

INTRODUCED: June 10, 2024

AN ORDINANCE No. 2024-166

To amend and reordain City Code §§ 21-44 concerning design-build and construction management contracts, 21-67 concerning competitive negotiation for goods, nonprofessional services, insurance, and construction, and 21-73 concerning job order contracting, all 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: JUNE 24 2024 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That section 21-44 of the Code of the City of Richmond (2020) is hereby **amended** and reordained as follows:

Sec. 21-44. – Design-build and construction management contracts.

The City may enter into a contract for construction on a fixed-price or not-to-exceed price construction management or design-build basis, provided that (i) the City Council, by resolution, has adopted procedures for utilizing construction management or design-build contracts that meet the requirements of Code of Virginia, Title 2.2, Ch. 43.1, Art. 4 (Code of Virginia, § 2.2-4382 et seq.), (ii) the City Council, by resolution, has provided approval for the City to utilize a

AYES: 7 NOES: 0 ABSTAIN:

ADOPTED: JUN 24 2024 REJECTED: STRICKEN:

construction management or design-build contract for the project prior to the City's issuance of a Request for Qualifications for the project, and (iii) the City complies with the requirements of Code of Virginia, Title 2.2, Ch. 43.1, Art. 4 (Code of Virginia, § 2.2-4382 et seq.) and such procedures adopted by the City Council.

§ 2. That section 21-67 of the Code of the City of Richmond (2020) is hereby **amended** and reordained as follows:

Sec. 21-67. – Competitive negotiation for goods, nonprofessional services, insurance and construction.

(a) *Conditions for use.* Conditions for use of competitive negotiation as set forth in this section shall be as follows:

(1) The Director may allow the use of either competitive sealed bidding as set forth in Section 21-47 and 21-52 through 21-56 or competitive negotiation as set forth in this section to procure any public contract with a nongovernmental contractor for the purchase or lease of goods or for the purchase of nonprofessional services or insurance.

(2) Upon a determination made in advance by the Director and set forth in writing that competitive sealed bidding or competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for in this section. The basis for this determination shall be documented in writing.

(3) Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances:

a. On a fixed-price design-build basis or construction management basis as provided in Section 21-44;

b. For the construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made

in advance by the Director and set forth in writing by the Director that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination; or

c. Pursuant to Article IX of this chapter.

No request for proposals for construction authorized by this chapter shall condition a successful offeror's eligibility on having a specified experience modification factor. For the purposes of this Section 21-67(a)(3), the term "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to Code of Virginia, § 38.2-1913(D).

(b) *Request for proposals.* A request for proposals shall be in writing and indicate in general terms what is sought to be procured, specifying the factors which 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 transportation construction services or transportation-related construction 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.

(c) *Public notice.* At least ten days prior to the date set for receipt of proposals, public notice shall be given 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 selected 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.

(d) *Procedures for evaluation and award.* No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposals, including price if so stated in the request for proposals. [~~In the case of a proposal for information technology, as defined in Code of Virginia, § 2.2-2006, the Director shall not require an offeror to state in a proposal any exception to any liability provisions contained in the request for proposals.~~] Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any contractual terms or conditions, including any liability provisions contained in the request for proposals in writing [at the beginning of negotiations, and such] at the time of responding to such request for proposal if so requested by the City. Such exceptions shall be considered during negotiation but shall not be used as a basis for scoring or evaluating which offerors are selected for negotiations. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the Director shall select the offeror which, in the Director's opinion,

has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the request for proposals, awards may be made 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 than the others under consideration, a contract may be negotiated and awarded to that offeror.

(e) *Evaluation factors.* The request for proposals shall state the relative importance of price and other evaluation factors. One evaluation factor shall be good faith minority business enterprise and emerging small business participation efforts. Such good faith minority business enterprise and emerging small business participation efforts shall comprise 30 percent of the total evaluation. The Office of Minority Business Development shall develop criteria to assess an offeror's good faith minority business enterprise and emerging small business participation efforts and shall evaluate the offeror's response based on those criteria. No offeror receiving less than 50 percent of the possible good faith minority business enterprise and emerging small business participation efforts percentage points from the Office of Minority Business Development shall receive a contract award under competitive negotiation unless granted a waiver by the Chief Administrative Officer. The Chief Administrative Officer may allow a waiver only when:

(1) No other qualified, willing, and able offerors have submitted proposals; and

(2) Either the Director of the Office of Minority Business Development certifies that the offeror is unable due to circumstances beyond its control to make good faith minority business enterprise and emerging small business participation efforts that would achieve a higher number of percentage points or the Chief Administrative Officer

determines that the City will suffer substantial cost, financial or otherwise, if a waiver is not granted.

§ 3. That section 21-73 of the Code of the City of Richmond (2020) is hereby **amended** and reordained as follows:

Sec. 21-73. – Job order contracting.

(a) The Director may award a job order contract for multiple jobs, provided (1) the jobs require similar experience and expertise, (2) the nature of the jobs is clearly identified in the solicitation, and (3) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first. The Director may select contractors through either competitive sealed bidding or competitive negotiation.

(b) Such contracts may be renewable for [~~two~~] three additional one-year terms. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed [~~\$6,000,000.00~~] \$10,000,000.00. Individual job orders shall not exceed [~~\$500,000.00~~] \$1,000,000.00.

(c) For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

(d) Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection (b) of this section is prohibited.

(e) The Director may not issue or use a job order under a job order contract solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in Code of Virginia, § 54.1-400. However, professional architectural or engineering services may be included on a job order where such professional services (1) are incidental and directly related to the job,

(2) do not exceed \$25,000.00 per job order, and (3) do not exceed \$75,000.00 per contract term.

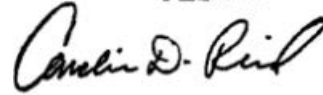
(f) Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass. However, job order contracting may be used for safety improvements or traffic calming measures for individual job orders up to \$250,000.00, subject to the maximum annual threshold amount established in this section.

§ 4. This ordinance shall be in force and effect on July 1, 2024.

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

A TRUE COPY:
TESTE:



City Clerk



City of Richmond

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2nd Floor of City Hall
Richmond, VA 23219
www.rva.gov

Master

File Number: Admin-2024-0585

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Contact:

Introduction Date:

Drafter: Rene.Almaraz@rva.gov

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	6/6/2024	Sabrina Joy-Hogg	Approve	6/7/2024
1	2	6/6/2024	Lincoln Saunders	Approve	6/7/2024
1	3	6/6/2024	Mayor Stoney	Approve	6/10/2024

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File Admin-2024-0585

City of Richmond

Intracity Correspondence

OSR Transmittal

DATE: June 6, 2024 **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 B. Joy-Hogg, Deputy Chief Administrative Officer, Finance and Admin

FROM: Rene M. Almaraz, Director of Procurement Services

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

ORD. OR RES. No.

PURPOSE: Recent amendments to the Virginia Public Procurement Act (the “VPPA”) require amendments to sections 21-44, 21-67 and 21-73 of the City Code. 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.

The City Code amendments are related to:

- Design-build and construction management contracts;
- Competitive negotiation for goods, nonprofessional services, insurance, and construction; and
- Job order contracting.

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. However, pursuant to Va. Code § 2.2-4343(A)(12), the City cannot opt out of certain, mandatory, provisions of the VPPA which still apply to the City.

During its 2024 session, the General Assembly made a few changes to the mandatory provisions of the VPPA. These proposed amendments now align the City Code with the requirements of the VPPA to reduce risks related to training, disputes, and audits.

Section 21-44 of the City Code is amended to require the adoption of a resolution approving use of the construction management or design-build method for a project prior to the City's issuance of a Request for Qualifications for that project. As a result of the changes made to Section 21-44 of the City Code herein, a resolution approving an updated Department of Procurement Policy No. 50 will be forthcoming.

Section 21-67 of the City Code is amended to (i) allow a public body to require that an offeror states in a proposal any exception to any liability provisions contained in a Request for Proposal for information technology, (ii) add a requirement that an offeror states any exception to any contractual terms or conditions in writing at the time of responding to such Request for Proposal, if so requested by the City, and (iii) prohibit the City from considering any such exception when scoring or evaluating offers for selection for negotiations.

Section 21-73 of the City Code is amended to (i) increase the maximum spend for all jobs performed in a one-year job order contract term from \$6,000,000 to \$10,000,000, (ii) increase the maximum spend for any individual job order from \$500,000 to \$1,000,000, and (iii) increase the number of additional one-year terms for which job order contracts can be renewed from two additional terms to three.

COMMUNITY ENGAGEMENT: N/A

STRATEGIC INITIATIVES AND OTHER GOVERNMENTAL: N/A

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

DESIRED EFFECTIVE DATE: July 1, 2024

REQUESTED INTRODUCTION DATE: June 10, 2024

CITY COUNCIL PUBLIC HEARING DATE: June 24, 2024

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Finance & Economic Development meeting on June 20, 2024.

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

RELATIONSHIP TO EXISTING ORD. OR RES.: Amends City Code §§ 21-44, 21-67, and 21-73.

ATTACHMENTS: Draft Amendments to City Code Chapter 21.

STAFF: Rene M. Almaraz, Director of Procurement Services

