

EXHIBIT NO.

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12-13-08

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~~12-9-08~~

*City of Alexandria, Virginia*

MEMORANDUM

DATE: NOVEMBER 17, 2008

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: ORDINANCE TO REVISE CITY CODE SECTIONS RELATED TO  
PURCHASING AND CONTRACTUAL SERVICES TO IMPLEMENT 2008  
GENERAL ASSEMBLY CHANGES TO THE VIRGINIA PUBLIC  
PROCUREMENT ACT

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**ISSUE:** Implementing changes now authorized by the Virginia Public Procurement Act ("VPPA").

**RECOMMENDATION:** That City Council adopt the attached ordinance on first reading and schedule it for public hearing, second reading and final passage on December 13, 2008.

**DISCUSSION:** During the 2008 legislative session, the Virginia General Assembly passed legislation to amend §2.2-4301 and §2.2-4303 of the Code of Virginia. The changes made to the VPPA would allow the City to make the following amendments to the City Code:

- 1) The amendment to Virginia Code § 2.2-4301, increases monetary limits for architectural and professional engineering services obtained by a multiple project contract. This amendment raises the annual limit for this type of contract from \$1 million to \$5 million, and increases the annual project fee limit for one project under this type of contract from \$200,000 to \$1 million.

The City Code currently includes the two lower monetary limits for architectural and engineering services. The proposed amendment to City Code Section 3-3-69(d) would adopt higher annual monetary limits now allowed under the VPPA for the one-project category, increasing the limit from \$200,000 to \$500,000. Increasing that limit to the \$1 million state cap is not recommended. Adopting the increased monetary limits would allow for the use of multiple project contracts for architectural and professional engineering services for larger-scale projects, for any project within the annual contract amount. Raising the multi-project limit is not proposed, as the current \$1 million limit is sufficient to cover the City's needs.

- 2) The amendment to Virginia Code § 2.2-4303, permits the use of competitive negotiation for the construction, alteration, repair, renovation or demolition of structures, in addition to buildings.

Under the current City Code, construction projects may be procured only by competitive sealed bidding, except competitive negotiation may be used upon a determination by the purchasing agent that competitive sealed bidding is not practicable or fiscally advantageous, for the construction, alteration, repair, renovation or demolition of buildings when the contract is equal to or less than \$500,000. It can also be used for design-build; construction management; construction of highways, streets and alleys; as well as a few other types of construction categories. For this group of contract activities, the cap for competitive negotiation is \$1 million.

Pursuant to VPPA section 2.2-4303-D4, at the City's request, the City has received a one-time determination from the Design-Build Construction Management Review Board 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..." and thus is exempt from the requirement in VPPA sections 2.2-4303-D2 and 2.2-4308 to obtain advance approval for the issuance of each RFP it wishes to issue for "construction, alteration, repair, renovation, or demolition of buildings" on a design-build or construction management basis. As a result of the one-time determination, the \$1 million authorization cap in 2.2-4303-D2 no longer applies to the City for design-build or construction management projects. The new DASH facility is being constructed under a design-build contract.

The proposed amendment to City Code Section 3-3-62(a)(1) would permit the City to use the competitive negotiation process for the construction, alteration, repair, renovation, or demolition of structures, as well as buildings. This will enable the City to use more detailed specifications for constructing, altering, repairing, renovating or demolishing structures. Further, the use of the competitive negotiation process for these projects will alert contractors that the selection process will be weighed according to additional criteria, other than pricing, as contained in the solicitation documents; which in turn will encourage them to make their best effort to be awarded a contract.

**FISCAL IMPACT:** There is no estimated direct fiscal impact from these changes; however, there should be an indirect fiscal impact through obtaining better value in City contracts, as well as efficiencies in procurement administration.

**ATTACHMENT:** Proposed changes to City Code Title 3, Chapter 3, of Section 3-3-62 and Section 3-3-69

**STAFF:**

Mark Jinks, Deputy City Manager

Laura B. Triggs, Director of Finance

Stephen B. Gordon, Director of Purchasing

Christina Zechman Brown, Assistant City Attorney

Introduction and first reading:	12/09/08
Public hearing:	12/13/08
Second reading and enactment:	12/13/08

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Section 3-3-62 (CONDITIONS FOR USE) and Section 3-3-69 (CONTRACTING FOR PROFESSIONAL SERVICES BY COMPETITIVE NEGOTIATION, 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 clarifies that the City may use the competitive negotiation process for the construction of structures and not just buildings, and increases the contract limit from \$500,000 to \$1 million.

The proposed ordinance also increases the monetary limit for a single project under a multiple project contract for architectural and engineering services from \$200,000 to \$500,000 . These changes conform the City's purchasing regulations to recent changes to state law.

Sponsor

Staff

Stephen B. Gordon, Director of Purchasing  
Christina Zechman Brown, Assistant City Attorney

Authority

Alexandria City Charter, § 2.03

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 3-3-62 (CONDITIONS FOR USE) and Section 3-3-69 (CONTRACTING FOR PROFESSIONAL SERVICES BY COMPETITIVE NEGOTIATION, 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 3-3-62 of The Code of the City of Alexandria, Virginia, 1981 as amended, be, and the same is hereby, amended and reordained 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 ~~\$500,000~~ \$1 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 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 2. That Section 3-3-69 of The Code of the City of Alexandria, Virginia, 1981 as amended, be, and the same is hereby, 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. 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

1 of any single project shall not exceed ~~\$200,000~~ \$500,000. Any unused amounts from one contract  
2 term shall not be carried forward to a successive term. Competitive negotiations for such contracts  
3 may result in awards to more than one offeror provided (1) the request for proposals so states, and  
4 (2) the purchasing agent has established procedures for distributing multiple projects among the  
5 selected contractors during the contract term.

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7 (e) Multiphase professional services contracts satisfactory and advantageous to the city may  
8 be negotiated and awarded based on a fair and reasonable price for the first phase only, when  
9 completion of the earlier phases is necessary to provide information critical to the negotiation of a  
10 fair and reasonable price for succeeding phases.

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12 Section 3. That this ordinance shall become effective upon the date and at the time of its  
13 final passage.

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15 WILLIAM D. EUILLE  
16 Mayor  
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18 Introduction: 12/09/2008  
19 First Reading: 12/09/2008  
20 Publication:  
21 Public Hearing:  
22 Second Reading:  
23 Final Passage:

ORDINANCE NO. 4567

AN ORDINANCE to amend and reordain Section 3-3-62 (CONDITIONS FOR USE) and Section 3-3-69 (CONTRACTING FOR PROFESSIONAL SERVICES BY COMPETITIVE NEGOTIATION, 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.

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(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.

Section 3. That this ordinance shall become effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE  
Mayor

Final Passage: December 13, 2008