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HOUSE BILL NO. 257

Offered January 10, 2018

Prefiled January 2, 2018

A BILL to amend and reenact § 2.2-4301 of the Code of Virginia, relating to the Virginia Public Procurement Act; definitions; responsible bidder or offeror.

 Patron—Hope

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-4301 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-4301. Definitions.**

As used in this chapter:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"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.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is the method of contractor selection set forth in § 2.2-4302.2.

"Competitive sealed bidding" is the method of contractor selection set forth in § 2.2-4302.1.

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

"Construction management contract" means the same as that term is defined in § 2.2-4379.

"Design-build contract" means the same as that term is defined in § 2.2-4379.

"Employment services organization" means an organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

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

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

"Job order contracting" means a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The contractor may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of the public body procuring the construction services. A minimum amount of work may be specified in the contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-4303.2.

"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 §§ 2.2-4360 and 2.2-4364, 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 the 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

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59 include the services of an economist procured by the State Corporation Commission.

60 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,
61 post, commission, committee, institution, board or political subdivision created by law to exercise some
62 sovereign power or to perform some governmental duty, and empowered by law to undertake the
63 activities described in this chapter. "Public body" shall include (i) any independent agency of the
64 Commonwealth, and (ii) any metropolitan planning organization or planning district commission which
65 operates exclusively within the Commonwealth of Virginia.

66 "Public contract" means an agreement between a public body and a nongovernmental source that is
67 enforceable in a court of law.

68 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform
69 fully the contract requirements and the moral and business integrity and reliability, *as demonstrated by*
70 *previous experience*, that will assure good faith performance, and who has been prequalified, if required.

71 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects
72 to the Invitation to Bid.

73 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified
74 goods or nonprofessional services through real-time electronic bidding, with the award being made to
75 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed
76 and bidders shall have the opportunity to modify their bid prices for the duration of the time period
77 established for bid opening.

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