

Publication of Requests for Proposals - Discussion Draft #2

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 2.2-4302.2 of the Code of Virginia and to amend the Code of Virginia
2 by adding in Article 1 of Chapter 43 of Title 2.2 a section numbered 2.2-4302.3, relating to the
3 Virginia Public Procurement Act; competitive negotiation; newspaper publication of notices for
4 requests for proposals.

5 **Be it enacted by the General Assembly of Virginia:**

6 **1. That the Code of Virginia is amended by adding in Article 1 of Chapter 11 of Title 2.2 a section**
7 **numbered 2.2-1102.1 as follows:**

8 **§ 2.2-4302.3. Department of General Services and local public bodies to provide electronic**
9 **procurement data files to requesting newspapers.**

10 A. The Department of General Services shall (i) provide an electronic data file of all agencies'
11 business opportunities required to be posted on the Department's central electronic procurement website
12 at no charge to any requesting newspaper or other print publication with circulation in Virginia using the
13 comma-separated values (CSV) format, other available format used by any such agency or in a file
14 format as agreed by the parties and (ii) send the data file automatically via electronic mail on a daily,
15 weekly, or monthly basis as agreed to by the parties. The data file shall contain all active business
16 opportunity notices posted on the Department's central electronic procurement website by all such
17 agencies in accordance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et
18 seq.). The electronic business opportunity data shall include, at a minimum: (a) the name of the issuing
19 agency, (b) a description of goods or services to be purchased, (c) the date the proposal is due, and (d)
20 the point of contact for the using agency, including the contact's name, phone number, and email
21 address.

22 B. Local public bodies shall either (i) provide an electronic data file of all business opportunities
23 to the Department's central electronic procurement website or (ii) provide an electronic data file of all
24 business opportunities at no charge to any requesting newspaper or other print publication with
25 circulation in Virginia using the comma-separated values (CSV) format, other available format used by

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26 the local public body, or in a file format as agreed by the parties and (ii) send the data file automatically
27 via electronic mail on a daily, weekly, or monthly basis as agreed to by the parties. The data file shall
28 contain all active business opportunity notices issued by the local public body in accordance with the
29 requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.). The electronic business
30 opportunity data shall include, at a minimum: (a) the name of the issuing local public body, (b) a
31 description of goods or services to be purchased, (c) the date the proposal is due, and (d) the point of
32 contact for the local public body, including the contact's name, phone number, and email address.

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

34 § 2.2-4302.2. Process for competitive negotiation.

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

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

40 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
41 proposals by posting on the Department of General Services' central electronic procurement website or
42 other appropriate websites. Additionally, public bodies shall publish in a newspaper of general
43 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the
44 maximum number of offerors that can be reasonably anticipated to submit proposals in response to the
45 particular request. From July 1, 2015, until June 30, 2017, public bodies that issue a Request for
46 Proposal shall continue to publish a public notice of the Request for Proposal in a newspaper of general
47 circulation in accordance with this subdivision; however, such notice shall include a statement indicating
48 the Internet webpage, either the Department of General Services' central electronic procurement website
49 (www.eva.virginia.gov) or the public body's public government or other appropriate website, where all
50 public notices for Requests for Proposals issued from the public body are located.

51 Posting on the Department of General Services' central electronic procurement website shall be
52 required of any state public body. Local public bodies are encouraged to utilize the Department of

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53 General Services' central electronic procurement website to provide the public with centralized visibility
54 and access to the Commonwealth's procurement opportunities.

55 In addition, proposals may be solicited directly from potential contractors. Any additional
56 solicitations shall include certified businesses selected from a list made available by the Department of
57 Small Business and Supplier Diversity; and

58 3. For goods, nonprofessional services, and insurance, selection shall be made of two or more
59 offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of
60 the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.
61 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but
62 need not be the sole or primary determining factor. After negotiations have been conducted with each
63 offeror so selected, the public body shall select the offeror which, in its opinion, has made the best
64 proposal and provides the best value, and shall award the contract to that offeror. When the terms and
65 conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more
66 than one offeror. Should the public body determine in writing and in its sole discretion that only one
67 offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under
68 consideration, a contract may be negotiated and awarded to that offeror; or

69 4. For professional services, the public body shall engage in individual discussions with two or
70 more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with
71 emphasis on professional competence, to provide the required services. Repetitive informal interviews
72 shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and
73 performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In
74 addition, offerors shall be informed of any ranking criteria that will be used by the public body in
75 addition to the review of the professional competence of the offeror. The Request for Proposal shall not,
76 however, request that offerors furnish estimates of man-hours or cost for services. At the discussion
77 stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited
78 to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance
79 with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or

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80 to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation
81 factors published in the Request for Proposal and all information developed in the selection process to
82 this point, the public body shall select in the order of preference two or more offerors whose
83 professional qualifications and proposed services are deemed most meritorious.

84 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract
85 satisfactory and advantageous to the public body can be negotiated at a price considered fair and
86 reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first
87 shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until
88 such a contract can be negotiated at a fair and reasonable price.

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

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

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

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

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

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107 2. Any locality or any authority, sanitation district, metropolitan planning organization or
108 planning district commission with a population in excess of 80,000, or any city within Planning District
109 8, the sum of all projects performed in a one-year contract term shall not exceed \$5 million and those
110 awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such
111 projects shall not exceed \$1.5 million;

112 3. 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 a one-year
114 contract term shall not exceed \$2 million. Such contract may be renewable for two additional one-year
115 terms at the option of the Director;

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

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

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

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

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

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

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

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

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

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

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

149 **§ 2.2-4302.2. Process for competitive negotiation.**

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

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156 proposals by posting on the Department of General Services' central electronic procurement website or
157 other appropriate websites. Additionally, public bodies ~~shall~~ may publish in a newspaper of general
158 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the
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161 website shall be required of any state public body. Local public bodies are encouraged to utilize the
162 Department of General Services' central electronic procurement website to provide the public with
163 centralized visibility and access to the Commonwealth's procurement opportunities. In addition,
164 proposals may be solicited directly from potential contractors. Any additional solicitations shall include
165 certified businesses selected from a list made available by the Department of Small Business and
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182 performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In
183 addition, offerors shall be informed of any ranking criteria that will be used by the public body in
184 addition to the review of the professional competence of the offeror. The Request for Proposal shall not,
185 however, request that offerors furnish estimates of man-hours or cost for services. At the discussion
186 stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited
187 to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance

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188 with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or
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190 factors published in the Request for Proposal and all information developed in the selection process to
191 this point, the public body shall select in the order of preference two or more offerors whose
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253 critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the entering into
254 any such contract, the public body shall (i) state the anticipated intended total scope of the project and
255 (ii) determine in writing that the nature of the work is such that the best interests of the public body
256 require awarding the contract.

257 **4. That the provisions of the first enactment of this act shall become effective July 1, 2015. The**
258 **provisions of the second and fifth enactments of this act shall become effective on July 1, 2015 and**
259 **shall expire on July 1, 2017. The provisions of the third enactment of this act shall become**
260 **effective on July 1, 2017.**

261 **5. That all public bodies issuing Requests for Proposals on or after July 1, 2015, through June 30,**
262 **2016, shall ascertain the method by which an offeror submitting a proposal in response to the**
263 **Request for Proposal became aware of the solicitation, , whether newspaper publication, website**
264 **posting, or other method. Such public bodies shall report such findings by July 1, 2016, to the**

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265 **Chairmen of the House Committee on General Laws and the Senate Committee on General Laws**
266 **and Technology.**

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