

1 HOUSE BILL NO. 1540

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee on General Laws

4 on _____)

5 (Patron Prior to Substitute--Delegate Albo)

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

8 **Be it enacted by the General Assembly of Virginia:**9 **1. That § 2.2-4302.2 of the Code of Virginia is amended and reenacted as follows:**10 **§ 2.2-4302.2. Process for competitive negotiation.**

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

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

18 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
19 proposals by posting on the Department of General Services' central electronic procurement website or
20 other appropriate websites. Additionally, public bodies shall publish in a newspaper of general
21 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the
22 maximum number of offerors that can be reasonably anticipated to submit proposals in response to the
23 particular request. Posting on the Department of General Services' central electronic procurement
24 website shall be required of any state public body. Local public bodies are encouraged to utilize the
25 Department of General Services' central electronic procurement website to provide the public with
26 centralized visibility and access to the Commonwealth's procurement opportunities. In addition,
27 proposals may be solicited directly from potential contractors. Any additional solicitations shall include

28 certified businesses selected from a list made available by the Department of Small Business and
29 Supplier Diversity; and

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

41 4. For professional services, the public body shall engage in individual discussions with two or
42 more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with
43 emphasis on professional competence, to provide the required services. Repetitive informal interviews
44 shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and
45 performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In
46 addition, offerors shall be informed of any ranking criteria that will be used by the public body in
47 addition to the review of the professional competence of the offeror. The Request for Proposal shall not,
48 however, request that offerors furnish estimates of man-hours or cost for services. At the discussion
49 stage, the public body ~~may discuss nonbinding estimates of total project costs, including, but not limited~~
50 ~~to, life-cycle costing, and where appropriate, nonbinding estimates of price for services shall not request~~
51 ~~estimates of costs for professional services.~~ In accordance with § 2.2-4342, proprietary information from
52 competing offerors shall not be disclosed to the public or to competitors. At the conclusion of
53 discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for
54 Proposal and all information developed in the selection process to this point, the public body shall select

55 in the order of preference two or more offerors whose professional qualifications and proposed services
56 are deemed most meritorious.

57 Negotiations, including any negotiations of the proposed contractual terms and conditions for
58 architectural or engineering services, shall then be conducted, beginning with the offeror ranked first. If
59 a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair
60 and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked
61 first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on
62 until such a contract can be negotiated at a fair and reasonable price.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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