

INTRODUCED: April 27, 2015

AN ORDINANCE No. 2015-102-202

As Amended

To amend City Code § 74-72, concerning contracting for professional services by competitive negotiation, to revise the contractual limits applicable to contracts for architectural or professional engineering services for multiple projects, to provide for multiphase professional services contracts, to modify the monetary threshold for procuring professional services as a small purchase, and to otherwise conform the section to the requirements of the Virginia Public Procurement Act.

Patron – Mayor Jones

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JUNE 8 2015 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That section 74-72 of the Code of the City of Richmond (2004) be and is hereby amended as follows:

Sec. 74-72. Contracting for professional services by competitive negotiation.

(a) *Conditions for use.* Where the cost of professional services is not expected to exceed [~~\$30,000.00~~] \$60,000.00 in the aggregate or for the sum of all phases of a contract or project, professional services may be procured [~~by direct negotiation with a contractor deemed by the using agency to be qualified~~] in accordance with small purchase procedures adopted in

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: NOV 9 2015 REJECTED: _____ STRICKEN: _____

writing by the director provided such procedures provide for competition wherever practicable. Where the cost of professional services is expected to exceed [~~\$30,000.00~~] \$60,000.00 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 and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor. The director shall give public notice of the request for proposals by posting on the department of procurement services' website and any other appropriate website and by publication in a newspaper or newspapers 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. In addition, proposals may be solicited directly from potential contractors. 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. 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. ~~[Proprietary]~~ In accordance with section 74-5 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, 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. ~~[If appropriate, requests for qualifications can be made prior to the release of a request for proposals. In such cases, only those vendors who have demonstrated that they are qualified may submit a response to the request for proposals.]~~

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

(1) ~~The] (i) the projects require similar experience and expertise[;],~~

~~[(2) — The]~~ (ii) the nature of the projects is clearly identified in the request for proposals[;], and

~~[(3) — The]~~ (iii) 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 ~~[two]~~ four 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 [~~\$1,000,000.00;~~] \$5,000,000.00, and (c) the project fee of any single project shall not exceed [~~\$200,000.00]~~ \$2,000,000.00. Any unused amounts from the first contract term shall not be carried forward to the 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.

(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. The Director of Procurement Services shall prepare and submit to the City Council, the Mayor, and the Chief Administrative Officer:

(a) A written report, submitted annually by the end of December beginning in 2016, showing the efficiencies achieved in the procurement of architectural and professional engineering services as a result of the adoption of this ordinance over the year preceding the submission of the report; and

(b) A written report, submitted monthly by the end of the month beginning with December, 2015, identifying all existing contracts procured under section 74-72 of the Code of the City of Richmond (2004), as amended, and as may be recodified in the future, that, since the last such report, have been:

(1) Modified via change order or contract modification, stating for each the dollar amount of the change and the change in scope or other reason for the change in dollar amount;

(2) Renewed or extended, stating for each the period of time for which the contract has been renewed or extended and the new expiration date; and

(3) Re-solicited, stating for each sufficient information to enable a person reading the report to view a copy of the new solicitation on the internet.

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



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O & R REQUEST

MAR 16 2015

RECEIVED


Administration Office
City of Richmond


APR 09 2015


O&R REQUEST OFFICE OF CITY ATTORNEY

DATE: February 4, 2015 **EDITION:** 1

TO: The Honorable Members of City Council

THROUGH: Dwight C. Jones, Mayor 

THROUGH: Christopher L. Beschler, Acting Chief Administrative Officer 

THROUGH: Norman D. Butts, Deputy Chief Administrative Officer 

FROM: C. Edward Gibbs, CPM, APM, VCO, Director of Procurement Services 

RE: Ordinance to amend City Code § 74-72

PURPOSE: To amend City Code § 74-72, concerning contracting for professional services by competitive negotiation, to revise the contractual limits applicable to contracts for architectural or professional engineering services for multiple projects, to provide for multiphase professional services contracts, to modify the monetary threshold for procuring professional services as a small purchase, and to otherwise conform the section to the requirements of the Virginia Public Procurement Act.

REASON: The proposed ordinance would conform City Code § 74-72 with its parallel provision in the Virginia Public Procurement Act as required by Va. Code § 2.2-4343(A)(12), to allow the City to increase its utilization of multiple-projects architectural and professional engineering contracts and allow the City to use multiphase professional services contracts.

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 Virginia Public Procurement Act, Va. Code §§ 2.2-4300—2.2-4377 (the “VPPA”), by adopting alternative policies and procedures in the form of Chapter 74 (“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), the City must still follow the method for procurement of professional services set forth in subsection (A)(3) of Va. Code § 2.2-4302.2. The City’s parallel provision setting forth the method for procuring professional services set forth in subsection (A)(3) of Va. Code § 2.2-4302.2 is found in City Code § 74-72.

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City Code § 74-72 generally prescribes a process called “competitive negotiation” whereby a request for proposals not requiring the submission of cost estimates is issued, discussions with offerors who submit proposals are held, offerors are ranked according to qualifications and proposed services, and negotiations are conducted with the top-ranked offeror. If a satisfactory contract cannot be negotiated with that offeror, then negotiations are terminated with that offeror and begun with the offeror ranked next, and so on until a satisfactory contract can be negotiated.

City Code § 74-72 was last amended by Ord. No. 2002-145-162, adopted Jun. 10, 2002. Consequently, this section does not reflect the changes made in the VPPA’s mandatory provisions concerning the procurement of professional services over the past twelve and a half years. The proposed ordinance would update subsection (a) of City Code § 74-72, which provides for “direct negotiation” with a single professional services contractor if the total cost will not exceed \$30,000. In contrast, Va. Code § 2.2-4303(G) empowers localities to use written small purchase procedures that provide for competition wherever practicable for purchases of, among other things, professional services where the cost is not expected to exceed \$60,000. This ordinance would conform subsection (a) to Va. Code § 2.2-4303(G). Further, the changes to subsection (b) of City Code § 74-72 proposed by this O&R request conform the wording of that subsection with the wording of subsection (A)(3) of Va. Code § 2.2-4302.2 by specifying the requirements for soliciting a professional services contract and removing an outdated reference to requests for qualifications for professional services.

Subsection (c) of City Code § 74-72 sets forth the requirements applicable to the procurement of architectural and professional engineering services contracts for multiple projects. This subsection primarily imposes limitations imposed by state law on contracts for more than one project. Prior to 2001, the VPPA authorized state agencies but not localities to let architectural and professional engineering services for multiple projects. Since 2001, the General Assembly has authorized localities to use multiple-projects contracts for architectural and professional engineering services within certain limits. At this time, subsections (B) through (D) of Va. Code § 2.2-4302.2 allow localities to procure these multiple-projects contracts provided that the total number of contract years is capped at five years (i.e., an initial contract term of one year with a maximum of four optional renewal years), the total amount of fees in each contract year is capped at \$5,000,000, and the total fee for any one project is capped at \$2,000,000. Subsection (c) of City Code § 74-72 has not kept up with these changes. It currently allows the City to procure these multiple-projects contracts only if the total number of contract years is capped at three years (i.e., an initial contract term of one year with a maximum of two optional renewal years), the total amount of fees in each contract year is capped at \$1,000,000, and the total fee for any one project is capped at \$200,000.

The City—and in particular the Department of Public Utilities, the Department of Public Works, and the Department of Parks, Recreation and Community Facilities—have made use of multiple-projects architectural and professional engineering services contracts for a number of years. Raising these limits to conform to the VPPA will benefit the City in a number of ways (beyond conformity with state law). First, inconsistencies between the VPPA and Chapter 74 of the Code of the City of Richmond can create difficulties for auditors attempting to determine which provisions apply to a particular contract. If the City Code mirrors the VPPA, then this difficulty

is eliminated. Second, increasing the contractual fee limits reduces the administrative burden caused by the continuous solicitation of architectural and professional engineering services projects with values between \$200,000 and \$2,000,000. These solicitations (in the form of requests for proposals) consume considerable time and money. The increased staff time alone in the originating agency, the Department of Procurement Services, the Office of the City Attorney and the Office of Minority Business Development historically increases an overall project schedule by between six and nine months. Therefore, these proposed changes will reduce costs and delivery times for medium-sized capital improvement projects. Of course, architectural or professional engineering services projects expected to exceed a \$2,000,000 fee will continue to require project-specific solicitations.

In addition, the proposed ordinance would add a new subsection (d) to City Code § 74-72 concerning multiphase professional services contracts—i.e., a contract for 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. The General Assembly added this provision to the VPPA applicable to localities by 2003 Va. Acts ch. 185, effective July 1, 2003. However, since City Code § 74-72 has not been updated since June 10, 2002, this provision does not currently appear in that City Code section. The availability of multiphase professional services contracts increases the City's flexibility in delivering long-term, complex projects.

FISCAL IMPACT/COST: This proposed ordinance should not have any cost in the upcoming fiscal year or succeeding fiscal years. The adoption of this proposed ordinance will reduce the administrative burden on City agencies caused by the continuous solicitation of architectural and professional engineering services for projects valued between \$200,000 and \$2,000,000 that could be awarded under multiple-projects architectural or professional engineering services contracts.

FISCAL IMPLICATIONS: This proposed ordinance should not impose any costs on the City in the foreseeable future. It is expected that this ordinance will save time and money, both for staff and for the projects affected by this ordinance.

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 23, 2015

CITY COUNCIL PUBLIC HEARING DATE: March 9, 2015

REQUESTED AGENDA: Consent Agenda

RECOMMENDED COUNCIL COMMITTEE: Governmental Operations Standing
Committee on February 26, 2015

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None.

AFFECTED AGENCIES: Department of Procurement Services, Department of Public Utilities, Department of Public Works, Department of Parks, Recreation and Community Facilities, Office of Minority Business Development, Office of the City Attorney.

RELATIONSHIP TO EXISTING ORD. OR RES.: Amends City Code § 74-72.

REQUIRED CHANGES TO WORK PROGRAMS: No changes to work programs are required.

ATTACHMENTS: Draft amendments to City Code § 74-72.

STAFF: Oscar Knott, Contract Specialist, Department of Procurement Services, 646-7499.
