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SENATE BILL NO. 1177

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend the Code of Virginia by adding in Chapter 43 of Title 2.2 an article numbered 7, consisting of sections numbered 2.2-4378, 2.2-4379, and 2.2-4380, relating to the Virginia Public Procurement Act; use of best value contracting by localities.*

Patron—Marsden

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 43 of Title 2.2 an article numbered 7, consisting of sections numbered 2.2-4378, 2.2-4379, and 2.2-4380, as follows:

*Article 7.**Best Value Contracting.**§ 2.2-4378. Definitions.*

A. As used in this article, unless the context requires a different meaning:

"Best value" means a procurement process whereby the lowest responsible bidder may be selected on the basis of objective criteria with the resulting selection representing the best combination of price and qualifications. Objective criteria that may be considered in determining the best value include, but are not limited to, the potential contractor's (i) financial condition, (ii) quality of performance on previous projects, (iii) timeliness of performance on previous projects, (iv) record of ability to minimize cost overruns, (v) use of local hiring pools, (vi) proven ability to minimize or eliminate change orders, (vii) provision of training or apprenticeship programs, (viii) technical capacities, (ix) provision of health care benefits for workers, (x) use of background checks and voluntary drug testing for employees and workers, (xi) participation in E-Verify program, (xii) key personnel qualifications, (xiii) safety record including the ability to minimize workplace safety risks, (xiv) use of small, woman-owned, minority and veteran-owned contractors and subcontractors, and (xv) environmental sustainability and track record.

"Best value contract" means a contract entered into pursuant to the provisions of this article.

"Best value contractor" means a properly licensed person, firm, or corporation that submits a bid for, or is awarded, a best value contract.

"Demonstrated management competency" means the experience, competency, capability, and capacity of the proposed management staffing to complete projects of similar size, scope, or complexity.

"Financial condition" means the financial resources needed to perform the contract. The criteria used to evaluate a bidder's financial condition shall include, at a minimum, capacity to obtain all required payment bonds, performance bonds, and liability insurance.

"Qualifications" means financial condition, relevant experience, demonstrated management competency, labor compliance, and safety record of the bidder, and, if required by the bidding documents, some or all of the preceding qualifications as they pertain to subcontractors proposed to be used by the bidder for designated portions of the work.

"Relevant experience" means the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity.

"Safety record" means the prior history concerning the safe performance of construction contracts. The criteria used to evaluate a bidder's safety record shall include, at a minimum, its experience modification rate for the most recent three-year period, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period.

§ 2.2-4379. Use of best value contracting by localities.

A. As an alternative to competitive sealed bidding, a locality may proceed with a best value procurement process in accordance with this article, provided that such locality has enacted an ordinance including a finding that the use of a best value procurement process is in the best interest of the locality.

B. The locality shall include in the Invitation to Bid a notice to potential bidders that the procurement decision shall be made based on best value. In addition, the Invitation to Bid for each best value contract shall include a section identifying and describing the (i) criteria that will be considered in evaluating bids, (ii) methodology and rating or weighting system that will be used in evaluating bids, and (iii) relative importance or weight assigned to the criteria identified in the Invitation to Bid.

§ 2.2-4380. Selection of the best value contractor by locality.

A. Selection of the best value contractor by locality shall be made as follows:

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- 59 1. The locality shall evaluate the qualifications of the bidders based solely upon the criteria set forth
60 in the Invitation to Bid, and shall assign a qualifications score to each bid.
- 61 2. The award of the contract shall be made to the bidder whose bid is determined by the locality to
62 be the best value to the locality. To determine the best value contractor, the locality shall divide each
63 bidder's price by its qualifications score. The lowest resulting cost per quality point will represent the
64 best value bid.
- 65 3. The locality shall issue a written decision of its contract award.
- 66 B. Upon issuance of a contract award, the locality shall announce its award identifying the best
67 value contractor to which the award is made, the project, the project price, and the selected best value
68 contractor's score based on the evaluation criteria listed in the Invitation to Bid. The notice of award
69 shall be made public and include the score of the selected best value contractor in relation to all other
70 responsive bidders and their respective prices. The contract file shall include documentation sufficient to
71 support the decision to award.