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HOUSE BILL NO. 1540

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 3, 2015)

(Patron Prior to Substitute—Delegate Albo)

A *BILL to amend and reenact § 2.2-4302.2 of the Code of Virginia, relating to the Virginia Public Procurement Act; negotiation of terms and conditions for architectural and engineering services.*

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4302.2 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4302.2. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable *proposed* contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. *Any proposed contractual terms and conditions for architectural or engineering services shall be subject to negotiations after a selection of the qualified architectural or engineering offeror has been made in accordance with this section;*

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper 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. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. 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 Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, 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 Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. 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 public body shall select the offeror which, in its 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 Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its 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; or

4. For 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 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 public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body ~~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 shall not request estimates of costs for professional services.~~ In accordance with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations, *including any negotiations of the proposed contractual terms and conditions for architectural or engineering services,* shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked

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60 first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on
61 until such a contract can be negotiated at a fair and reasonable price.

62 Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the
63 Request for Proposal, a public body may award contracts to more than one offeror.

64 Should the public body determine in writing and in its sole discretion that only one offeror is fully
65 qualified or that one offeror is clearly more highly qualified and suitable than the others under
66 consideration, a contract may be negotiated and awarded to that offeror.

67 B. For multiple projects, a contract for architectural or professional engineering services relating to
68 construction projects, or a contract for job order contracting, may be negotiated by a public body,
69 provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly
70 identified in the Request for Proposal, and (iii) the contract is limited to a one-year term or when the
71 cumulative total project fees reach the maximum cost authorized in this subsection, whichever occurs
72 first.

73 Such contracts may be renewable for four additional one-year terms at the option of the public body.
74 The fair and reasonable prices as negotiated shall be used in determining the cost of each project
75 performed and the sum of all projects performed in a one-year contract term shall not exceed \$500,000,
76 except that for:

77 1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract
78 term shall not exceed \$1 million as may be determined by the Director of the Department of General
79 Services;

80 2. Any locality or any authority, sanitation district, metropolitan planning organization or planning
81 district commission with a population in excess of 80,000, or any city within Planning District 8, the
82 sum of all projects performed in a one-year contract term shall not exceed \$5 million and those awarded
83 for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects
84 shall not exceed \$1.5 million;

85 3. Architectural and engineering services for rail and public transportation projects by the Director of
86 the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term
87 shall not exceed \$2 million. Such contract may be renewable for two additional one-year terms at the
88 option of the Director;

89 4. Environmental, location, design, and inspection work regarding highways and bridges by the
90 Commissioner of Highways, the initial contract term shall be limited to two years or when the
91 cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable
92 for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each
93 one-year contract term shall not exceed \$5 million; and

94 5. Job order contracting, the sum of all projects performed in a one-year contract term shall not
95 exceed \$2 million.

96 Competitive negotiations for such contracts may result in awards to more than one offeror provided
97 (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing
98 multiple projects among the selected contractors during the contract term.

99 C. For any single project, for (i) architectural or professional engineering services relating to
100 construction projects, or (ii) job order contracting, the project fee shall not exceed \$100,000, or for
101 architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation
102 projects, the project fee shall not exceed \$500,000, except that for:

103 1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be
104 determined by the Director of the Department of General Services;

105 2. Any locality or any authority or sanitation district with a population in excess of 80,000, or any
106 city within Planning District 8, the project fee shall not exceed \$2 million; and

107 3. Job order contracting, the project fee shall not exceed \$400,000.

108 The limitations imposed upon single project fees pursuant to this subsection shall not apply to
109 environmental, location, design, and inspection work regarding highways and bridges by the
110 Commissioner of Highways or architectural and engineering services for rail and public transportation
111 projects by the Director of the Department of Rail and Public Transportation.

112 D. For the purposes of subsections B and C, any unused amounts from the first contract term shall
113 not be carried forward to the additional term.

114 E. Multiphase professional services contracts satisfactory and advantageous to the completion of
115 large, phased, or long term projects may be negotiated and awarded based on a fair and reasonable price
116 for the first phase only, where the completion of the earlier phases is necessary to provide information
117 critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the entering into
118 any such contract, the public body shall (i) state the anticipated intended total scope of the project and
119 (ii) determine in writing that the nature of the work is such that the best interests of the public body
120 require awarding the contract.