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**HOUSE BILL NO. 2021**

Offered January 10, 2001

Prefiled January 10, 2001

*A BILL to amend and reenact § 11-37 of the Code of Virginia, relating to the Virginia Public Procurement Act; procurement of architectural or professional engineering services.*

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Patrons—May and Black; Senator: Mims

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Referred to Committee on General Laws**Be it enacted by the General Assembly of Virginia:****1. That § 11-37 of the Code of Virginia is amended and reenacted as follows:****§ 11-37. Definitions.**

The words defined in this section shall have the meanings set forth below throughout this chapter.

"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 a public body's needs.

"Competitive sealed bidding" is a method of contractor selection which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid 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 to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least ten days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of general circulation, or both. Public notice may also be published on the Department of General Services' central electronic procurement Web site and other appropriate Web sites. Effective July 1, 2002, posting by state agencies, departments and institutions on the public Internet procurement Web site designated by the Department of General Services shall be required. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential 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.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

6. Competitive sealed bidding shall not be required for procurement of professional services.

"Competitive negotiation" is a method of contractor selection which includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.

2. Public notice of the Request for Proposal at least ten days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice may also be published on the Department of General Services' central electronic procurement Web site and other appropriate Web sites. Effective July 1, 2002, publishing by state agencies, departments and institutions on the public Internet procurement Web site designated by the Department of General Services shall be required. In addition, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. The public body 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

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59 qualifications and performance data or staff expertise pertinent to the proposed project, as well as  
60 alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates  
61 of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding  
62 estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate,  
63 nonbinding estimates of price for services. Proprietary information from competing offerors shall not be  
64 disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision,  
65 on the basis of evaluation factors published in the Request for Proposal and all information developed in  
66 the selection process to this point, the public body shall select in the order of preference two or more  
67 offerors whose professional qualifications and proposed services are deemed most meritorious.  
68 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory  
69 and advantageous to the public body can be negotiated at a price considered fair and reasonable, the  
70 award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be  
71 formally terminated and negotiations conducted with the offeror ranked second, and so on until such a  
72 contract can be negotiated at a fair and reasonable price. Should the public body determine in writing  
73 and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more  
74 highly qualified and suitable than the others under consideration, a contract may be negotiated and  
75 awarded to that offeror.

76 A contract for architectural or professional engineering services ~~relating to construction projects~~ may  
77 be negotiated by a state agency, as defined in § 11-62.1, ~~or by a political subdivision of the~~  
78 *Commonwealth*, for multiple projects provided (i) the projects require similar experience and expertise,  
79 (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term  
80 is limited to one year or when the cumulative total project fees reach the maximum cost authorized in  
81 this paragraph, whichever occurs first. Such contract may be renewable for one additional term at the  
82 option of the state agency ~~or political subdivision~~. Under such contract, ~~(i)~~ the fair and reasonable  
83 prices, as negotiated, shall be used in determining the cost of each project performed, ~~(ii)~~ *In addition,*  
84 *for state agencies*, the sum of all projects performed in one contract term shall not exceed \$500,000 or  
85 such lesser amount as may be determined by the Director of the Department of General Services, and  
86 ~~(iii)~~ the project fee of any single project shall not exceed \$100,000 or such lesser amount as may be  
87 determined by the Director of the Department of General Services. Any unused amounts from the first  
88 contract term shall not be carried forward to the additional term. Competitive negotiations for such  
89 contracts may result in awards to more than one offeror provided (i) the Request for Proposal so states  
90 and (ii) the state agency ~~or local governing body~~ has established procedures for distributing multiple  
91 projects among the selected contractors during the contract term.

92 Multiphase professional services contracts satisfactory and advantageous to the Department of  
93 Transportation for environmental, location, design and inspection work regarding highways and bridges  
94 may be negotiated and awarded based on a fair and reasonable price for the first phase only, when  
95 completion of the earlier phases is necessary to provide information critical to the negotiation of a fair  
96 and reasonable price for succeeding phases.

97 b. Procurement of other than professional services. Selection shall be made of two or more offerors  
98 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the  
99 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.  
100 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but  
101 need not be the sole determining factor. After negotiations have been conducted with each offeror so  
102 selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and  
103 shall award the contract to that offeror. When the terms and conditions of multiple awards are so  
104 provided in the Request for Proposal, awards may be made to more than one offeror. Should the public  
105 body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one  
106 offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated  
107 and awarded to that offeror.

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

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

113 "Design-build contract" means a contract between a public body and another party in which the party  
114 contracting with the public body agrees to both design and build the structure, roadway or other item  
115 specified in the contract.

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

118 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of  
119 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or  
120 delivery schedule for the goods, services or construction being procured.

"Multiphase professional services 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.

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

"Potential bidder or offeror" for the purposes of §§ 11-66 and 11-70 means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"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. "Professional services" shall also include the services of an economist procured by the State Corporation Commission.

"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.

"Responsible bidder" or "offeror" means 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 assure 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 to Bid.

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

"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.