

INTRODUCED: May 14, 2018

AN ORDINANCE No. 2018-152

To amend section 21-5 of the City Code, concerning the public inspection of certain records, for the purpose of conforming the section to the requirements of Va. Code § 2.2-4343(A)(12).

\_\_\_\_\_  
Patron – Mayor Stoney  
\_\_\_\_\_

Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

PUBLIC HEARING: MAY 29 2018 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That section 21-5 of the Code of the City of Richmond (2015) be and is hereby **amended** and reordained as follows:

**Sec. 21-5. Public inspection of certain records.**

(a) Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act, Code of Virginia, § 2.2-3700 et seq.

(b) Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

AYES: 7 NOES: 0 ABSTAIN: \_\_\_\_\_

ADOPTED: MAY 29 2018 REJECTED: \_\_\_\_\_ STRICKEN: \_\_\_\_\_

(c) Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

(d) Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

(e) Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

(f) Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to Section 21-46 shall not be subject to the Virginia Freedom of Information Act, Code of Virginia, § 2.2-3700 et seq.; however, the bidder, offeror or contractor shall:

- (1) Invoke the protections of this section prior to or upon submission of the data or other materials;
- (2) Identify the data or other materials to be protected; and
- (3) State the reasons why protection is necessary.

A bidder, offeror or contractor shall not designate as trade secrets or proprietary information (i) an entire bid, proposal, or prequalification application; (ii) any portion of a bid, proposal, or

prequalification application that does not contain trade secrets or proprietary information; or (iii) line item prices or total bid, proposal, or prequalification application prices.

§ 2. This ordinance shall be in force and effect on July 1, 2018.



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O & R REQUEST

APR 26 2018
4-7750
Office of the
Chief Administrative Officer

O&R REQUEST

DATE: April 25, 2018

EDITION: 1

TO: The Honorable Members of City Council

RECEIVED

THROUGH: Levar M. Stoney, Mayor [Signature]

MAY 03 2018

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer [Signature]

OFFICE OF CITY ATTORNEY

THROUGH: Lenora G. Reid, Deputy Chief Administrative Officer for Finance and Administration [Signature]

FROM: Betty J. Burrell, Director of Procurement Services [Signature]

RE: State-Mandated Amendment to City's Public Procurement Laws Concerning Designation of Trade Secrets or Proprietary Information

ORD. OR RES. No. \_\_\_\_\_

PURPOSE: To amend section 21-5(f) of the City Code, concerning the public inspection of certain records, for the purpose of reflecting amendments made by the General Assembly to Va. Code § 2.2-4342(F) concerning the designation of trade secrets or proprietary information by bidders, offerors, and contractors, which Va. Code § 2.2-4343(A)(12) will require the City to follow.

REASON: The proposed ordinance would conform section 21-5(f) of the City Code with its parallel provision, Va. Code § 2.2-4342(F), 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.

During its 2018 session, on the recommendation of the Virginia Freedom of Information Advisory Council, the General Assembly enacted 2018 Va. Acts ch. 31, which added Va. Code § 2.2-4342, concerning the public inspection of certain procurement records, to the list of mandatory provisions set forth in Va. Code § 2.2-4343(A)(12) and amended Va. Code § 2.2-4342(F) to restrict what bidders, offerors, or contractors may designate as trade secrets or proprietary information when participating in the procurement process. The City must follow the requirements of these mandatory provisions, therefore, updating the City Code to properly reflect those requirements aligns the City Code with required practices for training, dispute-related, and audit purposes is appropriate.

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 changes to City Code § 21-5(f) are as follows:

(f) Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to Section 21-46 shall not be subject to the Virginia Freedom of Information Act, Code of Virginia, § 2.2-3700 et seq.; however, the bidder, offeror or contractor shall:

- (1) Invoke the protections of this section prior to or upon submission of the data or other materials;
- (2) Identify the data or other materials to be protected; and
- (3) State the reasons why protection is necessary.

A bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (i) an entire bid, proposal, or prequalification application; (ii) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (iii) line item prices or total bid, proposal, or prequalification application prices.

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

**FISCAL IMPLICATIONS:** This proposed ordinance should not impose any costs on the City in the foreseeable future.

**BUDGET AMENDMENT NECESSARY:** No budget amendment is necessary if this proposed ordinance is adopted.

**REVENUE TO CITY:** None.

**DESIRED EFFECTIVE DATE:** July 1, 2018.

**REQUESTED INTRODUCTION DATE:** May 14, 2018.

**CITY COUNCIL PUBLIC HEARING DATE:** May 29, 2018.

**REQUESTED AGENDA:** Consent.

**RECOMMENDED COUNCIL COMMITTEE:** Governmental Operations (May 24, 2018).

**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 §§ 21-5(f).

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

**ATTACHMENTS:** None.

**STAFF:** Betty J. Burrell, Director of Procurement Services, 646-5798.