

13103548D

HOUSE BILL NO. 1823

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact §§ 2.2-4301, 2.2-4303, 56-573.1:1, and 56-575.17 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 11 of Title 2.2 a section numbered 2.2-1102.1, relating to public procurement; posting by local public bodies of procurement opportunities.

Patrons—Villanueva, Dance, Head, Ramadan, Watson and Webert

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4301, 2.2-4303, 56-573.1:1, and 56-575.17 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 11 of Title 2.2 a section numbered 2.2-1102.1 as follows:

§ 2.2-1102.1. Department to provide data files of procurement notices to requesting newspapers.

The Department of General Services shall (i) provide an electronic data file of the using agency's business opportunities at no charge to any requesting newspaper or other print publication with circulation in Virginia using the comma-separated values (CSV) format and (ii) send the data file automatically via electronic mail on a daily, weekly, or monthly basis as agreed to by the parties. The data file shall contain all active business opportunity notices posted on the Department of General Services' central electronic procurement website by all public bodies in accordance with the requirements of §§ 2.2-4301, 2.2-4303, 56-573.1:1, and 56-575.17. The electronic business opportunity data shall include, at a minimum: (a) the name of the issuing public body, (b) a description of goods or services to be purchased, (c) the date the bid or proposal is due, and (d) the point of contact for the issuing public body, including the contact's name, phone number, and email address.

§ 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 a method of contractor selection that 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 that 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 that will be required of the contractor.

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 may post the notice on other appropriate websites or 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 all public body bodies. 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.

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

INTRODUCED

HB1823

59 informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their
60 qualifications and performance data or staff expertise pertinent to the proposed project, as well as
61 alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by
62 the public body in addition to the review of the professional competence of the offeror. The Request for
63 Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At
64 the discussion stage, the public body may discuss nonbinding estimates of total project costs, including,
65 but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services.
66 Proprietary information from competing offerors shall not be disclosed to the public or to competitors.
67 At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published
68 in the Request for Proposal and all information developed in the selection process to this point, the
69 public body shall select in the order of preference two or more offerors whose professional qualifications
70 and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning
71 with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be
72 negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise,
73 negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with
74 the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable
75 price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the
76 Request for Proposal, a public body may award contracts to more than one offeror.

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

80 A contract for architectural or professional engineering services relating to construction projects may
81 be negotiated by a public body, for multiple projects provided (i) the projects require similar experience
82 and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the
83 contract term is limited to one year or when the cumulative total project fees reach the maximum cost
84 authorized in this paragraph, whichever occurs first. For state public bodies, such contract, except those
85 awarded for environmental, location, design and inspection work regarding highways and bridges by the
86 Commissioner of Highways may be renewable for four additional one-year terms at the option of the
87 public body. For local public bodies, including metropolitan planning organizations or planning district
88 commissions, such contract may be renewable for four additional one-year terms at the option of the
89 public body. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in
90 determining the cost of each project performed, (b) except those awarded for environmental, location,
91 design and inspection work regarding highways and bridges by the Commissioner of Highways, the sum
92 of all projects performed in one contract term shall not exceed \$500,000 or, in the case of a state
93 agency, as defined in § 2.2-4347, such greater amount as may be determined by the Director of the
94 Department of General Services, not to exceed \$1 million, except that in any locality or any authority,
95 sanitation district, metropolitan planning organization or planning district commission with a population
96 in excess of 80,000, the sum of all such projects shall not exceed \$5 million; and (c) except those
97 awarded for environmental, location, design and inspection work regarding highways and bridges by the
98 Commissioner of Highways or for architectural and engineering services for rail and public
99 transportation projects by the Director of the Department of Rail and Public Transportation, the project
100 fee of any single project shall not exceed \$100,000 or, in the case of a state agency, such greater
101 amount as may be determined by the Director of the Department of General Services not to exceed
102 \$200,000, except that in any locality or any authority or sanitation district with a population in excess of
103 80,000, such fee shall not exceed \$1 million. Any unused amounts from the first contract term shall not
104 be carried forward to the additional term. Competitive negotiations for such contracts may result in
105 awards to more than one offeror provided (1) the Request for Proposal so states and (2) the public body
106 has established procedures for distributing multiple projects among the selected contractors during the
107 contract term. Notwithstanding any other provision in this section, for contracts for environmental
108 location, design and inspection work regarding highways and bridges by the Commissioner of Highways,
109 the initial contract term shall be limited to two years or when the cumulative total project fees reach \$5
110 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the
111 option of the Commissioner, and the sum of all projects in each one-year term shall not exceed \$5
112 million. For architectural and engineering services for rail and public transportation projects by the
113 Director of the Department of Rail and Public Transportation, the sum of all projects in one contract
114 term shall not exceed \$2 million and such contract may be renewable for two additional one-year terms
115 at the option of the Commissioner.

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

Multiphase professional services contracts satisfactory and advantageous to a local public body, including metropolitan planning organizations and planning district commissions, for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the local public body shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such public body require awarding the contract.

b. Procurement of other than professional services. 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 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 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.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, 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 10 days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website ~~or other appropriate websites~~. In addition, public bodies may publish in a newspaper of general circulation *or post the notice on other appropriate websites*. Posting on the Department of General Services' central electronic procurement website shall be required of ~~any state~~ *all public body bodies*. ~~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, 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.

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

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

"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.

182 "Multiphase professional services contract" means a contract for the providing of professional
183 services where the total scope of work of the second or subsequent phase of the contract cannot be
184 specified without the results of the first or prior phase of the contract.

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

187 "Potential bidder or offeror" for the purposes of §§ 2.2-4360 and 2.2-4364 means a person who, at
188 the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or
189 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the
190 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who
191 would have been eligible and qualified to submit a bid or proposal had the contract been procured
192 through competitive sealed bidding or competitive negotiation.

193 "Professional services" means work performed by an independent contractor within the scope of the
194 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
195 dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also
196 include the services of an economist procured by the State Corporation Commission.

197 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,
198 post, commission, committee, institution, board or political subdivision created by law to exercise some
199 sovereign power or to perform some governmental duty, and empowered by law to undertake the
200 activities described in this chapter. "Public body" shall include any metropolitan planning organization or
201 planning district commission which operates exclusively within the Commonwealth of Virginia.

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

204 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform
205 fully the contract requirements and the moral and business integrity and reliability that will assure good
206 faith performance, and who has been prequalified, if required.

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

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

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

217 **§ 2.2-4303. Methods of procurement.**

218 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for
219 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or
220 competitive negotiation as provided in this section, unless otherwise authorized by law.

221 B. Professional services shall be procured by competitive negotiation.

222 C. Upon a determination made in advance by the public body and set forth in writing that
223 competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods,
224 services, or insurance may be procured by competitive negotiation. The writing shall document the basis
225 for this determination.

226 Upon a written determination made in advance by (i) the Governor or his designee in the case of a
227 procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local
228 governing body in the case of a procurement by a political subdivision of the Commonwealth, that
229 competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured
230 through a licensed agent or broker selected in the manner provided for the procurement of things other
231 than professional services in subdivision 3 b of the definition of "competitive negotiation" in § 2.2-4301.
232 The basis for this determination shall be documented in writing.

233 D. Construction may be procured only by competitive sealed bidding, except that competitive
234 negotiation may be used in the following instances upon a determination made in advance by the public
235 body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally
236 advantageous to the public, which writing shall document the basis for this determination:

237 1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build
238 basis or construction management basis under § 2.2-4306;

239 2. By any public body for the construction of highways and any draining, dredging, excavation,
240 grading or similar work upon real property;

241 3. By any governing body of a locality with a population in excess of 100,000, provided that the
242 locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed
243 price or not-to-exceed price design-build or construction management basis and shall otherwise be in

compliance with the provisions of this section, § 2.2-4308, and other applicable law governing design-build or construction management contracts for public bodies other than the Commonwealth. The procedures of the local governing body shall be consistent with the two-step competitive negotiation process established in § 2.2-4301; or

4. As otherwise provided in § 2.2-4308.

E. Upon a determination in writing that there is only one 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 public body shall issue a written notice stating that only one 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 Department of General Services' central electronic procurement website ~~or other appropriate websites~~, and in addition, public bodies may ~~post the notice on other appropriate websites or~~ publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state ~~all public body bodies~~. ~~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.~~

However, no local public body shall be required to post on the Department of General Services' central electronic procurement website if (i) the amount of such contract is not expected to exceed \$100,000 or (ii) the local public body has a website for the posting of such notices and provides the website address to the Department of General Services for posting on its central electronic procurement website.

F. 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 included in the contract file. The public body 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 Department of General Services' central electronic procurement website ~~or other appropriate websites~~, and in addition, public bodies may ~~post the notice on other appropriate websites or~~ publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of General Services' central electronic procurement website shall be required of any state ~~all public body bodies~~. ~~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.~~

However, no local public body shall be required to post on the Department of General Services' central electronic procurement website if (i) the amount of such contract is not expected to exceed \$100,000 or (ii) the local public body has a website for posting of such notices and provides the website address to the Department of General Services for posting on its central electronic procurement website.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$100,000; however, such small purchase procedures shall provide for competition wherever practicable. ~~For local public bodies, such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$60,000.~~

For state public bodies, purchases under this subsection that are expected to exceed \$30,000 shall require the written informal solicitation of a minimum of four bidders or offerors. All public bodies proceeding with ~~purchases written informal solicitations~~ under this subsection shall post a public notice on the Department of General Services' central electronic procurement website ~~or other appropriate websites~~. *In addition, public bodies may post the notice on other appropriate websites or publish in a newspaper of general circulation.* Posting on the Department of General Services' central electronic procurement website shall be required of any state ~~all public body bodies~~. ~~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.~~

However, no local public body shall be required to post on the Department of General Services' central electronic procurement website if the local public body has a website for posting of such notices and provides the website address to the Department of General Services for posting on its central

305 *electronic procurement website.*

306 H. A state Any public body may establish purchase procedures, if adopted in writing, not requiring
307 competitive negotiation for single or term contracts for professional services if the aggregate or the sum
308 of all phases is not expected to exceed ~~\$50,000~~ \$60,000; however, such small purchase procedures shall
309 provide for competition wherever practicable. *All public bodies proceeding with written informal*
310 *solicitations under this subsection shall post a notice on the Department of General Services' central*
311 *electronic procurement website. In addition, public bodies may post the notice on other appropriate*
312 *websites or publish in a newspaper of general circulation.*

313 *However, no local public body shall be required to post on the Department of General Services'*
314 *central electronic procurement website if the local public body has a website for posting of such notices*
315 *and provides the website address to the Department of General Services for posting on its central*
316 *electronic procurement website.*

317 I. Upon a determination made in advance by a public body and set forth in writing that the purchase
318 of goods, products or commodities from a public auction sale is in the best interests of the public, such
319 items may be purchased at the auction, including online public auctions. Purchase of information
320 technology and telecommunications goods and nonprofessional services from a public auction sale shall
321 be permitted by any authority, department, agency, or institution of the Commonwealth if approved by
322 the Chief Information Officer of the Commonwealth. The writing shall document the basis for this
323 determination. However, bulk purchases of commodities used in road and highway construction and
324 maintenance, and aggregates shall not be made by online public auctions.

325 J. The purchase of goods or nonprofessional services, but not construction or professional services,
326 may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway
327 construction and maintenance, and aggregates shall not be made by reverse auctioning. *All public bodies*
328 *proceeding with reverse auctioning under this subsection shall post a notice on the Department of*
329 *General Services' central electronic procurement website. In addition, public bodies may post the notice*
330 *on other appropriate websites or publish in a newspaper of general circulation.*

331 *However, no local public body shall be required to post on the Department of General Services'*
332 *central electronic procurement website if (i) the amount of such reverse auctioning is not expected to*
333 *exceed \$100,000 or (ii) the local public body has a website for the posting of such notices and provides*
334 *the website address to the Department of General Services for posting on its central electronic*
335 *procurement website.*

336 **§ 56-573.1:1. Posting of conceptual proposals; public comment; public access to procurement**
337 **records.**

338 A. Conceptual proposals submitted in accordance with subsection A or B of § 56-560 to a
339 responsible public entity shall be posted by the responsible public entity within 10 working days after
340 acceptance of such proposals as follows:

341 1. For responsible public entities that are state agencies, authorities, departments, institutions, and
342 other units of state government, posting shall be on the Department of General Services' central
343 electronic procurement website; and

344 2. For responsible public entities that are local public bodies, posting shall be on the responsible
345 public entity's website or on the Department of General Services' central electronic procurement website.
346 In addition, such public bodies a responsible public entity may publish in a newspaper of general
347 circulation in the area in which the contract is to be performed or post on other appropriate websites a
348 summary of the proposals and the location where copies of the proposals are available for public
349 inspection. Such local public bodies are encouraged to utilize the Department of General Services'
350 central electronic procurement website to provide the public with centralized visibility and access to the
351 Commonwealth's procurement opportunities.

352 In addition to the posting requirements, at least one copy of the proposals shall be made available for
353 public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual
354 proposals by additional means deemed appropriate by the responsible public entity so as to provide
355 maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial
356 records, or other records of the private entity excluded from disclosure under the provisions of
357 subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the
358 responsible public entity and the private entity.

359 B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an
360 interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public
361 comment on the proposals. The public comment period required by this subsection may include a public
362 hearing in the sole discretion of the responsible public entity. After the end of the public comment
363 period, no additional posting shall be required.

364 C. Once the negotiation phase for the development of an interim or a comprehensive agreement is
365 complete and a decision to award has been made by a responsible public entity, the responsible public
366 entity shall present the major business points of the interim or comprehensive agreement, including the

use of any public funds, to its oversight board at a regularly scheduled meeting of the board that is open to the public.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.

§ 56-575.17. Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § 56-575.4 to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, authorities, departments, institutions, and other units of state government, posting shall be on the Department of General Services' centralized electronic procurement website; and

2. For responsible public entities that are local bodies, posting shall be on the responsible public entity's website or on the Department of General Services' central electronic procurement website. In addition, such public bodies *a responsible public entity* may publish in a newspaper of general circulation in the area in which the contract is to be performed *or post on other appropriate websites* a summary of the proposals and the location where copies of the proposals are available for public inspection. Such 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 to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. The responsible public entity shall hold a public hearing on the proposals during the proposal review process, but not later than 30 days prior to entering into an interim or comprehensive agreement.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible public entity shall make available the proposed agreement in a manner provided in subsection A.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, upon request. For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.