



Legislation Text

File #: ORD. 2021-035, **Version:** 1

To amend City Code §§ 21-67, concerning competitive negotiation for goods, nonprofessional services, insurance, and construction, and 21-68, concerning contracting for professional services by competitive negotiation, for the purpose of modifying the procedures for the publishing of public notices for competitive negotiations.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That sections 21-67 and 21-68 of the Code of the City of Richmond (2020) be and are hereby **amended** and reordained as follows:

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

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

(1) The Director may allow the use of either competitive sealed bidding as set forth in 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, insurance may be procured through a licensed agent or broker selected in the manner provided for in this section. The basis for this determination shall be documented in writing.

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

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

b. For the construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made in advance by the Director and set forth in writing by the Director that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination; or

c. Pursuant to Article IX of this chapter.

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

(b) *Request for proposals.* A request for proposals shall be in writing and indicate in general terms what is sought to be procured, specifying the factors which will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications, or qualifications that will be required. Except with regard to contracts for transportation construction services or transportation-related construction services, the City may include as a factor that will be used in evaluating a proposal the offeror's employment of persons with disabilities to perform the specifications of the contract. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the request for proposals or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.

(c) *Public notice.* At least ten days prior to the date set for receipt of proposals, public notice shall be given by posting on the City's internet website. In addition, the Director [~~shall~~] may 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~~]. Posting the notice on the Virginia Department of General Services' central electronic procurement website shall be required if the City elects not to publish notice of the request for proposal in a newspaper of general circulation in the city. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Virginia Department of Small Business and Supplier Diversity and shall include minority business enterprises or emerging small businesses, or both, selected from a list made available by the Office of Minority Business Development.

(d) *Procedures for evaluation and award.* No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposals, including price if so stated in the request for proposals. In the case of a proposal for information technology, as defined in Code of Virginia, § 2.2-2006, the Director shall not require an offeror to state in a proposal any exception to any liability provisions contained in the request for proposals. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any 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.

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. Except with regard to contracts for architectural or professional engineering services, the City may include as a factor that will be used in evaluating a proposal the offeror's employment of persons with disabilities to perform the specifications of the contract. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the request for proposals or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. 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 City's internet website. In addition, the Director [~~shall~~] may 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~~]. Posting the notice on the Virginia Department of General Services' central electronic procurement website shall be required if the City elects not to publish notice of the Request for Proposal in a newspaper of general circulation in the city. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses 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 \$8,000,000.00, and (c) the project fee of any single project shall not exceed \$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. This ordinance shall be in force and effect upon adoption.