

AN ORDINANCE TO AMEND AND REENACT CITY CODE SECTION 22-4

WHEREAS, in order to promote efficiency in the procurement of needed goods and services, the Virginia Public Procurement Act (VPPA) was amended to permit localities to use additional methods of procurement for certain kinds of contracts and to lessen the paperwork needed for certain transactions;

WHEREAS, the additional flexibility and efficiency offered by the state enabling legislation would benefit the City of Charlottesville in its procurement of needed goods and services;

WHEREAS, amendments to the procurement provisions of the City Code are necessary to enable the City to make use of the additional procurement methods and procedures afforded by the VPPA, and to bring the City Code into harmony with state enabling legislation;

WHEREAS, this Council has considered the staff recommendations regarding these changes to the procurement provisions of the City Code;

WHEREAS, this Council finds and determines that it is in the best interests of the citizens of the City of Charlottesville to promote efficiency in the procurement of needed goods and services;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Charlottesville, Virginia THAT:

Chapter 22 (City Procurement of Goods and Services from Non-Governmental Sources) of the Code of the City of Charlottesville (1990), as amended, Article I, Sec. 22-4, is hereby amended, re-ordained and re-enacted, as follows:

Sec. 22-4. Methods of procurement authorized.

- (a) All city contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, ~~(including construction, services)~~ or insurance, shall be awarded after competitive sealed bidding or competitive negotiation, unless otherwise authorized by the Virginia Public Procurement Act or this chapter.
- (b) Professional services shall be procured by competitive negotiation.
- (c) Goods, and non-professional services, and insurance shall may be procured by competitive sealed bidding or competitive negotiation.
- (d) Insurance may be procured by competitive sealed bidding or competitive negotiation.
However,
 - ~~(1) Upon a written determination, made in advance by the procurement manager, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.~~
 - ~~(2) Upon a written determination, made in advance by the procurement manager, that competitive negotiation is either not practicable or not fiscally~~

advantageous, insurance may be procured through a licensed agent or broker. The licensed agent or broker shall be selected in the manner provided for the procurement of things other than professional services using a competitive negotiations process.

(ee) Construction services shall be procured by competitive sealed bidding. However, upon a written determination, made in advance by the procurement manager, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, the following construction services may be procured by competitive negotiation:

- (1) Contracts for the construction of public streets and any draining, dredging, excavation, grading or similar work upon real property, or
- (2) ~~Fixed-price contracts~~ For design-build ~~and/or~~ construction management ~~contracts~~ as provided in § 2.2-437.8 of the Code of Virginia.

The procurement manager's determination shall document the basis for the ~~it~~ determination.

(fd) Upon a written determination, made in advance by the procurement manager, that there is only one (1) source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The procurement manager shall issue a written notice stating that only one (1) source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the city's website. ~~In addition, the notice may be posted in a designated public area or published in a newspaper of general circulation on the day the city awards or announces its decision to award the contract, whichever occurs first.~~

(eg) In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be ~~prepared by the procurement manager and~~ included in the contract file. The procurement manager shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the city's website. ~~In addition, the notice may be posted in a designated public area or published in a newspaper of general circulation on the day the city awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.~~

(fh) Competitive sealed bidding or competitive negotiation are not required for single or term contracts if the procurement is made pursuant to ~~The procurement manager may establish~~ written procedures ("small purchase procedures"), established by the purchasing manager ~~and~~ approved by the city manager, for single- or term-contracts for:

- (1) Goods and services (other than professional services) and non-transportation related construction, if the aggregate or the sum of all ~~phases~~ ~~amounts to be paid to the contractor~~ is not expected to exceed two hundred thousand dollars (\$200,000.00); and
- (2) Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed twenty-five thousand dollars (\$25,000.00); and
- (3) Professional services ~~without requiring competitive negotiation~~, provided the aggregate or the sum of all phases is not expected to exceed eighty thousand dollars (\$80,000.00).

Such small purchase procedures shall provide for competition wherever practicable.

- (gi) Upon a determination made in advance by the procurement manager and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates, shall not be made by online public auctions.
- (hj) The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates, shall not be made by reverse auctioning.
- (ik) The city may participate in, sponsor, conduct, or administer a cooperative procurement agreement on behalf of or in conjunction with one (1) or more other public bodies, or public agencies or institutions or localities of the several states, of the Commonwealth of Virginia, of the United States or its territories, the District of Columbia, ~~or the U.S. General Services Administration,~~ or the Metropolitan Washington Council of Governments, for the purpose of combining requirements to increase efficiency or reduce administrative expenses, in any acquisition of goods, ~~and services,~~ or construction.

In addition, aA public body may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association, even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies, except contracts for:

- (1) ~~Contracts for a~~Architectural or engineering services; or
 - (2) ~~Construction in excess of two hundred thousand dollars (\$200,000.00) by a local public body from the contract of another local public body that is more than a straight line distance of seventy-five (75) miles from the territorial limits of the local public body procuring the construction. This subsection shall not apply to (i) The installation of artificial turf or other athletic surfaces, (ii) stream restoration, (iii) stormwater management practices, or (iv) the installation of playground equipment, including all associated and necessary construction and maintenance. shall not be subject to the limitations prescribed in this subsection.~~ Nothing in this subsection shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections (df) and (eg) of this section.
- (jl) No contract for the construction of any building or for an addition to or improvement of an existing building by the city or any of its agencies, boards or departments for which state funds of not more than fifty thousand dollars (\$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 competitive negotiation.
 - (km) ~~Upon a determination made in advance by the procurement manager and set forth in writing that neither competitive sealed bidding nor competitive negotiations would be practicable or fiscally advantageous to the city, t~~The city in its capacity as a utility operator may purchase services through or participate in contracts awarded by one (1) or more utility operators that are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq. of the Code of Virginia). A purchase of

services under this subsection may deviate from the procurement procedures provided in this chapter, provided that the ~~contract is awarded~~ procurement manager certifies in writing that the contract has been awarded based on competitive principles and that the purchasing manager makes a determination in advance and in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.

This ordinance shall be effective as of June 11, 2023.

Approved as to form:

Jacob P. Stroman

Jacob P. Stroman
City Attorney