

INTRODUCED: June 13, 2022

AN ORDINANCE No. 2022-179

To amend City Code §§ 21-50, concerning bid bonds on construction contracts, and 21-68, concerning contracting for professional services by competitive negotiation, for the purpose of reflecting amendments to state law that Va. Code § 2.2-4343(A)(12) requires the City to follow.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JUN 27 2022 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That sections 21-50 and 21-68 of the Code of the City of Richmond (2020) be and are hereby **amended** and reordained as follows:

Sec. 21-50. Bid bonds on construction contracts.

(a) Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$500,000.00 or transportation-related projects authorized under Code of Virginia, Title 33.2, Ch. 2, Art. 2 (Code of Virginia, § 33.2-208 et seq.) that are in excess of [~~\$250,000.00~~] \$350,000.00 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do

AYES: 8 NOES: 0 ABSTAIN: _____

ADOPTED: JUN 27 2022 REJECTED: _____ STRICKEN: _____

business in Virginia, as a guarantee that, if the contract is awarded to the bidder, 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) [For nontransportation-related construction contracts in excess of \$100,000.00 but less than \$500,000.00, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with Section 21-46. However, the Director may waive the requirement for prequalification of a bidder with a current Class A contractor license for contracts in excess of \$100,000.00 but less than \$300,000.00 upon a written determination made in advance by the City Council that waiving the requirement is in the best interests of the City. The City shall not enter into more than ten such contracts per year.~~

~~(e)~~ No forfeiture under a bid bond shall exceed the lesser of:

- (1) The difference between the bid for which the bond was written and the next low bid; or
- (2) The face amount of the bid bond.

~~(d)~~ (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 \$500,000.00 for nontransportation-related projects or ~~[\$250,000.00]~~ \$350,000.00 for transportation-related projects authorized under Code of Virginia, Title 33.2, Ch. 2, Art. 2 (Code of Virginia, § 33.2-208 et seq.) and partially or wholly funded by the Commonwealth.

Sec. 21-68. Contracting for professional services by competitive negotiation.

(a) *Conditions for use.* Where the cost of professional services is not expected to exceed \$80,000.00 in the aggregate or for the sum of all phases of a contract or project, professional services may be procured in accordance with small purchase procedures adopted in writing by the

Director provided such procedures provide for competition wherever practicable. Where the cost of professional services is expected to exceed \$80,000.00 in the aggregate or for the sum of all phases of a contract or project, professional services shall be procured by competitive negotiation as set forth in this section.

(b) *Competitive negotiation; solicitation, discussion and award.* The Director shall issue a written request for proposals indicating in general terms that which is to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications, or qualifications that will be required. Except with regard to contracts for architectural or professional engineering services, the City may include as a factor that will be used in evaluating a proposal the offeror's employment of persons with disabilities to perform the specifications of the contract. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the request for proposals or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. At least ten days prior to the date set for receipt of proposals, the Director shall give public notice of the request for proposals by posting on the City's internet website. In addition, the Director shall publish the notice in a newspaper of general circulation in the city so as to provide reasonable notice to the maximum number of offerors that can be reasonably expected to submit proposals in response to the particular request and may publish the notice on the Virginia Department of General Services' central electronic procurement website. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses from a list

made available by the Virginia Department of Small Business and Supplier Diversity and shall include minority business enterprises or emerging small businesses, or both, selected from a list made available by the Office of Minority Business Development. The Director 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. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the Director in addition to the review of the professional competence of the offeror. The request for proposals shall not, however, request that offerors furnish estimates of man-hours or cost for services. For architectural or engineering services, the Director shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to Code of Virginia, § 2.2-1132, until after the qualified offerors are ranked for negotiations. At the discussion stage, the Director may discuss nonbinding estimates of total project costs, including, but not limited to, life cycle costing and, where appropriate, nonbinding estimates of price for services. In accordance with Section 21-5 of this Code, proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subsection, on the basis of evaluation factors published in the request for proposals and all information developed in the selection process to this point, the Director 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 and pursuant to contractual terms and conditions acceptable to the City, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations 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 proposals, the Director may award contracts to more than one offeror. Should the Director determine in writing and in the director's sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than any others under consideration, a contract may be negotiated and awarded to that offeror.

(c) *Architectural or professional engineering services for multiple projects.* A contract for architectural or professional engineering services relating to [~~construction~~] multiple projects may be [~~negotiated~~] awarded by the City [~~for multiple projects~~], provided:

- (1) The projects require similar experience and expertise;
- (2) The nature of the projects is clearly identified in the request for proposals;

and

- (3) The contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this subsection, whichever occurs first.

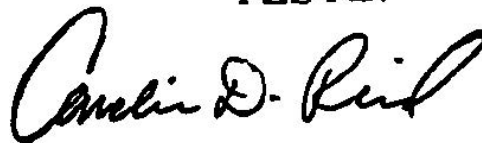
Such contract may be renewable for [~~four~~] three additional [~~one-year~~] terms at the option of the City. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall not exceed [~~\$8,000,000.00~~] \$10,000,000.00, and (c) the [~~project~~] fee of any single project shall not exceed \$2,500,000.00. Any unused amounts from [~~the first~~] one contract term shall not be carried forward to [~~the~~] any additional 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 Director has established procedures for distributing multiple projects among the selected contractors during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for individual projects based on price.

(d) *Multiphase professional services contracts.* Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased or long term projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, where completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Director shall state the anticipated total scope of the project and determine in writing that the nature of the work is such that the best interests of the City require awarding the contract. For purposes of this subsection, “multiphase professional service contract” means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

§ 2. This ordinance shall be in force and effect on July 1, 2022.

**A TRUE COPY:
TESTE:**

A handwritten signature in black ink, appearing to read "Carolin D. Reed". The signature is written in a cursive style with a large initial 'C'.

City Clerk




CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: April 28, 2022 **EDITION:** 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor 

THROUGH: J. E. Lincoln Saunders, Chief Administrative Officer 

THROUGH: Sabrina Joy-Hogg, Deputy Chief Administrative Officer 

FROM: Betty J. Burrell, Director of Procurement Services 

RE: State-Mandated Amendments to City's Public Procurement Laws

ORD. OR RES. No. _____

PURPOSE: To amend sections 21-50 and 21-68 of the City Code, concerning bid bonds on construction contracts and contracting for architectural and professional engineering services by competitive negotiation, for the purpose of reflecting amendments to state law that Va. Code § 2.2-4343(A)(12) requires the City to follow.

REASON: The proposed ordinance would conform sections 21-50 and 21-68 of the City Code with their parallel provisions in the Virginia Public Procurement Act, Va. Code §§ 2.2-4300—2.2-4377 (the “VPPA”).

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. However, pursuant to Va. Code § 2.2-4343(A)(12), certain mandatory provisions of the VPPA still apply to the City.

During its 2022 session, the General Assembly made a few changes to the VPPA, including the mandatory provisions set forth in Va. Code § 2.2-4343(A)(12). While the City must follow the

requirements of these mandatory provisions anyway, updating the City Code to properly reflect those requirements aligns the City Code with required practices for training, dispute-related, and audit purposes.

The changes proposed in this ordinance reflect only those changes that the City is required to make to its procurement laws pursuant to state law. Section 21-50 of the City Code is amended to conform with Va. Code § 2.2-4336 to (i) increase the threshold for transportation-related construction projects for which bid bonds are required, (ii) remove the requirement that prospective contractors be prequalified for nontransportation related construction projects if the bid bond requirements are waived for such projects, and (iii) increase the threshold for transportation-related construction projects for which the City may require bid bonds even if bid bonds are not required by law. Section 21-68(c) of the City Code is amended to conform with Va. Code § 2.2-4303.1 to (i) reduce the number of renewal options from four to three, (ii) increase the aggregate limit for architectural and engineering services contracts for projects performed in a contract term from \$8 million to \$10 million, and (iii) revise terminology in the City Code for consistency with the parallel provisions in state law.

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: July 1, 2022.

REQUESTED INTRODUCTION DATE: June 13, 2022.

CITY COUNCIL PUBLIC HEARING DATE: June 27, 2022.

REQUESTED AGENDA: Consent.

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development (June 16, 2022).

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 §§ 21-50, 21-68.

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

ATTACHMENTS: Draft Amendments to City Code Chapter 21.

STAFF: Betty J. Burrell, Director of Procurement Services, 646-5716.