

EXHIBIT NO. 1

City of Alexandria, Virginia

~~VJ~~ ²⁵
~~6-12-01~~ 6-16-01

MEMORANDUM

DATE: JUNE 5, 2001
TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*
SUBJECT: AMENDMENTS TO CITY CODE RELATED TO PURCHASING

ISSUE: City Council consideration of an Ordinance implementing amendments to the City's Procurement Code based on changes in the Virginia Public Procurement Act.

RECOMMENDATION: That City Council pass the proposed Ordinance (Attachment 1) on first reading and set it for public hearing, second reading and final passage on Saturday, June 16.

DISCUSSION: The proposed Ordinance brings the City Code into conformance with a new mandatory provision of the Virginia Public Procurement Act, and amends the City Code based on other provisions of the Virginia Public Procurement Act enacted during the 2001 Session of the General Assembly. Changes include:

- The mandatory provision to be inserted in the City Procurement Code is Sec. 3-3-54 (d), which requires waivers of a subcontractor's right to sue on payment bonds to be in writing and executed after the subcontractor is under contract and has provided labor or materials. This provision was inserted by the General Assembly as a protection for subcontractors from general contractors on public capital construction projects.

The other proposed code changes are not mandatory, but staff recommends that Council adopt the revisions as clarifications or desirable changes to improve the City Code.

- Section 3-3-46 (a) provides for preference for Virginia products, construction and services furnished by Virginia persons, firms or corporations in the event of tie bids. The change to the Code makes the existing Virginia preference language of this code section easier to interpret.
- Section 3-3-69 (d) provides authorization for the City to enter into contracts with architectural or professional engineering firms for multiple projects. This new section of the City Code establishes maximum cumulative costs for such contracts and places limits on the number of renewal options available to the City before re-solicitation of the

contracts. The provision also authorizes the award of multiple contracts for architects and professional engineers in order to reduce the time taken for solicitation and to provide the City with the ability to take advantage of the expertise of a variety of firms without the necessity of frequent requests for proposals, particularly for the lower value and less complicated projects that occur frequently.

Prior to the 2001 General Assembly action, the generally accepted interpretation of the Virginia Public Procurement Act was that local governments had the authority to enter into contracts with architectural and engineering firms for multiple projects. As a result, this is a contracting option that many local governments and the City have used (such as for the engineer of record contracts). However, with the new state law, specific mandatory parameters have been established. As a result, if the City wishes to continue to use this optional contracting method, then the new mandatory provisions need to be added to the City Code.

- Section 3-3-73.1 establishes a new procurement concept called reverse auctioning. This concept has been developed to take advantage of the capabilities of the Internet, and it will allow bidders to submit successive bids on-line in real-time until a prescribed cut-off time. Bidders will be allowed to see other bids and to modify their bids during the auction process. Active use of this provision by the City will require installation of specially developed software on the City's website or the establishment of a link to a software vendor's website. Reverse auctioning is most applicable when purchasing commodities.
- The change to Sec. 3-3-107 (b) adds language that when City contracts contain procedures for consideration of contractual claims, such procedures may either be contained in the contract or specifically incorporated into the contract by reference, and if incorporated by reference, the claims procedures are made available to the contractors.

FISCAL IMPACT: The only change expected to require expenditure of funds is the reverse auctioning procedure authorized by Sec. 3-3-73.1. The amount of this cost will not be known until the City seeks proposals to furnish the needed software. No additional staff will be needed as a result of these changes.

ATTACHMENT: 1. Proposed Ordinance amending the City Procurement Code

STAFF: Mark Jinks, Assistant City Manager
D.A. Neckel, Director of Finance
Jack T. Pitzer, Ph.D., CPPO, Purchasing Agent
Steven L. Rosenberg, Assistant City Attorney

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~~6-12-01~~ 6-16-01

Introduction and first reading: 6/12/01
Public hearing: 6/16/01
Second reading and enactment: 6/16/01

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Sections 3-3-46 (TIE BIDS) and 3-3-54 (ACTIONS ON PAYMENT BONDS), of Division 1 (COMPETITIVE SEALED BIDDING), to amend and reordain Section 3-3-69 (CONTRACTING FOR PROFESSIONAL SERVICES BY COMPETITIVE NEGOTIATION), of Division 2 (COMPETITIVE NEGOTIATION), and to enact new Section 3-3-73.1 (REVERSE AUCTIONING), of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION); and (2) amend and reordain Section 3-3-107 (CONTRACTUAL DISPUTES) of Article G (APPEALS AND REMEDIES FOR BID PROTESTS), all of Chapter 3 (PROCUREMENT), Title 3 (FINANCE, TAXATION AND PROCUREMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

The proposed ordinance brings the city procurement code into conformance with the mandatory provisions of the Virginia Public Procurement Act, and amends the city procurement code based on other provisions of the Virginia Public Procurement Act.

Sponsor

None

Staff

Mark Jinks, Assistant City Manager
Jack T. Pitzer, Purchasing Agent
Steven L. Rosenberg, Assistant City Attorney

Authority

§§ 5.12 and 5.13, Alexandria City Charter
§ 11-35 et seq., Code of Virginia (1950), as amended

Estimated Costs of Implementation

None

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

None

~~15~~ 25
~~6-12-01~~ 6-16-01

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Sections 3-3-46 (TIE BIDS) and 3-3-54 (ACTIONS ON PAYMENT BONDS), of Division 1 (COMPETITIVE SEALED BIDDING), to amend and reordain Section 3-3-69 (CONTRACTING FOR PROFESSIONAL SERVICES BY COMPETITIVE NEGOTIATION), of Division 2 (COMPETITIVE NEGOTIATION), and to enact new Section 3-3-73.1 (REVERSE AUCTIONING), of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION); and (2) amend and reordain Section 3-3-107 (CONTRACTUAL DISPUTES) of Article G (APPEALS AND REMEDIES FOR BID PROTESTS), all of Chapter 3 (PROCUREMENT), 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 3-3-46 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. 3-3-46 Tie bids.

(a) In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services and/or construction produced in Virginia or provided by Virginia persons, firms or corporations, ~~if such a choice is available~~; otherwise, the tie shall be decided by lot, or as hereinafter provided.

(b) Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.

(c) If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder.

(d) In the event that there is a tie bid, the tie bidders shall be invited to resubmit written bids below the original bid, and award shall be made to the bidder with the lowest bid price. Any price quote made verbally shall be confirmed in writing.

(e) In the event that none of the foregoing provisions of this section resolves the tie, the purchasing agent may cancel the solicitation and rebid. Records shall be kept of any proceeding connected with tie bids.

Section 2. That section 3-3-54 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. 3-3-54 Actions on payment bonds.

(a) Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished materials in accordance with the contract for which a payment bond has been given, and who has not been paid in full therefor before the expiration of 90 days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.

(b) Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under section 3-3-52 but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under section 3-3-52 but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this subsection.

(c) Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

(d) Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

Section 3. That section 3-3-69 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

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

(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. 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 proposal, 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 proposal so states, and (2) the purchasing agent has established procedures for distributing multiple projects among the selected contractors during the contract term.

(de) 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.

Section 4. That Chapter 3 of Title 3 of The Code of the City of Alexandria, 1981, as amended, be, and the same hereby is, amended by adding new section 3-3-73.1 to read as follows:

Sec. 3-3-73.1 Reverse auctioning.

(a) The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

(b) During the reverse auctioning bidding process, bids shall be revealed to other bidders and bidders shall have the opportunity to modify their bids until the time designated for bid opening.

(c) For purposes of this section, "reverse auctioning" means a method of source selection in which bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder.

Section 5. That section 3-3-107 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. 3-3-107 Contractual disputes.

(a) Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

(b) A procedure for consideration of contractual claims may be included in each contract. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the purchasing agent.

(c) A contractor may not invoke the administrative procedures set forth in the contract, if any, or institute legal action as provided in section 3-3-108 of this chapter, prior to receipt of the decision on the claim, unless the purchasing agent fails to render such decision within the time specified in the contract.

(d) The decision of the purchasing agent shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the

purchasing agent by invoking the administrative procedures set forth in the contract, if any, or in the alternative by instituting legal action as provided in section 3-3-108 of this chapter.

Section 6. That this ordinance shall become effective upon the date and at the time of its final passage.

KERRY J. DONLEY
Mayor

Introduction: 6/12/01
First Reading: 6/12/01
Publication: 6/14/01
Public Hearing: 6/16/01
Second Reading: 6/16/01
Final Passage:

N.B. Underlining is not part of the ordinance but denotes material that is new or amended.
Strike-outs or dashes are not part of the ordinance but denote material that is being deleted.

ORDINANCE NO. 4208

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(c) If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder.

(d) In the event that there is a tie bid, the tie bidders shall be invited to resubmit written bids below the original bid, and award shall be made to the bidder with the lowest bid price. Any price quote made verbally shall be confirmed in writing.

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(b) Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under section 3-3-52 but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under section 3-3-52 but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this subsection.

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(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.

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(b) A procedure for consideration of contractual claims may be included in each contract. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the purchasing agent.

(c) A contractor may not invoke the administrative procedures set forth in the contract, if any, or institute legal action as provided in section 3-3-108 of this chapter, prior to receipt of the decision on the claim, unless the purchasing agent fails to render such decision within the time specified in the contract.

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purchasing agent by invoking the administrative procedures set forth in the contract, if any, or in the alternative by instituting legal action as provided in section 3-3-108 of this chapter.

Section 6. That this ordinance shall become effective upon the date and at the time of its final passage.

KERRY J. DONLEY
Mayor

Final Passage: June 16, 2001