

1 **Ordinance to Amend and Reenact Chapter 2 of the City Code of the City of**
2 **Hampton, Virginia, titled “Administration” by Amending Article XIV, Division 1,**
3 **Section 2-336.1 titled “Same – Design-Build and Construction Management**
4 **Contracting”**

5
6 **BE IT ORDAINED** by the City Council of the City of Hampton, Virginia, that Chapter 2
7 Article XIV, Division 1, Section 2-336.1 of the City Code of the City of Hampton, Virginia
8 entitled “Administration” is amended and reenacted to read as follows:

9
10 **CHAPTER 2 – ADMINISTRATION**

11 . . .

12
13 **ARTICLE XIV. - PROCUREMENT OFFICE**

14
15 **DIVISION 1. - GENERALLY**

16 . . .

17 **Sec. 2-336.1. Same—Design-build and construction management contracting.**

18 (a) Pursuant to Code of Virginia chapter 43 § 2.2-4302, as it may be amended from
19 time to time, the provisions of Code of Virginia chapter 43.1 §§ 2.2-4378, 2.2-4379,
20 ~~and 2.2-4382, and 2.2-4383, as those sections may be modified or amended from~~
21 ~~time to time,~~ related to governmental procurement of construction utilizing the
22 design-build and construction management procurement methods, as those
23 sections may be amended from time to time, are incorporated herein by this
24 reference.

25 (b) Notwithstanding subsection (a) of this section, whenever any provision of those
26 sections incorporated thereby are modified or amended by any other section of the
27 city code, or by any rule, regulation, policy, procedure, or administrative directive,
28 such provision shall be interpreted and implemented as modified or amended.

29 (c) ~~When~~ Design-build and construction management contracting methods are
30 authorized ~~as follows:-~~

31 (1) The city may enter into a contract for construction on a fixed price or not-to-
32 exceed price construction management or design-build basis, provided that the
33 ~~requesting city department complies with-~~ (i) ~~has received city council approval,~~
34 ~~as per subsection (c)(2); the requirements of Code of Virginia chapter 43.1 §~~
35 ~~2.2-4382, as those sections may be amended from time to time, and (ii)~~
36 ~~complies with the requirements of Title 2.2, Subtitle II, Chapter 43.1, Article 4~~
37 ~~of the Code of Virginia, as it may be amended from time to time; and (iii)~~
38 ~~complies with procedures implemented by city council by ordinance or~~
39 ~~resolution that are consistent with the procedures adopted by the Secretary of~~
40 ~~Administration of Virginia for utilizing construction management or design-build~~
41 ~~contracts~~ the director of finance or designee shall have implemented
42 ~~procedures consistent therewith.~~

43

44 (2) City council shall approve, by resolution or motion, in a public forum, each
45 project for which a city department is requesting to use construction
46 management or design-build, prior to the issuance of a request for
47 qualifications. A city department's request for city council approval pursuant to
48 this subsection shall include the writing required subsection (c)(4).

49 (32) Prior to making a determination as to the use of design-build or construction
50 management for a specific construction project, the city shall have in its employ
51 or under contract a licensed architect or engineer with professional
52 competence appropriate for the project who shall (i) advise the city regarding
53 the use of design-build or construction management for that project; and (ii)
54 assist the city with the preparation of the request for proposal and the
55 evaluation of such proposals.

56 (43) A written determination shall be made in advance by a city department that
57 includes: (i) an explanation of why the design-bid-build project delivery method
58 is not practicable or fiscally advantageous; and (ii) the basis for the
59 determination to utilize construction management or design-build, including a
60 determination that the project is a "complex project," as defined by Code of
61 Virginia §2.2-4379. This determination shall be included in the request for
62 qualifications and be maintained in the procurement file.

63 ~~Prior to taking any action on the use of design-build or construction management~~
64 ~~for a specific construction project, the department making such request must~~
65 ~~receive formal approval to proceed from the city manager. The request shall~~
66 ~~contain a written determination justifying why competitive sealed bidding is not~~
67 ~~practicable or fiscally advantageous, and such writing shall document the basis~~
68 ~~for the determination to utilize design-build or construction management. The~~
69 ~~determination shall be included in the request for qualifications and be~~
70 ~~maintained in the procurement file.~~

71 (54) Procedures adopted by the city for construction management or design-build
72 pursuant to this section shall include, in addition to the other requirements set
73 forth in this section:

74 a. Construction management or design-build may be utilized on projects,
75 provided that the requesting department has complied with the requirements of
76 section (c);

77 b. Public notice of the request for qualifications is posted on the Department's
78 central electronic procurement website known as eVA, or the City's own
79 website, at least 30 days prior to the date set for receipt of qualification
80 proposals;

81 c. The construction management contract is entered into no later than the
82 completion of the schematic phase of design, unless prohibited by
83 authorization of funding restrictions;

84 d. Prior construction management or design-build experience or previous
85 experience with the city shall not be considered as a prerequisite or factor
86 considered for prequalification of a contract. However, in the selection of a

87 contractor, the city may consider the experience of each contractor on
88 comparable construction management or design-build projects;

89 e. Construction management contracts shall require that (i) no more than 10
90 percent of the construction work, as measured by the cost of the work, be
91 performed by the construction manager with its own forces and (ii) the
92 remaining 90 percent of the construction work, as measured by the cost of the
93 work, be performed by subcontractors of the construction manager, which the
94 construction manager shall procure by publicly advertised, competitive sealed
95 bidding to the maximum extent practicable. The provisions of this subdivision
96 shall not apply to construction management contracts involving infrastructure
97 projects;

98 f. The procedures allow for a two-step competitive negotiation process;

99 g. Price is a critical basis for award of the contract; and

100 h. The procedures allow the city to post on the Department's central
101 electronic procurement website known as eVA, or the City's own website,
102 when and where the general contractor plans to advertise bid packages for
103 subcontracting opportunities when appropriate.

104 ~~Design-build construction projects shall include a two-step competitive negotiation~~
105 ~~process consistent with the standards established by the Virginia division of~~
106 ~~engineering and buildings of the department of general services for state~~
107 ~~agencies.~~

108 (56) In addition to the requirement set forth in 4(e), the two-step competitive
109 negotiation process for design build construction projects shall be consistent
110 with the standards established by the Division of Engineering and Buildings of
111 the Department for state public bodies.

112 ~~Construction management contracts shall include a two-step process and the~~
113 ~~selection criteria shall be included in the request for qualifications and the~~
114 ~~request for proposals. The procedures and required construction management~~
115 ~~terms shall be consistent with the procedures as adopted by the Virginia~~
116 ~~Secretary of Administration.~~

117 (6) ~~Prior design-build or construction management experience or previous~~
118 ~~experience with Virginia's Bureau of Capital Outlay Management shall not be a~~
119 ~~prerequisite for award of a contract. However, in the selection of a contractor,~~
120 ~~the city may consider the experience of the contractor on comparable projects.~~

121 (7) ~~The following additional requirements apply to construction management~~
122 ~~contracts:~~

123 a. ~~Construction management contracts may be utilized for projects where the~~
124 ~~project cost is expected to be more than \$10,000,000.00.~~

125 b. ~~Construction management may be utilized on projects where the project~~
126 ~~cost is expected to be less than \$10,000,000.00, provided that (i) the~~
127 ~~project is a complex project and (ii) the project procurement method is~~

128 ~~approved by the city council. The written approval of the city council shall~~
129 ~~be maintained in the procurement file.~~

130 ~~c. The construction management contract shall be entered into no later than~~
131 ~~the completion of the schematic phase of design, unless prohibited by~~
132 ~~authorization of funding restrictions.~~

133 ~~d. Construction management contracts shall require that (i) no more than 10~~
134 ~~percent of the construction work, as measured by the cost of the work, be~~
135 ~~performed by the construction manager with its own forces and (ii) the~~
136 ~~remaining 90 percent of the construction work, as measured by the cost of~~
137 ~~the work, be performed by subcontractors of the construction manager,~~
138 ~~which the construction manager shall procure by publicly advertised,~~
139 ~~competitive sealed bidding to the maximum extent practicable.~~

140 ~~e. Public notice of the request for qualifications shall be posted on electronic~~
141 ~~procurement website, known as eVA, at least 30 days prior to the date set~~
142 ~~for receipt of the request for qualifications.~~

143 ~~f. Price is a critical basis for award of the contract.~~

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