

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date: May 15, 2023

Action Required:

Presenter:

Staff Contacts: Allyson Davies, Senior Deputy City Attorney
Vernice Grooms

Title: Amending City Code Section 22-4. Methods of Procurement Authorized, to increase the bid bond limit from \$100,000 to \$200,000 (2nd reading)

Background

The City of Charlottesville's current bonding limit is lower than the limit permitted under the Virginia Code and under Federal law for bonding. This lower limit meets the minimum requirement of both the Virginia Code and Federal requirements, but recently, the City's small purchase limits were updated and the City's small purchase threshold increased to \$200,000.

The following language is currently included in the City's Invitation for Bids (IFB) for Construction Greater than 100K template (attached):

B. Each bid in excess of \$100,000 submitted in response to this IFB shall be accompanied by a bid bond in an amount equal to five percent (5%) of the total monetary amount of the bid (total base bid plus all additive bid items). The bid guarantee may be either (i) a certified or cashier's check made payable to "The City of Charlottesville, Virginia," or (ii) a bid bond made payable to "The City of Charlottesville, Virginia." The bid guarantee shall be for the purpose of promising and guaranteeing that the bidder will not withdraw its bid for a period of 30 days following bid opening. The proceeds of the bid guarantee shall be and remain the sole property of the City, as liquidated damages, should the successful bidder fail to execute a contract, proof of all required insurance and endorsements and all required payment and performance bonds within five days of the City's issuance of notice of award of the contract. In lieu of a bid bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond, or, if approved in advance by the city attorney, a bidder may furnish a personal bond, property bond, or a bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid bond.

E. In lieu of a bid bond, a bidder may furnish a cashier's check or cash escrow in the face amount required for the bid bond. If approved by the city attorney, a bidder may furnish a personal bond, property bond or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid bond. Approval shall be granted only upon a determination by the city attorney that the alternative form of security proffered affords protection to the city equivalent to a corporate surety's bond.

The following is what is stated in the Code of Virginia:

§ 2.2-4336. Bid bonds; construction contracts.

A. Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 (§ [33.2-208](#) et seq.) of Chapter 2 of Title 33.2 that are in excess of \$350,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for nontransportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ [33.2-208](#) et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

Issue:

The \$100,000 bonding requirement now falls within the City's small purchase threshold. Small purchases are handled by decentralized buyers and others throughout the City. The \$100,000 bonding limit was okay when the City's Small Purchase threshold was \$10,000 to \$100,000 because bonding was only required for formal solicitations handled by select individuals with delegated authority to make those purchases.

Discussion

This request seeks City Council's approval for the City of Charlottesville's bid bond threshold to be increased to \$200,000, which would only require bid bonds for formal solicitations, which is consistent with what the City has required in the past. As stated earlier, the City currently has a bonding limit at a lower amount than the Virginia Code limit and the Federal limit. A \$200,000 limit would still be lower than the Virginia Code and the Federal bonding limits.

Alignment with City Council's Vision and Strategic Plan

The change to Chapter 22 of the City of Charlottesville Code of Ordinances aligns with the Council's vision for Charlottesville to be a Smart, Citizen-Focused Government. It contributes to Goal 4 of the Strategic Plan, be a well-managed and successful organization, and objective 4.2, maintain strong fiscal policies.

Community Engagement

This is a required administrative change to reconcile the City Code to the City's purchasing procedures and therefore public comment is not applicable to this administrative change.

Budgetary Impact

There is no anticipated impact on the General Fund.

Recommendation

Staff recommends approval of this ordinance change.

Alternatives

If the ordinance is not approved, contractors will still be required to submit bid bonds for projects in excess of \$100,000, which again is lower than state and federal requirements. The City's informal solicitation templates for construction will need to be revised to include the \$100,000 bonding requirement and all staff having purchasing authority will need to be trained on the collection and handling of bid bonds.

Additional Thoughts:

The City does need to be careful not to implement excessive bonding, which can negatively impact the City's Disadvantaged Business Enterprise program.

Attachments

1. Bid bond limit increase amended ordinance 4858-0014-1663 v.1