

INTRODUCED: February 22, 2021

AN ORDINANCE No. 2021-034

To amend City Code § 21-59, concerning contract modification or supplement, for the purpose of providing that no fixed-price contract may be increased by more than 25 percent of the amount of the contract or \$100,000.00, whichever is greater, without written approval by the Chief Administrative Officer before any such modification is made.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: MAR 8 2021 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That section 21-59 of the Code of the City of Richmond (2020) be and are hereby **amended** and reordained as follows:

Sec. 21-59. Contract modification or supplement.

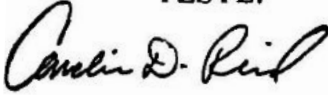
A public contract may include provisions for modification of the contract during performance, but no fixed-price contract [~~that will increase the amount to be expended under such contract in an amount in excess of \$100,000.00 in the aggregate shall be made~~] may be increased by more than 25 percent of the amount of the contract or \$100,000.00, whichever is greater, unless

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: MAR 8 2021 REJECTED: _____ STRICKEN: _____

the Chief Administrative Officer approves such change in writing in advance of such modification being made.

§ 2. This ordinance shall be in force and effect upon adoption.

ATRUE COPY:
TESTE:

City Clerk



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: February 1, 2021 **EDITION:** 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor *L.M.S.*

THROUGH: J.E. Lincoln Saunders, Acting Chief Administrative Officer *JELS*

FROM: Betty J. Burrell, Director of Procurement Services *B. Burrell*

RE: Amendments to City's Public Procurement Laws – Contract modification or supplement (City Code § 21-59)

ORD. OR RES. No. _____

PURPOSE: To amend section 21-59 of the City Code, concerning contract modification or supplement, to bring section 21-59 in line with the purpose of similar state law within the Virginia Public Procurement Act, Va. Code §§ 2.2-4300—2.2-4377 (the "VPPA").

REASON: The proposed ordinance would tailor section 21-59 of the City Code to Va. Code § 2.2-4309(A) to clarify when the City must obtain approval of the Chief Administrative Officer for contract modifications or supplements and to more precisely bring section 21-59 in line with the purpose of Va. Code § 2.2-4309(A).

RECOMMENDATION: The City Administration recommends adoption of this ordinance.

BACKGROUND: Pursuant to Va. Code § 2.2-4343(A)(10), the City has "opted out" of the VPPA, by adopting alternative policies and procedures in the form of Chapter 21 ("Public Procurement") of the Code of the City of Richmond which are (i) based on competitive principles and (ii) generally applicable to the procurement of goods and services by the City. These alternative policies and procedures remain valid so long as they incorporate provisions of the VPAA, set forth in Va. Code § 2.2-4343(A)(12) and often referred to as "mandatory" provisions. In addition, over the years, the City has found it beneficial to include provisions similar to those in the VPPA even if those particular provisions are not mandatory.

Va. Code § 2.2-4309(A) is not a mandatory provision of the VPPA under Va. Code § 2.2-4343(A)(12). However, adopting its language in City Code § 21-59 would be beneficial to the City. The purpose of Va. Code § 2.2-4309(A) is to require additional oversight for large changes in a contract, but the current City Code § 21-59 broadly exceeds that purpose by requiring additional oversight for trivial sums, as well.

Section 21-59 of the City Code currently states that a contract may include provisions for modification of the contract during performance, but no fixed-price contract that will increase the amount to be expended under such contract in an amount in excess of \$100,000.00 in the aggregate shall be made unless the Chief Administrative Officer approves such change in writing in advance of such modification being made. Va. Code § 2.2-4309(A) contains similar language, but only requires written approval for contract modification for fixed price contracts when the change will increase the contract by more than 25% or \$50,000.00, whichever is greater.

The practical result of the current version of City Code § 21-59 is that any contract modification or supplement for a contract with a total value of \$100,000.00 or more must be approved by the Chief Administrative Officer – for example, even if the change to the contract is only \$500.00. The proposed changes to City Code § 21-59 would bring section 21-59 in line with the purpose of similar state law, as tailored for the City's particular high-dollar environment by maintaining the alternative threshold of \$100,000.00 that is currently reflected in City Code § 21-59. These changes to City Code § 21-59 would more precisely achieve the level of additional oversight required by Va. Code § 2.2-4309(A). The City will still maintain additional oversight by the Chief Administrative Officer on large increases to contracts (those increases of more than 25% or \$100,000.00, whichever is greater) but the City will not need to seek the approval of the Chief Administrative Officer for changes of smaller amounts.

FISCAL IMPACT / COST: This proposed ordinance should not have any cost in the upcoming fiscal year or succeeding fiscal years.

FISCAL IMPLICATIONS: This proposed ordinance should not impose any costs on the City in the foreseeable future.

BUDGET AMENDMENT NECESSARY: No budget amendment is necessary if this proposed ordinance is adopted.

REVENUE TO CITY: None.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: February 22, 2021.

CITY COUNCIL PUBLIC HEARING DATE: March 8, 2021.

REQUESTED AGENDA: Consent.

RECOMMENDED COUNCIL COMMITTEE: Governmental Operations (February 24, 2021).

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None.

AFFECTED AGENCIES: Department of Procurement Services, Office of the City Attorney.

RELATIONSHIP TO EXISTING ORD. OR RES.: Amends City Code § 21-59.

REQUIRED CHANGES TO WORK PROGRAM(S): No changes to work programs are required.

ATTACHMENTS: Draft Amendments to City Code § 21-59.

STAFF: Betty J. Burrell, Director of Procurement Services, 646-5798