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HOUSE BILL NO. 1632

Offered January 9, 2019

Prefiled October 30, 2018

A BILL to amend and reenact § 2.2-4301 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-4303.3, relating to the Virginia Public Procurement Act; multiple award indefinite delivery/indefinite quantity contracting.

Patron—Cole

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 and that the Code of Virginia is amended by adding a section numbered 2.2-4303.3 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.

"Multiple award indefinite delivery/indefinite quantity contract" or "MAIDIQ contract" means a contract (i) for an indefinite quantity of such goods or services, within stated limits, during a fixed period of time; (ii) that provides for the issuance of orders for the delivery or performance of such goods or services; (iii) awarded to multiple qualified vendors; and (iv) where awarded vendors have an opportunity to bid on orders.

"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

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59 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the
 60 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who
 61 would have been eligible and qualified to submit a bid or proposal had the contract been procured
 62 through competitive sealed bidding or competitive negotiation.

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

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

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

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

78 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects
 79 to the Invitation to Bid *or an order under a MAIDIQ contract*.

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

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

88 **§ 2.2-4303.3. Multiple award indefinite delivery/indefinite quantity contracting; limitations.**

89 *A. A multiple award indefinite delivery/indefinite quantity contract may be awarded by a public body*
 90 *for multiple jobs or deliveries, provided that (i) the public body cannot predetermine, above a specified*
 91 *minimum, the precise quantities of goods or services it will require during the contract period, (ii) it*
 92 *would be unreasonable for the public body to commit to more than the minimum quantity, and (iii) a*
 93 *reoccurring need for the goods or services is anticipated.*

94 *B. Contractors may be selected through either competitive sealed bidding or competitive negotiation*
 95 *subject to the provisions of this subsection. A MAIDIQ contract and the associated solicitation shall:*

96 *1. Specify the period of the contract, including the number of options and the period for which the*
 97 *public body may extend the contract under each option;*

98 *2. Specify the total minimum and maximum quantity of supplies or services the public body will*
 99 *acquire under the contract;*

100 *3. Include a statement of work or specifications or other description that reasonably describes the*
 101 *general scope, nature, complexity, and purpose of the goods or services the public body will acquire*
 102 *under the contract in a manner that will enable a prospective offeror to decide whether to submit an*
 103 *offer;*

104 *4. State the procedures that the public body will use in issuing orders, including the ordering media,*
 105 *and, if multiple awards may be made, state the procedures and selection criteria that the public body*
 106 *will use to provide awardees a fair opportunity to be considered for each order; and*

107 *5. Include a description of the entities authorized to issue orders.*

108 *C. A public body shall not award a MAIDIQ contract if:*

109 *1. It is determined that one contractor is capable of providing performance at the level of quality*
 110 *required because the supplies or services are unique or highly specialized;*

111 *2. More favorable terms and conditions, including pricing, will be provided if a single award is*
 112 *made;*

113 *3. The expected cost of administration of multiple contracts outweighs the expected benefits of*
 114 *making multiple awards;*

115 *4. The projected task orders are so integrally related that only a single contractor can reasonably*
 116 *perform the work;*

117 *5. The total estimated value of the contract is less than the threshold for using small purchase*
 118 *procedures established pursuant to subsection G of § 2.2-4303;*

119 *6. Multiple awards would not be in the best interests of the public body; or*

120 *7. Only one offer is received.*

121 D. A MAIDIQ contract may be renewable for two additional one-year terms at the option of the
122 public body. The sum of all jobs performed in a one-year contract term shall not exceed \$5 million.
123 Individual job orders shall not exceed \$500,000. Any unused amounts from one contract term shall not
124 be carried forward to any additional term. Order splitting with the intent of keeping an order for goods
125 or services under the maximum dollar amounts prescribed in this subsection is prohibited.

126 E. The public body shall provide each awardee a fair opportunity to be considered for each order
127 under a MAIDIQ contract unless:

128 1. The need for the supplies or services is so urgent that providing a fair opportunity would result in
129 unacceptable delays;

130 2. Only one awardee is capable of providing the supplies or services required at the level of quality
131 required because the supplies or services ordered are unique or highly specialized;

132 3. The order must be issued on a sole-source basis in the interest of economy and efficiency because
133 it is a logical follow-on to an order already issued under the contract, provided that all awardees were
134 given a fair opportunity to be considered for the original order; or

135 4. It is necessary to place an order to satisfy a minimum guarantee.

136 F. For any order under a MAIDIQ contract, the public body shall select the lowest responsive
137 bidder.