

INTRODUCED: June 27, 2016

AN ORDINANCE No. 2016-197

As Amended

To amend sections 21-4, 21-42, 21-44, 21-47, 21-53, 21-54, 21-63, 21-67, and 21-68 of the City Code, concerning public procurement, and to amend ch. 21, art. II of the City Code by adding therein a new section 21-73, concerning job order contracting, for the purpose of reflecting amendments to state law that Va. Code § 2.2-4343(A)(12) requires the City to follow.

Patron – Mayor Jones

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JULY 25 2016 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That sections 21-4, 21-42, 21-44, 21-47, 21-53, 21-54, 21-63, 21-67, and 21-68 of the Code of the City of Richmond (2015) be and are hereby **amended** and reordained as follows:

Sec. 21-4. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Best value, as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the City’s needs.

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: SEPT 12 2016 REJECTED: _____ STRICKEN: _____

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Competitive negotiation means a method of ~~[source]~~ contractor selection ~~[that involves individual discussions between the City and the offeror on the basis of responses to the City's request for proposals]~~ set forth in Section 21-67 or Section 21-68.

Competitive sealed bidding means a method of contractor selection ~~[under this chapter, not required for the procurement of professional services, that begins with the public notice and issuance of a written invitation for bids under Section]~~ set forth in Sections 21-47, [includes a public opening under Section] 21-52, [and results in the evaluation of bids under Section] 21-54, and ~~[an award under Section]~~ 21-55.

Construction means building, altering, repairing, improving or demolishing any structure, building, road, street or highway, and any draining, dredging, excavation, grading or similar work upon real property.

Construction management contract means a contract in which a party is retained by the City to coordinate and administer contracts for construction services for the benefit of the City, and may also include, if provided in the contract, the furnishing of construction services to the City.

Contract means all types of City agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.

Contract modification/supplement means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties to the contract.

Contractor means any person, company, corporation, or partnership having a contract with the City or a using agency thereof.

Cost analysis means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

Cost data means factual information concerning the cost of labor, material, overhead, and other cost elements, which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Cost reimbursement contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and this chapter and a fee or profit, if any.

Design-build contract means a contract between the City and another party in which the party contracting with the City agrees to both design and build the structure, roadway or other item specified in the contract.

Direct or indirect participation means involvement through decision, approval, disapproval, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity.

Director means the Director of Procurement Services of the City.

Disadvantaged business means a business meeting the definitions set forth in the Code of Federal Regulations pertaining to the applicable Federal grant program.

Emerging small business means a business that:

(1) Has been certified by the Office of Minority Business Development for a period of up to seven years;

(2) Has annual gross receipts of \$500,000.00 or less for each of its three fiscal years preceding application for such certification if engaged primarily in the construction business or of \$250,000.00 or less if engaged primarily in a nonconstruction business;

(3) Has fewer than ten full-time, permanent employees;

(4) Is not a subsidiary of another business and does not belong to a group of businesses owned and controlled by the same individuals;

(5) Has its principal place of business entirely within the boundaries of a City enterprise zone;

(6) Possesses a City business license; and

(7) Pays personal property, real estate, and business taxes, as applicable, to the City.

Good faith minority business enterprise and emerging small business participation efforts means the sum total of efforts by a particular business to provide for the equitable participation of minority business enterprises or emerging small business subcontractors. For past efforts, this sum total shall be comprised of the record of participation by minority business enterprises and emerging small businesses through subcontracting or joint ventures. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of minority business enterprises or emerging small business subcontractors.

Goods means all material, equipment, supplies, printing and automated data processing hardware and software.

Informality means a minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids or the request for proposals which does not affect the quality, quantity or delivery schedule for the goods, services or construction being procured.

Insurance means a contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.

Intent to award means an intent by the City to accept a bid or proposal.

Invitation for bids means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

Job order contracting means a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing, in which the contractor is selected through either competitive sealed bidding or competitive negotiation depending on the needs of the City, a minimum amount of work may be specified in the contract, and the contract term and the project amount do not exceed the limitations specified in Section 21-73.

Minority business enterprise means a business, at least 51 percent of which is owned and controlled or 51 percent minority-owned and operated by minority group members or, for a stock corporation, at least 51 percent of the stock which is owned and controlled by minority group members.

Minority group members means citizens of the United States who are Blacks, Hispanics, Asians, Indians, Eskimos or Aleuts.

Nominal value means a value so small, slight, or the like, in comparison to what might properly be expected, as scarcely to be entitled to the same, but in no case to be more than \$30.00.

Nonprofessional services means any services not specifically identified as professional services in the definition of professional services.

Professional services means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.

Public body means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter.

Public contract means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

Qualified products list means an approved list of goods, services or construction items described by model or catalog number that, prior to competitive solicitation, the City has determined will meet the applicable specification requirements.

Recycled paper means any paper having a total weight consisting of not less than 50 percent recovered materials, as that term is defined for purposes of purchasing paper and paper products in 40 CFR 247.3 (2001), as amended.

Request for proposals means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Request for qualifications means all documents, whether attached or incorporated by reference, utilized for soliciting qualification statements.

Responsible bidder and *responsible offeror* mean a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will ensure good faith performance, and who has been prequalified, if required.

Responsive bidder means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

Services means any work performed by an independent contractor which does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

Specification means any written description of the physical or functional characteristics or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing, or preparing a good, service or construction item for delivery.

Using agency means any department, agency, bureau, board, commission, court, City jail or jail forum or other unit in the City government requiring goods, services, insurance or construction as provided for in this chapter.

Sec. 21-42. Competitive sealed bidding or competitive negotiations of State-aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building for which State funds of not more than [~~\$30,000~~] \$50,000.00 in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under Section 21-67(a)(3). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

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

(a) Pursuant to Code of Virginia, § 2.2-4308, the City is authorized to enter into contracts for construction on a fixed-price or not-to-exceed price design-build or construction management basis in accordance with this section.

(b) Prior to making a determination to use a design-build or construction management contract for a specific construction project, the City shall have in its employ or under contract an architect or professional engineer with professional competence appropriate to the project who will advise the City regarding the use of a design-build or construction management contract for that project and assist the City with the preparation of the request for proposals and the evaluation of proposals submitted by interested offerors in response to the request for proposals for that project.

(c) Prior to issuing a request for proposals for a design-build or construction management contract, the Director shall make a written determination, to be maintained in the file for the procurement, that:

(1) Explains why a design-build or construction management contract is more advantageous than a competitive sealed bidding contract for the project;

(2) Identifies the specific benefits to the City from using the design-build or construction management contract; and

(3) Finds that competitive sealed bidding is neither practical nor fiscally advantageous to the City for the project.

(d) (1) The selection, evaluation and award of design-build and construction management contracts shall conform to the requirements of this section. Requests for proposals for design-build and construction management contracts shall include and define the criteria of such construction projects in the areas of:

- a. Site plans;
- b. Floor plans;
- c. Exterior elevations;

- d. Basic building envelope materials;
- e. Fire protection information plans;
- f. Structural, mechanical (HVAC) and electrical systems;
- g. Special telecommunications; and
- h. Such other requirements as the using agency determines appropriate for that particular construction project.

(2) The procurement of each design-build or construction management contract shall be conducted in two steps. The first step shall consist of a prequalification. The conduct of the prequalification step shall conform to the requirements of Section 21-46. The second step shall consist of a competitive negotiation. The conduct of the competitive negotiation step shall conform to the requirements of Section 21-67. For any guaranteed maximum price construction management contract, the contract shall require that:

- a. Not more than ten percent of the construction work (measured by cost of the work) shall be performed by the construction manager with its own forces; and

- b. The remaining 90 percent of the construction work shall be performed by subcontractors of the construction manager which the construction manager shall procure by competitive sealed bidding or competitive negotiations.

(3) The Director shall award the contract to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the request for proposals.

(e) The Director shall issue such rules, regulations and operational procedures pursuant to the authority granted to the Director by Section 2-596 as may be necessary to implement the

provisions of this section. Such rules, regulations and operational procedures shall be designed to conform to the requirements of State law and this Code.

Sec. 21-47. [~~Notice of invitation to bid~~] Competitive sealed bidding; procedures.

(a) An invitation for bids shall be in writing and contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Director has provided for prequalification of bidders as provided under Section 21-45 or Section 21-46, the invitation for bids shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation

(b) [~~Notice inviting bids or requesting proposals~~] Public notice of the invitation for bids shall be posted [in a designated public area] on the City's internet website at least ten [calendar] days [preceeding the last day] prior to the date set for the receipt of bids [or proposals]. In addition, the Director may publish in a newspaper of general circulation or on the Virginia Department of General Services' central electronic procurement website.

[(b)] (c) When [~~requesting proposals or~~] inviting bids, the Director [~~shall~~] may also solicit [~~proposals or sealed~~] bids directly from [~~a minimum of three responsible prospective suppliers who have requested their names to be added to a vendors' list, which the Director shall maintain, by sending another notice as will acquaint them with the proposed purchase or sale. Where there exist less than three known suppliers, the Director shall solicit proposals or sealed bids from each source. In any case, solicitations sent to the vendors on the vendors' list shall be limited to goods or services that are similar in character and ordinarily handled by the trade group to which the~~

~~solicitations are sent.]~~ 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.

~~[(e) The Director shall also advertise pending purchases or sales by notice posted on the public bulletin board in the Office of the Department of Procurement Services.]~~

(d) ~~[In addition to the requirements of this section, the Director may provide the notices required by this section electronically and on the City's World Wide Web site in accordance with such policies and procedures as the Director may promulgate to govern such notices.]~~ No invitation for bids for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. For purposes of this subsection (d), "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).

Sec. 21-53. Withdrawal of bid due to error.

(a) A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw the bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection

of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

(b) If a bid contains both clerical and judgment mistakes, a bidder may withdraw the bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

(c) One of the following procedures for withdrawal of a bid shall be selected by the Director and stated in the advertisement for bids:

(1) The bidder shall give notice in writing of the claim of right to withdraw the bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

(2) ~~[The] Where the City opens the bids one day following the time fixed for the submission of bids, the~~ bidder shall submit to the Director the bidder's original work papers, documents and materials used in the preparation of the bid ~~[within one day after the date fixed for submission]~~ at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail ~~[at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of Section 21-5(f). The bids shall be opened one day following the time fixed by the Director for the submission of bids. Thereafter, the]~~ The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined in this

~~[subsection]~~ section and withdraw the bid. The contract shall not be awarded by the City until the two-hour period has elapsed.

~~[The]~~ Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required in this subsection. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of Section 21-5(f).

(d) The Director may establish procedures for the withdrawal of bids for other than construction contracts.

(e) No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

(f) If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

(g) No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

(h) The Director shall notify the bidder in writing within five business days of the Director's decision regarding the bidder's request to withdraw its bid. If the Director denies the withdrawal of a bid under the provisions of this section, the Director shall ~~[notify the bidder in writing stating]~~ state in such notice the reasons for the decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same

time that the notice is provided, the Director shall return all work papers and copies thereof that have been submitted by the bidder.

Sec. 21-54. Bid evaluation under competitive sealed bidding.

Bids shall be evaluated based upon the requirements set forth in the Invitation for Bids, which may include special qualifications of contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability. In determining the lowest responsive and responsible bidder on purchases or contracts, the following factors, among such others as will protect and preserve the interests of the City and its inhabitants, shall be considered:

- (1) The ability, capacity and will of the bidder to perform the contract or provide the service required.
- (2) Whether the bidder can perform the contract or provide the services promptly or within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) The quality of performance of previous contracts or services.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract, purchase or service.
- (6) The equipment, personnel and facilities available to the bidder to perform the contract or provide the service.
- (7) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.

(8) The quality, availability and adaptability of the supplies, materials, equipment or services to the particular use required.

(9) The ability of the bidder to provide future maintenance and service for the use of the subject of the purchase or contract.

(10) The amount and conditions, if any, of the bid.

(11) The bidder's showing that it can and will comply with its proposed commitments to minority business enterprise and emerging small business participation efforts.

(12) The bidder's past performance with regard to its minority business enterprise and emerging small business participation efforts.

Sec. 21-63. Performance and payment bonds.

(a) [~~Upon~~] Except as provided in subsection (h), upon the award of any:

(1) Public construction contract exceeding \$500,000.00 awarded to any prime contractor;

(2) Construction contract exceeding \$500,000.00 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by a public body;

(3) Construction contract exceeding \$500,000.00 in which the performance of labor or the furnishing of materials will be paid with public funds; or

(4) Transportation-related projects exceeding [~~\$250,000.00~~] \$350,000.00 that are partially or wholly funded by the Commonwealth;

the contractor shall furnish to the City the following bonds:

(1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications

and conditions of the contract. For transportation-related projects authorized under Code of Virginia, title 33.2, ch. 2, art. 2, (Code of Virginia, § 33.2-208 et seq.), such bond shall be in a form and amount satisfactory to the Director.

(2) A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in furtherance of the work. 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, such bond shall be in a form and amount satisfactory to the Director.

The term “labor or materials” shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

(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.

(c) Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

(d) Bonds shall be payable to the City.

(e) Each of the bonds shall be filed with the Director.

(f) Nothing in this section shall preclude the Director from requiring payment or performance bonds for construction contracts below \$500,000.00 for nontransportation-related

projects or [~~\$250,000.00~~] \$350,000.00 for transportation-related projects authorized under Code of Virginia, § 33.1-12 and partially or wholly funded by the Commonwealth.

(g) Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

(h) The performance and payment bond requirements of subsection (a) for transportation-related projects that are valued in excess of \$250,000.00 but less than \$350,000.00 may only be waived by the Director if the bidder provides evidence, satisfactory to the Director, that a surety company has declined an application from the contractor for a performance or payment bond.

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

(a) *Conditions for use.* Conditions for use of competitive negotiation [~~for nonprofessional services~~] 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 Sections 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 [~~to the public~~], [~~goods, services, or~~] insurance may be procured [~~by competitive negotiation~~] through a licensed agent or broker selected in the

manner provided for in this section. The ~~[writing shall document the]~~ basis for this determination shall be documented in writing.

~~[(2) Upon a written determination made in advance by the Chief Administrative Officer that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the following manner, the basis for this determination being documented in writing:~~

~~a. 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. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole 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 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.~~

~~b. 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.]~~

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

a. ~~[For the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000.00; and~~

~~b.]~~ For the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; and

b. Pursuant to Section 21-44 or 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), "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 ~~[which]~~ that will be required ~~[of the contractor]~~. ~~[If appropriate, requests for qualifications can be requested prior to the release of a request for proposals. In such case, only those vendors who have demonstrated that they are qualified may submit a response to the request for proposals.]~~ 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 [~~in a public area normally used for posting of public notices or by publication in a newspaper of general circulation in the Richmond area, or both.~~] 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) [~~Receipt of proposals~~] *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 liability

provisions contained in the request for proposals in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. 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.

~~[(f) — *Discussion with responsible offerors and revision to proposals.* As provided in the request for proposals, discussion may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to ensure full understanding of and conformance with the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.~~

~~(g) — *Award.* Award shall be made to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.]~~

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 \$60,000.00 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 \$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, 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 ~~[of the contractor]~~. 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. ~~[The]~~ 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 ~~[department of procurement services²]~~ City's internet website, ~~[and any other appropriate website and by publication]~~ In addition, the Director shall publish the notice 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 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. 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 projects may be negotiated 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 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 [~~\$5,000,000.00~~] \$6,000,000.00, and (c) the project fee of any single project shall not exceed [~~\$2,000,000.00~~] \$2,500,000.00. 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. 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. That Chapter 21, Article II of the Code of the City of Richmond (2015) be and is hereby amended and reordained by **adding therein a new** section numbered 21-73 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 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 \$5,000,000.00. Individual job orders shall not exceed \$500,000.00.

(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) herein 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.

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



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

JUN 8 2016
4-5264
Chief Administration Office
City of Richmond

O&R REQUEST

DATE: June 6, 2016

TO: The Honorable Members of City Council

THROUGH: Dwight C. Jones, Mayor

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

THROUGH: Lenora Reid, Deputy Chief Administrative Officer for Finance and Administration

FROM: C. Edward Gibbs, Director of Procurement Services

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

ORD. OR RES. No. _____

RECEIVED
EDITION:
OFFICE OF CITY ATTORNEY
JUN 22 2016

PURPOSE: To amend sections 21-4, 21-42, 21-44, 21-47, 21-53, 21-54, 21-63, 21-67, and 21-68 of the City Code, concerning public procurement, and to amend ch. 21, art. II of the City Code by adding therein a new section 21-73, concerning job order contracting, 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 certain sections of the City Code with their parallel provisions in the Virginia Public Procurement Act, Va. Code §§ 2.2-4300—2.2-4377 (the "VPPA"), as required by Va. Code § 2.2-4343(A)(12).

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. These changes are shown, with appropriate explanatory notes, in the attachment to this O&R request.

The last major revision to the City's public procurement laws occurred in 2002, by Ord. No. 2002-145-162, adopted Jun. 10, 2002. Since that time, the General Assembly has made numerous changes to the VPPA, including the mandatory provisions set forth in Va. Code § 2.2-4343(A)(12). A small number of those changes have been reflected in ordinances previously adopted by the City Council, such as Ord. No. 2013-232-214, adopted Nov. 25, 2013, and Ord. No. 2015-102-202, adopted Nov. 9, 2015. However, a number of required changes have not been made. 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. The City Administration intends to propose additional changes to the City's public procurement laws in the form of different ordinances at a later date to make optional but recommended changes to improve the City's public procurement processes.

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: June 27, 2016.

CITY COUNCIL PUBLIC HEARING DATE: July 25, 2016.

REQUESTED AGENDA: Consent.

RECOMMENDED COUNCIL COMMITTEE: Governmental Operations

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 §§ 21-4, 21-42, 21-44, 21-47, 21-53, 21-54, 21-63, 21-67, and 21-68.

O&R Request

June 6, 2016

Page 3 of 3

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

ATTACHMENTS: Draft Amendments to City Code Chapter 21.

STAFF: C. Edward Gibbs, Director of Procurement Services, 646-5798.

DRAFT AMENDMENTS TO CITY CODE CHAPTER 21

Sec. 21-4. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Best value, as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the City's needs.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Competitive negotiation means a method of ~~[source]~~ contractor selection ~~[that involves individual discussions between the City and the offeror on the basis of responses to the City's request for proposals]~~ set forth in Section 21-67 or Section 21-68.

Competitive sealed bidding means a method of contractor selection ~~[under this chapter, not required for the procurement of professional services, that begins with the public notice and issuance of a written invitation for bids under Section]~~ set forth in Sections 21-47, [includes a public opening under Section] 21-52, ~~[and results in the evaluation of bids under Section]~~ 21-54, and ~~[an award under Section]~~ 21-55.

Construction means building, altering, repairing, improving or demolishing any structure, building, road, street or highway, and any draining, dredging, excavation, grading or similar work upon real property.

Construction management contract means a contract in which a party is retained by the City to coordinate and administer contracts for construction services for the benefit of the City, and may also include, if provided in the contract, the furnishing of construction services to the City.

Contract means all types of City agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.

Contract modification/supplement means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties to the contract.

Contractor means any person, company, corporation, or partnership having a contract with the City or a using agency thereof.

Cost analysis means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

Cost data means factual information concerning the cost of labor, material, overhead, and other cost elements, which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Cost reimbursement contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and this chapter and a fee or profit, if any.

Design-build contract means a contract between the City and another party in which the party contracting with the City agrees to both design and build the structure, roadway or other item specified in the contract.

Direct or indirect participation means involvement through decision, approval, disapproval, preparation of any part of a purchase request, influencing the content of any specification

or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity.

Director means the Director of Procurement Services of the City.

Disadvantaged business means a business meeting the definitions set forth in the Code of Federal Regulations pertaining to the applicable Federal grant program.

Emerging small business means a business that:

(1) Has been certified by the Office of Minority Business Development for a period of up to seven years;

(2) Has annual gross receipts of \$500,000.00 or less for each of its three fiscal years preceding application for such certification if engaged primarily in the construction business or of \$250,000.00 or less if engaged primarily in a nonconstruction business;

(3) Has fewer than ten full-time, permanent employees;

(4) Is not a subsidiary of another business and does not belong to a group of businesses owned and controlled by the same individuals;

(5) Has its principal place of business entirely within the boundaries of a City enterprise zone;

(6) Possesses a City business license; and

(7) Pays personal property, real estate, and business taxes, as applicable, to the City.

Good faith minority business enterprise and emerging small business participation efforts means the sum total of efforts by a particular business to provide for the equitable participation of minority business enterprises or emerging small business subcontractors. For past efforts, this sum total shall be comprised of the record of participation by minority business enterprises and emerging small businesses through subcontracting or joint ventures. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of minority business enterprises or emerging small business subcontractors.

Goods means all material, equipment, supplies, printing and automated data processing hardware and software.

Informality means a minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids or the request for proposals which does not affect the quality, quantity or delivery schedule for the goods, services or construction being procured.

Insurance means a contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.

Intent to award means an intent by the City to accept a bid or proposal.

Invitation for bids means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

Job order contracting means a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing, in which the contractor is selected through either competitive sealed bidding or competitive negotiation depending on the needs of the City, a minimum amount of work may be specified in the contract, and the contract term and the project amount do not exceed the limitations specified in Section 21-73.

Minority business enterprise means a business, at least 51 percent of which is owned and controlled or 51 percent minority-owned and operated by minority group members or, for a stock corporation, at least 51 percent of the stock which is owned and controlled by minority group members.

Minority group members means citizens of the United States who are Blacks, Hispanics, Asians, Indians, Eskimos or Aleuts.

Nominal value means a value so small, slight, or the like, in comparison to what might properly be expected, as scarcely to be entitled to the same, but in no case to be more than \$30.00.

Nonprofessional services means any services not specifically identified as professional services in the definition of professional services.

Professional services means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.

Public body means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter.

Public contract means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

Qualified products list means an approved list of goods, services or construction items described by model or catalog number that, prior to competitive solicitation, the City has determined will meet the applicable specification requirements.

Recycled paper means any paper having a total weight consisting of not less than 50 percent recovered materials, as that term is defined for purposes of purchasing paper and paper products in 40 CFR 247.3 (2001), as amended.

Request for proposals means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Request for qualifications means all documents, whether attached or incorporated by reference, utilized for soliciting qualification statements.

Responsible bidder and *responsible offeror* mean a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will ensure good faith performance, and who has been prequalified, if required.

Responsive bidder means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

Services means any work performed by an independent contractor which does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

Specification means any written description of the physical or functional characteristics or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing, or preparing a good, service or construction item for delivery.

Using agency means any department, agency, bureau, board, commission, court, City jail or jail forum or other unit in the City government requiring goods, services, insurance or construction as provided for in this chapter.

COMMENTARY: The “best value” definition from Va. Code § 2.2-4301 is added because it is used in the revisions to City Code § 21-44, concerning design-build and construction management contracts, and City Code § 21-67, concerning competitive negotiation for goods, non-professional services, insurance, and construction. The “job order contracting” definition based on Va. Code § 2.2-4301 is added because it is the subject of the new City Code § 21-73,

concerning job order contracting. The changes to City Code §§ 21-44 and 21-67 and the new City Code § 21-73 conform the City Code to the mandatory provisions set forth in Va. Code § 2.2-4343(A)(12). Housekeeping amendments are also made to the definitions of “competitive negotiation,” “competitive sealed bidding,” and “nonprofessional services.”

Sec. 21-42. Competitive sealed bidding or competitive negotiations of State-aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building for which State funds of not more than [~~\$30,000~~] \$50,000.00 in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under Section 21-67(a)(3). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

COMMENTARY: City Code § 21-42 derives from the mandatory provisions of Va. Code § 2.2-4305. The change to City Code § 21-42 conforms the City Code to Va. Code § 2.2-4305 as amended in 2010.

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

(a) Pursuant to Code of Virginia, § 2.2-4308, the City is authorized to enter into contracts for construction on a fixed-price or not-to-exceed price design-build or construction management basis in accordance with this section.

(b) Prior to making a determination to use a design-build or construction management contract for a specific construction project, the City shall have in its employ or under contract an architect or professional engineer with professional competence appropriate to the project who will advise the City regarding the use of a design-build or construction management contract for that project and assist the City with the preparation of the request for proposals and the evaluation of proposals submitted by interested offerors in response to the request for proposals for that project.

(c) Prior to issuing a request for proposals for a design-build or construction management contract, the Director shall make a written determination, to be maintained in the file for the procurement, that:

(1) Explains why a design-build or construction management contract is more advantageous than a competitive sealed bidding contract for the project;

(2) Identifies the specific benefits to the City from using the design-build or construction management contract; and

(3) Finds that competitive sealed bidding is neither practical nor fiscally advantageous to the City for the project.

(d) (1) The selection, evaluation and award of design-build and construction management contracts shall conform to the requirements of this section. Requests for proposals for design-build and construction management contracts shall include and define the criteria of such construction projects in the areas of:

- a. Site plans;
- b. Floor plans;
- c. Exterior elevations;
- d. Basic building envelope materials;

- e. Fire protection information plans;
- f. Structural, mechanical (HVAC) and electrical systems;
- g. Special telecommunications; and
- h. Such other requirements as the using agency determines appropriate for that particular construction project.

(2) The procurement of each design-build or construction management contract shall be conducted in two steps. The first step shall consist of a prequalification. The conduct of the prequalification step shall conform to the requirements of Section 21-46. The second step shall consist of a competitive negotiation. The conduct of the competitive negotiation step shall conform to the requirements of Section 21-67. For any guaranteed maximum price construction management contract, the contract shall require that:

- a. Not more than ten percent of the construction work (measured by cost of the work) shall be performed by the construction manager with its own forces; and
- b. The remaining 90 percent of the construction work shall be performed by subcontractors of the construction manager which the construction manager shall procure by competitive sealed bidding or competitive negotiations.

(3) The Director shall award the contract to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the request for proposals.

(e) The Director shall issue such rules, regulations and operational procedures pursuant to the authority granted to the Director by Section 2-596 as may be necessary to implement the provisions of this section. Such rules, regulations and operational procedures shall be designed to conform to the requirements of State law and this Code.

COMMENTARY: City Code § 21-44 derives from the mandatory provisions of Va. Code § 2.2-4308. The change to City Code § 21-44 conforms the City Code to Va. Code § 2.2-4308 as amended in 2006.

Sec. 21-47. [~~Notice of invitation to bid~~] Competitive sealed bidding; procedures.

(a) An invitation for bids shall be in writing and contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Director has provided for prequalification of bidders as provided under Section 21-45 or Section 21-46, the invitation for bids shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation

(b) [~~Notice inviting bids or requesting proposals~~] Public notice of the invitation for bids shall be posted [in a designated public area] on the City's internet website at least ten [calendar] days [preceding the last day] prior to the date set for the receipt of bids [or proposals]. In addition, the Director may publish in a newspaper of general circulation or on the Virginia Department of General Services' central electronic procurement website.

[(b)] (c) When [requesting proposals or] inviting bids, the Director [shall] may also solicit [proposals or sealed] bids directly from [a minimum of three responsible prospective suppliers who have requested their names to be added to a vendors' list, which the Director shall main

~~tain, by sending another notice as will acquaint them with the proposed purchase or sale. Where there exist less than three known suppliers, the Director shall solicit proposals or sealed bids from each source. In any case, solicitations sent to the vendors on the vendors' list shall be limited to goods or services that are similar in character and ordinarily handled by the trade group to which the solicitations are sent.]~~ potential contractors. Any additional solicitations shall include minority business enterprises or emerging small businesses, or both, selected from a list made available by the Office of Minority Business Development.

~~[(c) The Director shall also advertise pending purchases or sales by notice posted on the public bulletin board in the Office of the Department of Procurement Services.]~~

~~(d) [In addition to the requirements of this section, the Director may provide the notices required by this section electronically and on the City's World Wide Web site in accordance with such policies and procedures as the Director may promulgate to govern such notices.]~~ No invitation for bids for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. For purposes of this subsection (d), "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).

COMMENTARY: City Code § 21-47 is revised to incorporate most of the provisions of Va. Code § 2.2-4302.1, concerning the process for competitive sealed bidding. Va. Code § 2.2-4303(D), a mandatory provision pursuant to Va. Code § 2.2-4343(A)(12), requires the City to use competitive sealed bidding as defined in Va. Code § 2.2-4302.1 as the default procedure for construction. The changes to City Code § 21-47 reflect the 2013 and 2016 amendments to Va. Code § 2.2-4302.1.

Sec. 21-53. Withdrawal of bid due to error.

(a) A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw the bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

(b) If a bid contains both clerical and judgment mistakes, a bidder may withdraw the bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

(c) One of the following procedures for withdrawal of a bid shall be selected by the Director and stated in the advertisement for bids:

(1) The bidder shall give notice in writing of the claim of right to withdraw the bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

(2) ~~[The] Where the City opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the Director the bidder's original work papers, documents and materials used in the preparation of the bid [within one day after the date fixed for submission] at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail [at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of Section 21-5(f). The bids shall be opened one day following the time fixed by the Director for the submission of bids. Thereafter, the]~~ The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined in this [subsection] section and withdraw the bid. The contract shall not be awarded by the City until the two-hour period has elapsed.

[The] Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required in this subsection. The work papers, documents and materials submitted by the bidder shall, at the bidders request, be considered trade secrets or proprietary information subject to the conditions of Section 21-5(f).

(d) The Director may establish procedures for the withdrawal of bids for other than construction contracts.

(e) No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

(f) If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

(g) No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

(h) The Director shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the Director denies the withdrawal of a bid under the provisions of this section, the Director shall [notify the bidder in writing stating] state in such notice the reasons for the decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the Director shall return all work papers and copies thereof that have been submitted by the bidder.

COMMENTARY: City Code § 21-53 derives from the mandatory provisions of Va. Code § 2.2-4330. The changes to City Code § 21-53 reflect the 2011 amendments to Va. Code § 2.2-4330.

Sec. 21-54. Bid evaluation under competitive sealed bidding.

Bids shall be evaluated based upon the requirements set forth in the Invitation for Bids, which may include special qualifications of contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability. In determining the lowest responsive and responsible bidder on purchases or contracts, the following factors, among such others as will protect and preserve the interests of the City and its inhabitants, shall be considered:

- (1) The ability, capacity and will of the bidder to perform the contract or provide the service required.
- (2) Whether the bidder can perform the contract or provide the services promptly or within the time specified, without delay or interference.
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) The quality of performance of previous contracts or services.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract, purchase or service.
- (6) The equipment, personnel and facilities available to the bidder to perform the contract or provide the service.
- (7) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- (8) The quality, availability and adaptability of the supplies, materials, equipment or services to the particular use required.
- (9) The ability of the bidder to provide future maintenance and service for the use of the subject of the purchase or contract.
- (10) The amount and conditions, if any, of the bid.
- (11) The bidder's showing that it can and will comply with its proposed commitments to minority business enterprise and emerging small business participation efforts.
- (12) The bidder's past performance with regard to its minority business enterprise and emerging small business participation efforts.

COMMENTARY: City Code § 21-54 is revised to incorporate those provisions of Va. Code § 2.2-4302.1 not covered by City Code § 21-47 above. Va. Code § 2.2-4303(D), a mandatory provision pursuant to Va. Code § 2.2-4343(A)(12), requires the City to use competitive sealed bidding as defined in Va. Code § 2.2-4302.1 as the default procedure for construction. The changes to City Code § 21-54 reflect the 2013 and 2016 amendments to Va. Code § 2.2-4302.1.

Sec. 21-63. Performance and payment bonds.

- (a) ~~Upon~~ Except as provided in subsection (h), upon the award of any:
 - (1) Public construction contract exceeding \$500,000.00 awarded to any prime contractor;
 - (2) Construction contract exceeding \$500,000.00 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by a public body;
 - (3) Construction contract exceeding \$500,000.00 in which the performance of labor or the furnishing of materials will be paid with public funds; or
 - (4) Transportation-related projects exceeding ~~[\$250,000.00]~~ \$350,000.00 that are partially or wholly funded by the Commonwealth;
 the contractor shall furnish to the City the following bonds:
 - (1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects authorized under Code of Virginia, title 33.2, ch. 2, art. 2, (Code of Virginia, § 33.2-208 et seq.), such bond shall be in a form and amount satisfactory to the Director.

(2) A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in furtherance of the work. 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, such bond shall be in a form and amount satisfactory to the Director.

The term "labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

(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.

(c) Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

(d) Bonds shall be payable to the City.

(e) Each of the bonds shall be filed with the Director.

(f) Nothing in this section shall preclude the Director from requiring payment or performance bonds for construction contracts below \$500,000.00 for nontransportation-related projects or ~~[\$250,000.00]~~ \$350,000.00 for transportation-related projects authorized under Code of Virginia, § 33.1-12 and partially or wholly funded by the Commonwealth.

(g) Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

(h) The performance and payment bond requirements of subsection (a) for transportation-related projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by the Director if the bidder provides evidence, satisfactory to the Director, that a surety company has declined an application from the contractor for a performance or payment bond.

COMMENTARY: City Code § 21-63 derives from the mandatory provisions of Va. Code § 2.2-4337. The changes to City Code § 21-63 reflect the 2012 amendments to Va. Code § 2.2-4337.

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

(a) *Conditions for use.* Conditions for use of competitive negotiation [~~for nonprofessional services~~] 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 Sections 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 [~~to the public~~], [~~goods, services, or~~] insurance may be

procured [~~by competitive negotiation~~] through a licensed agent or broker selected in the manner provided for in this section. The [~~writing shall document the~~] basis for this determination shall be documented in writing.

~~[(2) Upon a written determination made in advance by the Chief Administrative Officer that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the following manner, the basis for this determination being documented in writing:~~

~~a. 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. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole 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 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.~~

~~b. 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.]~~

(3) Construction may be procured only by competitive sealed bidding [~~How-~~ever], except that, 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, competitive negotiation may be used in the following instances:

~~a. [For the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000.00; and~~

~~b.] For the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; and~~

~~b. Pursuant to Section 21-44 or 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), "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 [~~which~~] that will be required [of the contractor]. [~~If appropriate, requests for qualifications can be requested prior to the release of a request for proposals. In such case, only those vendors who have demonstrated that they are qualified may submit a response to the request for proposals.]~~ 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 [in a public area normally used for posting of public notices or by publication in a newspaper of general circulation in the Richmond area, or both.] 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 minority business enterprises or emerging small businesses, or both, selected from a list made available by the Office of Minority Business Development.

(d) ~~[Receipt of proposals]~~ *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 liability provisions contained in the request for proposals in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. 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.

(f) ~~[Discussion with responsible offerors and revision to proposals. As provided in the request for proposals, discussion may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to ensure full understanding of and conformance with the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.]~~

(g) ~~Award. Award shall be made to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.]~~

COMMENTARY: City Code § 21-67 is revised to incorporate the applicable provisions of Va. Code § 2.2-4302.2, concerning the process for competitive negotiation. Va. Code § 2.2-4303(C) and (D), mandatory provisions pursuant to Va. Code § 2.2-4343(A)(12), provide for the City to use competitive negotiation as defined in Va. Code § 2.2-4302.2 for the procurement of goods, nonprofessional services, insurance, and, in certain cases, construction. The changes to City Code § 21-67 reflect the 2013, 2015, and 2016 amendments to Va. Code § 2.2-4302.2.

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 \$60,000.00 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 \$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, 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 ~~[of the contractor]~~. 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. ~~[The]~~ 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 [department of procurement services²] City's internet website, [and any other appropriate website and by publication] In addition, the Director shall publish the notice 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 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 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 projects may be negotiated 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 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 [~~\$5,000,000.00~~] \$6,000,000.00, and (c) the project fee of any single project shall not exceed [~~\$2,000,000.00~~] \$2,500,000.00. 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. 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.

COMMENTARY: City Code § 21-68 derives both from those portions of Va. Code § 2.2-4302.2 that concern the process of competitive negotiation for professional services and from the limitations imposed on certain architectural and professional engineering services contracts by Va. Code § 2.2-4303.1. Va. Code § 2.2-4343(A)(12) makes these provisions mandatory for the City. The changes to City Code § 21-68 reflect the 2015 and 2016 amendments to Va. Code § 2.2-4302.2 and the 2015 amendments to Va. Code § 2.2-4303.1.

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 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 \$5,000,000. Individual job orders shall not exceed \$500,000.

(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 herein 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 per job order, and (3) do not exceed \$75,000 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.

COMMENTARY: City Code § 21-73 is a new City Code section that derives from Va. Code § 2.2-4303.2. Va. Code § 2.2-4303.2 is a mandatory provision regarding job order contracting added to the Virginia Public Procurement Act in 2015.