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City of Alexandria, Virginia

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MEMORANDUM

DATE: DECEMBER 6, 2010
TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: JAMES K. HARTMANN, CITY MANAGER *J*
SUBJECT: PROPOSED ORDINANCE TO AMEND CITY PROCUREMENT PROVISIONS

ISSUE: Consideration of an ordinance to amend City Code Sections 3-3-24, 3-3-32, and 3-3-62 in accordance with the modifications made to Code of Virginia §§ 2.2-4304, 2.2-4305, and 2.2-4303 and to amend City Code Section 3-3-24 to lift restrictions on the City's ability to make purchases under contracts competitively entered into by other public bodies.

RECOMMENDATION: That City Council introduce the ordinance, pass it on first reading and schedule for public hearing, second reading and final passage on Saturday, December 18 (Attachment 1).

DISCUSSION: Code of Virginia §2.2-4304 was amended by the General Assembly to add an additional restriction on a locality's ability to purchase under the contract of another public body. The amendment prohibits a locality from purchasing under another local public body's contract for construction when the contract cost exceeds \$200,000 and the other local public body is more than a 75 mile straight line distance from the locality procuring the construction. For the City, this distance runs from about Hanover County, Virginia to the south to Adams County, Pennsylvania to the north. This limitation does not apply to contracts for the installation of artificial turf or other artificial surfaces nor does it apply to the use of sole source or emergency procurements. As a result, City Code Section 3-3-24 would be modified to reflect this change. Additionally, City Code Section 3-3-24 currently specifies that the City may purchase from another public body's contract only if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In order to allow the City to take advantage of additional cooperative procurement opportunities, this language should be deleted, as it is not required by State law.

In addition, Code of Virginia §2.2-4305 was amended to raise from \$30,000 to \$50,000 the amount of state aid funds that can be used for construction before competitive bidding or competitive negotiation must be used. In 1997, the Virginia Code was amended to remove a restriction on contract award eligibility. Under this restriction, which has never been removed from the City Code, no person or firm could be eligible to bid on or submit a proposal for projects using state funds, or be awarded any such contract, if that person or firm has been engaged as architect or engineer for the same project under a separate contract. The proposed ordinance would modify the City Code Section 3-2-32 to reflect both of these changes.

Finally, Code of Virginia §2.2-4303 was amended to increase the threshold for the use of competitive negotiation for contracts for the construction of structures and fixed-price design-build or construction management contracts from \$1 million to \$1.5 million. City Code Section 3-2-62 would be modified to reflect this new threshold.

FISCAL IMPACT: The inability to utilize cooperative contracts outside a 75-mile radius will increase the need for Procurement staff to prepare competitive bidding for some items that would be generic to many jurisdictions. Examples of contracts we currently use include Charlotte, North Carolina for police alarm services, the Town of Blacksburg for fire apparatus, and the City of Newport News for pavement management services.

ATTACHMENT:

Attachment 1: Proposed Ordinance

STAFF:

Eleanor Foddrell, Acting Director of Procurement
Christina Zechman Brown, Assistant City Attorney

Introduction and first reading:	12/14/10
Public hearing:	12/18/10
Second reading and enactment:	12/18/10

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Section 3-3-24 (PURCHASES UNDER CONTRACT COMPETITIVELY ENTERED BY OTHER PUBLIC BODIES) of Article C (COOPERATIVE PROCUREMENT), Section 3-3-32 (COMPETITIVE BIDDING ON STATE AID PROJECTS) of Division 1 (COMPETITIVE SEALED BIDDING) of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION) and Section 3-3-62 (CONDITIONS FOR USE) of Division 2 (COMPETITIVE NEGOTIATION) of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION), all of Chapter 3 (PURCHASES AND CONTRACTUAL SERVICES) of Title 3 (FINANCE, TAXATION AND PROCUREMENT) of the Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

The proposed ordinance amends City Code Sections 3-3-24, 3-3-32 and 3-3-62 in accordance with the modifications made to Virginia Code §§ 2.2-4304, 2.2-4305 and 2.2-4303.

Sponsor

Staff

Laura B. Triggs, Chief Financial Officer
Eleanor Foddrell, Acting Director of Procurement
Christina Zechman Brown, Assistant City Attorney

Authority

Virginia Code §§ 2.2-4303, 4304, and 4305

Estimated Costs of Implementation

None

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

None

ORDINANCE NO. _____

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3 AN ORDINANCE to amend and reordain Section 3-3-24 (PURCHASES UNDER CONTRACT
4 COMPETITIVELY ENTERED BY OTHER PUBLIC BODIES) of Article C
5 (COOPERATIVE PROCUREMENT), Section 3-3-32 (COMPETITIVE BIDDING ON
6 STATE AID PROJECTS) of Division 1 (COMPETITIVE SEALED BIDDING) of
7 Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION)
8 and Section 3-3-62 (CONDITIONS FOR USE) of Division 2 (COMPETITIVE
9 NEGOTIATION) of Article D (CONTRACT FORMATION AND METHODS OF
10 SOURCE SELECTION), all of Chapter 3 (PURCHASES AND CONTRACTUAL
11 SERVICES) of Title 3 (FINANCE, TAXATION AND PROCUREMENT) of the Code
12 of the City of Alexandria, Virginia, 1981, as amended.
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14 THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:
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16 Section 1. That Article C (Cooperative Procurement) of Chapter 3 (Purchases and
17 Contractual Services) of Title 3 (Finance, Taxation and Procurement) of the Code of the City of
18 Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by enacting
19 amended Section 3-3-24, to read as follows:
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21 Sec. 3-3-24 Purchases under contracts competitively entered by other public bodies.
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23 (a) Notwithstanding any other provision of this chapter to the contrary, except for
24 contracts for architectural and engineering services as listed under subsection (b), the city may
25 purchase from another public body's contract even if the city did not participate in the request for
26 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the
27 procurement was being conducted on behalf of other public bodies. Prior to any city purchase
28 under a contract entered by another public body, the purchasing agent shall find that the process
29 pursuant to which the contract was entered generally complied with the policies and procedures
30 established by this chapter.
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32 (b) The city may not purchase:
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34 (1) from another public body's contract for architectural or engineering services or
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36 (2) for construction in excess of \$200,000, from the contract of another local public body
37 that is more than a straight line distance of 75 miles from the territorial limits of the city. The
38 installation of artificial turf or other athletic surfaces shall not be subject to the limitations
39 prescribed in this subsection. Nothing in this subsection shall be construed to prohibit sole source
40 or emergency procurements awarded pursuant to the City Code Section 3-3-71 or 3-3-73.
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42 Section 2. That Division 1 (Competitive Sealed Bidding) of Article D (Contract
43 Formation And Methods of Source Selection), of Chapter 3 (Purchases and Contractual Services)
44 of Title 3 (Finance, Taxation and Procurement) of the Code of the City of Alexandria, Virginia,
45 1981, as amended, be, and the same hereby is, amended by enacting amended Section 3-3-32, to
46 read as follows:

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2 Sec. 3-3-32 Competitive bidding on state aid projects.
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4 No contract for the construction of any building or for an addition to or improvement of
5 an existing building for which state funds of not less than \$350,000, in the aggregate or for the
6 sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used
7 or are to be used for all or part of the cost of the construction, addition or improvement shall be
8 let except after competitive sealed bidding or competitive negotiation as provided under
9 subsection (b) of section 3-3-62. The procedure for the advertising for bids or the submission of
10 proposals and the letting of the contract shall conform, mutatis mutandis, to this chapter. ~~No~~
11 ~~person or firm shall be eligible to bid on or submit a proposal for any such contract, or to have~~
12 ~~the same awarded to him or it, who or which has been engaged as architect or engineer for the~~
13 ~~same project under a separate contract.~~
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15 Section 3. That Division 2 (Competitive Negotiation) of Article D (Contract
16 Formation and Methods of Source Selection), of Chapter 3 (Purchases and Contractual Services)
17 of Title 3 (Finance, Taxation and Procurement) of the Code of the City of Alexandria, Virginia,
18 1981, as amended, be, and the same hereby is, amended by enacting amended Section 3-3-62, to
19 read as follows:
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21 Sec. 3-3-62 Conditions for use.
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23 (a) Upon a determination made in advance by the purchasing agent and set forth in
24 writing that competitive sealed bidding is either not practicable or not fiscally advantageous to
25 the public, goods, services or insurance may be procured by competitive negotiation. The writing
26 shall document the basis for this determination. Notwithstanding the foregoing, upon a
27 determination made in advance by the purchasing agent that the procurement of insurance by
28 competitive negotiation is either not practicable or not fiscally advantageous, insurance may be
29 procured through a licensed broker or agent selected through competitive negotiation. The basis
30 for this determination shall be documented in writing.
31

32 (b) Construction may be procured only by competitive sealed bidding, except that
33 competitive negotiation may be used in the following instances upon a determination made in
34 advance by the purchasing agent and set forth in writing that competitive sealed bidding is either
35 not practicable or not fiscally advantageous to the public, which writing shall document the basis
36 for this determination:
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38 (1) for the construction, alteration, repair, renovation or demolition of buildings or
39 structures when the contract is expected to equal or be less than \$1.5 million;
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41 (2) on a fixed price design-build basis or construction management basis under section
42 2.2-4308 of the Code of Virginia, 1950, as amended, when the contract is not expected to cost
43 more than \$1.5 million;
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45 (3) the construction of highways, streets and alleys;
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1 (4) the draining, dredging, excavation or grading of, or similar work upon, real property;

2 or

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

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6 Section 4. That this ordinance shall become effective upon the date and at the
7 time of its final passage.

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WILLIAM D. EUILLE
Mayor

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12 Introduction: 12/14/10

13 First Reading: 12/14/10

14 Publication:

15 Public Hearing: 12/18/10

16 Second Reading: 12/18/10

17 Final Passage: 12/18/10

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ORDINANCE NO. 4699

AN ORDINANCE to amend and reordain Section 3-3-24 (PURCHASES UNDER CONTRACT COMPETITIVELY ENTERED BY OTHER PUBLIC BODIES) of Article C (COOPERATIVE PROCUREMENT), Section 3-3-32 (COMPETITIVE BIDDING ON STATE AID PROJECTS) of Division 1 (COMPETITIVE SEALED BIDDING) of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION) and Section 3-3-62 (CONDITIONS FOR USE) of Division 2 (COMPETITIVE NEGOTIATION) of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION), all of Chapter 3 (PURCHASES AND CONTRACTUAL SERVICES) of Title 3 (FINANCE, TAXATION AND PROCUREMENT) of the Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That 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 amended Section 3-3-24, to read 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 for contracts for architectural and engineering services 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, 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.

(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 the City Code Section 3-3-71 or 3-3-73.

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 Section 3-3-32, to read as follows:

Sec. 3-3-32 Competitive bidding on state aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of not less than \$350,000, in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of the construction, addition or improvement shall be let except after competitive sealed bidding or competitive negotiation as provided under subsection (b) of section 3-3-62. The procedure for the advertising for bids or the submission of proposals and the letting of the contract shall conform, mutatis mutandis, to this chapter. ~~No person or firm shall be eligible to bid on or submit a proposal for any such contract, or to have the same awarded to him or it, who or which has been engaged as architect or engineer for the same project under a separate contract.~~

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 Section 3-3-62, 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 or structures when the contract is expected to equal or be less than \$1.5 million;

(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 \$1.5 million;

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

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

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

Section 4. That this ordinance shall become effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Final Passage: December 18, 2010