to implement changes in the Virginia Public Procurement Act adopted during the 2006 session of the General Assembly.

RECOMMENDATION: That City Council pass the Ordinance on first reading and schedule it for public hearing, second reading and final passage Saturday, December 16, 2006.

DISCUSSION: The proposed ordinance would amend various provisions of the City Code regarding Purchasing to comport with amendments to the Virginia Public Procurement Act made by the 2006 session of the General Assembly. These changes impact on the provisions for using contracts entered by other jurisdictions; establishing the amounts of bids, performance and payment bonds; authorizing the use of owner-controlled insurance for construction projects; authorizing the use of competitive negotiation for low dollar construction projects; authorizing the award of multiple contracts as a result of competitive negotiation; authorizing the use of design-build or construction management delivery methods; and modifying the Code provisions for programs relating to participation of small businesses and businesses owned by women and minorities. Specific changes include the following:

(1) Prior to the recent action by the General Assembly, the State Code prohibited the use of cooperative purchasing programs to obtain any professional service; however, the General Assembly has now eliminated that prior prohibition with two exceptions. The law still restricts the use of architectural and engineering service contracts entered into by other public jurisdictions.

(2) Increases the minimum contract amount that requires bonding on transportation-related projects from $100,000 to $250,000. The City may still require bonds on contracts less than the minimum;

(3) Allows the City to purchase insurance for public construction contracts where the amount of the contract or combination of contracts is more than $100 million;

(4) Allows use of competitive negotiation for construction, alteration, repair, renovation or demolition of buildings when the contract is expected to cost less than $500,000, and for fixed price design-build or construction management construction contracts expected to cost less than $1 million;

(5) Allows multiple awards as a result of a single competitively negotiated solicitation;

(6) Allows the City to use design-build and construction management contracting without review by the Commonwealth Design-Build/Construction Management Review Board after a determination by the Board that the City is capable of performing these procurements; and

(7) Defines small, minority and women-owned businesses, mandates the establishment of programs to facilitate the participation of such businesses in procurement transactions, authorizes use of certification lists of small, minority and women-owned businesses maintained by the Virginia Department of Minority Business Enterprises, and authorizes the City Manager to establish enhancement and remedial measures for small, minority and women-owned businesses.

Of the above seven changes, the first six of them will allow for greater flexibility in the purchasing process which creates the opportunities for being able to select more responsive and responsible contractors, as well as creates the opportunity for cost savings or process efficiencies. The final change (#7) allows the City to expand its efforts in regard to contracting with small, minority and women-owned businesses. While court rulings and Virginia law do not authorize set-asides or quotas, the new law will allow the City to establish goals and also have a more proactive program in this area. The new State law allows such a program where there is a "natural basis for small business enhancement" or if there is a "persuasive analysis"[1] of disparity between the "availability and utilization of women-and minority-owned businesses."[1]

As a result, the first step in the development of such a program will need to be the establishment of findings that meet these State Code requirements. Subsequently, if the findings meet the test of the State Code, then a City program could be developed and implemented. City purchasing staff will begin working on developing a findings document. The Commonwealth of Virginia has already undertaken such an analysis and has implemented a goal-based program under executive orders issued by former Governor Warner and recently reaffirmed by Governor Kaine. The City, as required by federal law, has already been using a goal-based approach in City capital projects where federal highway funds are used as part of the project financing.

FISCAL IMPACT: There is no estimated fiscal impact from these changes.

[1] 15.2 – 965.1 of the Code of Virginia

ATTACHMENT: Proposed Ordinance

STAFF:
Mark Jinks, Deputy City Manager
D. A. Neckel, Director of Finance
Jack T. Pitzer, Ph.D., CPPO, Director of Procurement
Roderick B. Williams, Assistant City Attorney

EXHIBIT NO. 2

Introduction and first reading:	12/12/06
Public hearing:	12/16/06
Second reading and enactment:	12/16/06

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Sections 3-3-24, 3-3-39, 3-3-52, 3-3-55, 3-3-62, 3-3-69, 3-3-70, and 3-3-111 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.

Summary

The proposed ordinance would amend various provisions of City Code regarding purchasing, to comport with amendments to the Virginia Public Procurement Act made by the 2006 session of the General Assembly.

Sponsor

Staff

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

Authority

Virginia Code, Title 2.2, Chapter 43
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

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EXHIBIT NO. 3

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Sections 3-3-24, 3-3-39, 3-3-52, 3-3-55, 3-3-62, 3-3-69, 3-3-70, and 3-3-111 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 Article C (Cooperative Procurement) 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 3-3-24, to read as follows:

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

Notwithstanding any other provision of this chapter to the contrary, ~~the city may make purchases of goods and services from nongovernmental vendors under contracts that the vendors have entered, pursuant to a competitive procurement process, with one or more other public bodies, whether or not those contracts expressly provide for purchases by other public bodies~~ except for contracts for architectural and engineering services, 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, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. 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.

Section 2. That Division 1 (Competitive Sealed Bidding) 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 amended Sections 3-3-39, 3-3-52, and 3-3-55, 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 $100,000 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 will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent 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.

(c) 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 $100,000 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.

Sec. 3-3-52 Performance and payment bonds.

(a) Upon the award of any (i) public construction contract exceeding $100,000 to any prime contractor; (ii) construction contract exceeding $100,000 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 $100,000 in which the performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding $250,000 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.

(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.

(b) 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.

(c) The bonds shall be made payable to the city.

(d) Each of the bonds shall be filed with the purchasing agent.

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

(f) 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.

Sec. 3-3-55 Alternative forms of security.

(a) In lieu of a bid, payment or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

(b) If approved by the city attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the city equivalent to the corporate surety's bond.

(c) Purchase of owner-controlled insurance in construction projects.

(1) Notwithstanding any other provision of law to the contrary, the city may purchase at its expense an owner-controlled insurance program in connection with any public construction contract where the amount of the contract or combination of contracts is more than $100 million, provided that no single contract valued at less than $50 million shall be combined pursuant to this section. The city shall provide notice if it intends to use an owner-controlled insurance program, including the specific coverages of such program, in any request for proposal, invitation to bid, or other applicable procurement documents.

(2) The city shall not require a provider of architecture or professional engineering services to participate in the owner-controlled insurance program, except to the extent that the city may elect to secure excess coverage. No contractor or subcontractor shall be required to provide insurance coverage for a construction project if that specified coverage is included in an owner-controlled insurance program in which the contractor or subcontractor is enrolled.

(3) For the purposes of this subsection, "owner-controlled insurance program" means a consolidated insurance program or series of insurance policies issued to the city that may provide for some or all of the following types of insurance coverage for any contractor or subcontractor working on or at a public construction contract or combination of such contracts: general liability, property damage, workers' compensation, employer's liability, pollution or environmental liability, excess or umbrella liability, builder's risk, and excess or contingent professional liability.

Section 3. 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 amended Sections 3-3-62, 3-3-69, and 3-3-70 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 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:

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

(2) on a fixed price design-build basis or construction management basis under section 2.2-4308 of the Code of Virginia, 1950, as amended, when the contract is not expected to cost more than $1 million;

~~(2)~~(3) the construction of highways, streets and alleys;

~~(3)~~(4) the draining, dredging, excavation or grading of, or similar work upon, real property; or

~~(4)~~(5) as otherwise provided in section 3-3-70.

Sec. 3-3-69 Contracting for professional services by competitive negotiation.

(a) Professional services shall be procured by competitive negotiation.

(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. 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 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 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.

(c) 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.

(d) A contract for architectural or professional engineering services relating to construction projects may be negotiated by the purchasing agent, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the request for proposals, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first. Such contract may be renewable for two additional term one-year terms at the option of the city, as exercised by the purchasing agent. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed; (b) the sum of all projects performed in one contract term shall not exceed one million dollars; and (c) the project fee of any single project shall not exceed $200,000. Any unused amounts from one contract term shall not be carried forward to a successive term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the request for proposals so states, and (2) the purchasing agent has established procedures for distributing multiple projects among the selected contractors during the contract term.

(e) Multiphase professional services contracts satisfactory and advantageous to the city 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.

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 either 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, or the Review Board has made a one-time determination that the city has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis. 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~~ 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~~ 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 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 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.

Section 4. That Article H (Assistance to Small and Disadvantaged Businesses) 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 3-3-111 to read as follows:

Sec. 3-3-111 Participation of small businesses and businesses owned by women and minorities.

(a) The purchasing agent ~~may~~ 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 may include cooperation with the state office of minority business enterprise, the United States Small Business Administration and other public or private agencies~~ comply with the provisions of any enhancement or remedial measures authorized by the city manager pursuant to section 15.2-965.1 of the Code of Virginia, 1950, as amended, and

shall include specific plans to achieve any goals established therein. A small, women- or minority-owned business that is certified by the Virginia Department of Minority Business Enterprises pursuant to section 2.2-1403 of the Code of Virginia, 1950, as amended, shall not be required by any locality to obtain any additional certification to participate in any program designed to enhance the participation of such businesses as vendors or to remedy any documented disparity.

(b). As used in this section:

"Minority individual" means an individual who is a citizen of the United States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Marinas, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

"Minority-owned business" means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

"Small business" means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

"Women-owned business" means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law.

Section 5. That this ordinance shall become effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Introduction: 12/12/06
First Reading: 12/12/06
Publication:
Public Hearing:
Second Reading:
Final Passage:

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