

INTRODUCED: June 24, 2024

AN ORDINANCE No. 2024- 186

To amend City Code § 21-4, concerning definitions related public procurement, and to amend Ch. 21, art. II, by adding therein new section 21-74, concerning the payment of prevailing wages for certain construction contracts, as authorized by Va. Code § 2.2-4321.3(C).

Patrons –Mayor Stoney, Ms. Lynch, President Nye, and Ms. Robertson

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JULY 22 2024 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That section 21-4 of the Code of the City of Richmond (2020) be and is hereby **amended** 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: _____ NOES: _____ ABSTAIN: _____

ADOPTED: _____ 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 contractor selection set forth in Section 21-67 or Section 21-68.

Competitive sealed bidding means a method of contractor selection set forth in Sections 21-47, 21-52, 21-54, and 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, 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.

Employment services organization means an organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Virginia Department for Aging and Rehabilitative Services.

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.

Prevailing Wage Rate means the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of mechanics, laborers, or workers

employed for the same work in the same trade or occupation in the locality in which the public facility or immovable property that is the subject of construction is located, as determined by the Virginia Commissioner of Labor and Industry on the basis of applicable prevailing wage rate determinations made by the United States Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended.

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. The term "specification" 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.

§ 2. That Chapter 21, Article II, of the Code of the City of Richmond (2020) be and is hereby amended and reordained by **adding therein a new section** numbered 21-74, as follows:

Sec. 21-74. Payment of prevailing wage for work performed on certain construction contracts.

(a) Each contract for construction greater than \$250,000.00 awarded by the City pursuant to Chapter 21 shall require that the contractor and subcontractors pay wages, salaries,

benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the construction contract at or above the prevailing wage rate.

(b) *Certain contracts exempted.* Construction contracts subject to Federal prevailing wage law are exempted from the City's prevailing wage requirement.

(c) *Contractor Responsibilities.*

(1) Upon the award of any contract subject to the provisions of Section 21-74, the contractor to whom such contract is awarded shall certify, under oath, to the Virginia Commissioner of Labor and Industry, the pay scale for each craft or trade employed on the project to be used by such contractor and any of the contractor's subcontractors for work to be performed under such contract. This certification shall, for each craft or trade employed on the project, specify the total hourly amount to be paid to employees, including wages and applicable fringe benefits, provide an itemization of the amount paid in wages and each applicable benefit, and list the names and addresses of any third-party fund, plan or program to which benefit payments will be made on behalf of employees. Within five days of certifying to the Virginia Commissioner of Labor and Industry, the contractor must provide a copy of the certification to the Director.

(2) In addition to applying the prevailing wage rates to its own employees pursuant to the terms of its contract with the City, the contractor under each such contract shall include the provisions of Section 21-74 in every subcontract so that such provisions will be binding upon each subcontractor. The contractor agrees to assume the obligation that the wage requirements will be observed in fulfilling the requirements of the contract. The appropriate enforcement sanctions may be invoked against the contractor and any such

subcontractor in the event of such subcontractor's failure to comply with any of the provisions of Section 21-74.

(3) A contractor or subcontractor who employs any mechanic, laborer, or worker to perform work contracted to be done under the construction contract at a rate that is less than the prevailing wage rate (i) shall be liable to such individuals for the payment of all wages due plus interest at an annual rate of eight percent accruing from the date the wages were due; and (ii) shall be disqualified from bidding on contracts with any public body until the contractor or subcontractor has made full restitution to the individuals. A contractor or subcontractor who willfully violates Section 21-74 shall be guilty of a Class I misdemeanor.

(4) Each contractor and its subcontractor subject to the provisions of Section 21-74 shall keep, maintain, and preserve (i) records relating to the wages paid to and hours worked by each individual performing the work of any mechanic, laborer, or worker, and (ii) a schedule of the occupation or work classification at which each individual performing the work of any mechanic, laborer, or worker on the construction project is employed each work day and week. The contractor or subcontractor shall preserve these records for a minimum of six years after the expiration or termination of the applicable contract, and shall make such records available to the Virginia Department of Labor and Industry or to the City within ten days of a request, and shall certify that records reflect the actual hours worked and the amount paid to its workers for whatever time period is requested.

(5) Each contractor and subcontractor subject to the provisions of Section 21-74 shall post, during the entire time work is being performed, a clearly legible statement of the general prevailing wage rate for each craft and classification involved, as determined

by the Virginia Commissioner of Labor and Industry, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work and at any such places as are used by the contractor or subcontractors to pay workers their wages. Such posting must be made in English and any other language that is primarily spoken by the employees at the work site. Within ten days of such posting, a contractor or subcontractor shall certify to the Director and to the Virginia Commissioner of Labor and Industry its compliance with this subsection.

(6) Contractors and subcontractors shall fully cooperate with any contract compliance requirements specified in the executed contract documents, including but not limited to site visits, staff interviews to validate wage rates, and the submission of payroll records.

(d) The Director shall be authorized to establish additional policies and procedures designed to implement, administer, and enforce Section 21-74.

§ 3. This ordinance shall be in force and effect on January 1, 2025.

APPROVED AS TO FORM

CITY ATTORNEY'S OFFICE



Richmond City Council

The Voice of the People

Richmond, Virginia

Office of the Council Chief of Staff

Council Ordinance/Resolution Request

TO Laura Drewry, Richmond City Attorney

THROUGH LaTasha S. Holmes, Council Chief of Staff

FROM Tamiya Lunsford, Council Budget Analyst
Office of the Council Chief of Staff

COPY Stephanie Lynch, 5th District Councilmember
Kristen Nye, 4th District Councilmember
Ellen Robertson, 6th District Councilmember
Tabrica Rentz, Deputy City Attorney
Adam Poser, Deputy Council Chief of Staff
Timmy Siverd, 4th District Liaison
Amy Robins, 5th District Liaison
Gayle Harris, 6th District Liaison

DATE June 13, 2024

PAGE/s 2

TITLE: Payment of Prevailing Wages

This is a request for the drafting of an **Ordinance** **Resolution**

REQUESTING COUNCILMEMBER/PATRON

SUGGESTED STANDING COMMITTEE

Councilmember Stephanie Lynch,
President Kristen Nye, and
Councilmember Ellen Robertson

Finance & Economic Development
Standing Committee

ORDINANCE/RESOLUTION SUMMARY

To amend ch. 21 of the City Code by adding therein a new section 21-74, to establish prevailing wage provisions for certain contracts for construction as authorized by Va. Code §2.2-4321.3(C).

BACKGROUND

To ensure laborers and mechanics under contracts awarded for city programs are paid a prevailing wage, Councilmembers Lynch, Nye, and Robertson would like to establish a prevailing wage law for certain City contracts, as authorized in Code of Virginia, Title 2.2., Ch. 43 (Code of Virginia, § 2.2-4321.3(C)).

The Virginia General Assembly during its 2020 session amended the Virginia Public Procurement Act (VPPA) to provide Virginia localities the non-mandatory option to implement local prevailing wage programs for public works contracts valued at more than \$250,000.

The proposed introduction for this legislation is June 24, 2024.

FISCAL IMPACT STATEMENT

Fiscal Impact Yes No

Budget Amendment Required Yes No

Estimated Cost or Revenue Impact

Note: The total fiscal impact of a prevailing wage program is difficult to estimate with any degree of certainty. The City is likely to see some impact on the pricing for construction contracts, both due to increases in wage rates as well as from increased administration costs. However, this cannot be determined with any level of certainty at the present time.

Attachment/s Yes No