

**The**  
**Albemarle County**  
**Service Authority**  
**Purchasing Manual**

**Adopted August 20, 2015**

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# Summary

The purpose of this manual is to not only establish “what” must be done during the procurement process, but also to explain “how” those acts should be performed. The following is a summary of the “what” component of the manual - it is a digest of the summaries of essential information appearing on the first page of each chapter. The section numbers below correspond to the chapters in which the information appears both in their summary and detailed forms.

## 1. **Introduction**

- This manual identifies the applicable policies and procedures for the procurement of goods and services, and is to be followed by all Authority agencies and departments.
- The primary goal and purpose of the procedures set forth in this manual is to assure that goods and services are procured in a competitive process which is fair, impartial, administratively efficient and accessible to all qualified vendors.

## 2. **The Powers and Duties of the Participants in the Procurement Process**

- The purchasing agent is responsible for the procurement of all goods, services, insurance and construction, unless another Authority officer or employee is expressly authorized to do so by the Code of Virginia and this manual.
- The using department is responsible for anticipating procurement needs, cooperating with the purchasing agent in the procurement process, and otherwise complying with the requirements of this manual.
- The Authority attorney is responsible for assuring that the procurement process complies with applicable laws and policies, and for reviewing all procurement contracts as to form.
- The Authority is not bound by an unauthorized procurement; the individual who makes an unauthorized procurement is personally liable unless the procurement is ratified by the Board of Directors.

## 3. **General Requirements and Policies Applicable to All Procurements: Nondiscrimination, Public Records, Ethics and Conflicts of Interest**

- In the procurement of goods and services, the Authority shall not discriminate against a vendor because of race, religion, color, sex, national origin, age, disability, its status as a faith-based organization, or other basis prohibited by state law relating to discrimination in employment.

- The Authority welcomes and encourages the participation of small businesses and businesses owned by women and minorities in procurement transactions.
- With limited exceptions, all proceedings, records, contracts and other public records relating to procurement transactions are open for inspection by the public.
- All Authority officers and employees who have official responsibility for the procurement of goods, services, insurance or construction must comply with ethics requirements of the Virginia Public Procurement Act and the State and Local Government Conflict of Interests Act.

#### **4. Determining Which Procedure Applies**

- Generally, the procurement of goods or nonprofessional services requires using the competitive sealed bidding or competitive negotiation procedure if the costs are expected to exceed \$50,000. If the costs are not expected to exceed \$50,000, one of the three small purchase procedures applies.
- If there is only a sole source, an emergency exists, or if the goods may be procured at public auction, the competitive sealed bidding or competitive negotiation procedure need not be followed even if the costs are expected to exceed \$50,000.
- There are several types of goods and services that are exempt from the competitive sealed bidding or competitive negotiation procedure even if the costs are expected to exceed \$50,000. Legal services are the most notable goods or services in this exempt class.
- When determining which procedure applies, begin by assuming that the competitive sealed bidding procedure applies, and then determine the expected cost of the goods or services, classify what is being procured, and determine whether an excuse or exemption applies.

#### **5. Competitive Sealed Bidding: Procedure**

- Preparation of the invitation for bids: The preparation of an invitation for bids which contains or incorporates by reference the specifications and contractual terms and conditions applicable to the procurement, and a statement of any requisite qualifications of potential contractors.
- Issuance and public notice of the invitation for bids: The public notice of the invitation for bids is given at least ten days prior to the date set for the receipt of the bids by posting the notice in a public area, or publishing notice in a newspaper of general circulation, or both. The purchasing agent also may solicit bids directly using the Authority's "bidder list" which includes businesses selected from a list made available by the Department of Minority Business Enterprise.

- Public opening and announcement of all bids timely received: All bids timely received are opened in public at the time, date, and place stated in the public notice and the bid prices are read aloud.
- Evaluation of the bids: The bids and the qualifications of the bidders are examined by the purchasing agent for compliance with the requirements set forth in the invitation for bids.
- Award to the lowest responsive and responsible bidder: After the evaluation of all bids and the bidders, the award is made to the lowest responsive and responsible bidder who meets the requirements set forth in the invitation for bids.

#### **6. Competitive Sealed Bidding: Elements of an Invitation for Bids**

- The competitive sealed bidding procedure formally begins when the invitation for bids is issued.
- The invitation for bids must, at a minimum, describe the goods or services to be procured, and identify the applicable contractual terms and conditions, the minimum qualifications for the successful vendor, and the criteria by which each bid will be evaluated.

#### **7. Competitive Sealed Bidding: Specifications**

- A specification is a description of the physical or functional characteristics of the goods or services to be procured.
- Performance specifications are the preferred form of specifications.
- The using department has the primary responsibility for writing specifications.
- Specifications should be written in clear, simple language, free of vague terms or those subject to variation in interpretation.
- The using department should use brand name specifications with caution.

#### **8. Competitive Sealed Bidding: Addenda, Modifications, and Withdrawals**

- The purchasing agent may modify an invitation for bids by issuing a written addendum no later than five calendar days prior to the date bids must be received; if the addendum modifies the date bids must be received, it may be issued at any time prior to that date.
- A bid may be modified or withdrawn by the vendor any time prior to the time and date bids must be received.

- After bid opening, the purchasing agent may allow a vendor to withdraw its bid without prejudice if clear and convincing evidence supports the existence of an error.
- After bid opening, the purchasing agent may allow mistakes other than clerical errors to be corrected only if the evidence of the mistake and of the bid actually intended is clear and convincing.

**9. Competitive Sealed Bidding: Evaluating Bids**

- Bids are evaluated upon the criteria set forth in the invitation for bids.
- A responsive bid is one that is in substantial conformance with the requirements of the invitation for bids.
- The determination of whether a bid is responsive is made at the time the bid is opened.
- The purchasing agent may waive informalities in bids.
- A responsible vendor is one who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance.
- In determining the bid price, the initial costs and other cost factors must be considered.
- If the bid from the lowest responsive and responsible bidder exceeds available funds, the purchasing agent and the using department may negotiate with the bidder to obtain a contract price within available funds.

**10. Competitive Sealed Bidding: Canceling the Procurement or Rejecting All Bids**

- At any time prior to award of the contract, the purchasing agent may cancel the invitation for bids or reject any or all of the bids.
- The purchasing agent may cancel the invitation for bids or reject any or all of the bids for any reason, except to avoid awarding a contract to a particular responsive and responsible bidder.

**11. Competitive Negotiation: Procedure**

The three key procedural steps in the competitive negotiation procedure are:

- Preparation of the request for proposals: The preparation of a request for proposals (“RFP”), which states in general terms that which is sought to

be procured, specifies the factors which will be used in evaluating any proposal (and indicates whether a numerical scoring system will be used in evaluation of the proposal), including any unique capabilities or qualifications which will be required of the vendor, and contains or incorporates by reference other applicable contractual terms and conditions. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.

- Issuance and public notice of the RFP: The public notice of the RFP is given at least ten days prior to the date set for the receipt of the proposals by posting the notice in a public area, or publishing the notice in a newspaper of general circulation, or both. The purchasing agent also may solicit proposals directly using the Authority's "offeror list," which includes businesses selected from a list made available by the Department of Minority Business Enterprise.
- Negotiation and award: The purchasing agent or the selection committee negotiates with vendors who are determined to be qualified, responsible and suitable. The negotiation procedure for the procurement of goods and nonprofessional services is different from that for the procurement of professional services.

## **12. Competitive Negotiation: Elements of a Request for Proposals**

- The competitive negotiation procedure formally begins when the RFP is issued.
- The RFP must, at a minimum, describe the goods or services to be procured, and identify the applicable contractual terms and conditions, the minimum qualifications for the successful vendor, and the criteria by which each proposal will be evaluated.

## **13. Competitive Negotiation: Evaluation Criteria**

- The RFP must identify those criteria determined by the purchasing agent, the using department and the selection committee to be relevant and material to properly evaluate a proposal.
- The criteria may include the vendor's plan for providing the goods or services, qualifications, experience with similar projects, past performance, availability, reputation and familiarity with the Authority.
- If criteria are weighted, it should be done with caution to assure that they are properly weighted in accordance with the importance of each criterion.

- The RFP should indicate the relative importance of the criteria by describing the decisional logic that the selection committee intends to use to make the selection decision.

**14. Competitive Negotiation: Addenda, Modifications, and Withdrawals**

- The purchasing agent may modify an RFP by issuing a written addendum no later than five calendar days prior to the date proposals must be received; if the addendum modifies the date proposals must be received, it may be issued at any time prior to that date.
- A proposal may be modified by the vendor any time prior to the time and date proposals must be received.
- A proposal may be withdrawn at any time, and a withdrawn proposal may be resubmitted any time prior to the time and date proposals must be received.

**15. Competitive Negotiation: Evaluating Proposals**

- The selection committee reviews and scores each proposal based on the evaluation criteria specified in the RFP.
- The evaluation process should consist of feature-by-feature comparisons of the proposals, the evaluation of trade-offs among competing proposals, and, if goods or nonprofessional services are being procured, cost comparisons.
- The scope of the evaluation of each proposal should cover, at a minimum, the proposal's general quality and responsiveness, and the vendor and its personnel.
- The selection committee should use the information contained in each proposal to evaluate its merit. Other relevant information from previous surveys, field technical reports and advisors and consultants may be used to evaluate criteria other than technical criteria.
- An RFP for the procurement of goods or nonprofessional services that requests pricing information should be evaluated using either a cost, price or value analysis.
- The selection committee may exclude a vendor from further consideration in the procurement process if it determines that its proposal is unacceptable; whether a proposal is acceptable or unacceptable should not be determined on the basis of a predetermined cut-off score.

- Upon completion of the evaluation of the proposals, proposals are classified as being either “acceptable”, “potentially acceptable” and “unacceptable.

**16. Competitive Negotiation: Negotiations**

- Before negotiations begin with the selected vendors, the selection committee should request any additional information from the vendors, provide advance information to vendors, arrange a tour of the site or the facility, if appropriate, schedule the negotiations, identify who should attend, and visit each vendor’s office and recent projects, if appropriate.
- Negotiations must be confined to the vendor’s proposal and it’s identified deficiencies in relation to the requirements of the RFP, and the requirements and format of the proposed written contract.
- The vendor may elaborate on its qualifications during negotiations and may revise, modify or alter its proposal.
- The evaluation criteria established by the selection committee guide the negotiations.
- Negotiations should be conducted in a way to arrive at a complete agreement on all basic issues, and not leave any issues for later negotiation.
- If there is a concern about cost or price being too high or too low in the procurement of goods or nonprofessional services, the selection committee should advise the vendor during the negotiations so that the vendor may submit a revised cost proposal.

**17. Competitive Negotiation: Selecting a Vendor After Negotiations**

- On the basis of the evaluation criteria published in the RFP and all of the information developed through the negotiation process, the selection committee selects a vendor with whom to negotiate a contract.
- If goods or nonprofessional services are being procured, the selection committee shall select the vendor that, in its opinion, has made the best proposal, and shall recommend that the contract be awarded to that vendor.
- If professional services are being procured, the selection committee shall select in the order of preference two or more vendors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations are then conducted with the vendor ranked first and if a contract satisfactory and advantageous to the Authority can be negotiated at a price considered fair and reasonable, the award shall be made to that vendor. If not, negotiations with the vendor ranked first shall be formally terminated and negotiations are conducted with the vendor ranked second, and so on.

**18. Competitive Negotiation: Canceling the Procurement or Rejecting All Bids**

- At any time prior to award of the contract, the purchasing agent may cancel the RFP or reject any or all of the proposals.
- The purchasing agent may cancel the RFP or reject any or all of the proposals for any reason, except to avoid awarding a contract to a particular vendor.

**19. Sole Source**

- A sole source is the only vendor that is practicably available to provide the goods or services sought to be procured.
- The competitive sealed bidding and competitive negotiation procedures are excused when it is determined that the goods or services are practicably available from a sole source.
- The determination of whether the goods or services may be procured only from a sole source shall be made by the purchasing agent.
- In determining whether the goods or services may be procured only from a sole source, the purchasing agent shall determine whether there is only one source practicably available for the goods or services to be procured.

**20. Emergencies**

- An emergency may include, but is not limited to, natural disasters and situations when the goods or services are needed immediately to protect the public health safety or welfare, to prevent further damage to public property, machinery or equipment.
- An emergency may exist even if the emergency is self-created because of poor planning, overlooked requirements, inaccurate usage history, inadequate forecasting, or other similar reason, but the use of this procedure in these cases is discouraged.
- The competitive sealed bidding and competitive negotiation procedures are excused when it is determined that an emergency exists that necessitates the need for the procurement.



- The determination of whether goods or services may be procured using the emergency procedure provided herein shall be made by the purchasing agent.

## **21. Public Auction**

- The competitive sealed bidding and competitive negotiation procedures are excused when it is determined in advance that it is in the best interests of the public that the goods be procured at a public auction.
- The determination of whether it is in the best interests of the public to procure goods at a public auction shall be made by the Board of Directors.
- The Board of Directors shall make its determination at a regular meeting of the board.

## **22. Small Purchases**

- The using department shall make a good faith determination as to whether the cost of the procurement is expected to exceed \$50,000.
- Neither the purchasing agent nor the using department shall procure goods or services in a piecemeal manner in order to avoid formal procurement procedures that would otherwise apply.
- The receipt of written quotations is preferred, even if verbal or telephone quotations are authorized.
- If goods or nonprofessional services are sought to be procedural, one of three informal procurement procedures applies. A separate procedure applies when professional services are sought to be procured.

## **23. Qualification of a Vendor**

- A responsible vendor is one who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance.
- The purchasing agent may, and at the request of the using department or the selection committee shall, require that vendors be prequalified.
- The purchasing agent is authorized to debar a prospective vendor from participating in a procurement under the procedures set forth in this chapter.

- Determinations as to whether a vendor is not responsible, not qualified, or should be debarred shall be in writing, based upon a consideration of all available information, and be made only after the vendor has had an opportunity to rebut or respond to the purchasing agent's preliminary determination.

#### **24. Security**

- A bid bond is required for all construction contracts whose cost is expected to exceed \$100,000, and may be required for any other procurement. A bid bond promises that the vendor and its surety are jointly and severally liable for the amount of the bond if the vendor refuses to honor the bid or proposal upon being tendered the contract.
- A performance bond is required for all construction contracts exceeding \$100,000, and may be required for any other procurement. A performance bond is a promise by the vendor and the surety to pay up to the sum of the bond unless there is satisfactory performance of the contract.
- A payment bond is required for all construction contracts exceeding \$100,000, and may be required for any other procurement. A payment bond protects subcontractors, materialmen and suppliers because it is an agreement by the vendor and the surety to pay for material and labor supplied in the performance of the work.
- In lieu of a bid, performance or payment bond, a vendor may furnish a certified check, cash escrow, or a bank or saving's institution's letter of credit, in the face amount required for the bond.

#### **25. Protests**

- The protest procedure provides a possible remedy in any procurement when a prospective vendor desires to challenge the award of a contract to another vendor.
- A protest must be received in the purchasing office within ten (10) calendar days of the public posting of the notice of intent to award or the notice of award.
- The purchasing agent may award a contract during the period allowed to protest under certain circumstances.

- A protest must be in writing and shall include the basis for the protest and the relief sought.
- The purchasing agent must issue a written response to the protest within ten (10) calendar days of the receipt of the protest. The response must state the reasons for either denying or upholding the protest.
- No protest lies for a claim that the selected vendor is not responsible, or that challenges the terms and conditions of the invitation for bids or request for proposals.
- If the protest is upheld, the purchasing agent shall grant appropriate relief.

## **26. The Contract**

- After a contract is awarded, the purchasing agent shall prepare and circulate a contract for review and signature by the vendor and Authority officers.
- Before forwarding a contract to the Authority attorney for review, the purchasing agent shall confirm that all contract documents are included and that the certificate of insurance and all bonds or other forms of surety are provided and satisfy the requirements of the invitation for bids or request for proposals.
- The contract shall be in a form approved by the Authority attorney.
- Although a vendor's standard contract may be used if provided for in the invitation for bids or request for proposals, such a contract should be avoided.

## **27. Design Build (D/B) Procedures**

- The Authority may enter Design-Build (D/B) contracts only after it has determined in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.
- Prior to using a D/B contract, the Authority department must receive approval from the Board of Directors.
- Procurement of a D/B contract is a two-step competitive negotiation system. The Authority first selects qualified offerors and then, from among them, the design-build contractor.
- For construction projects in excess of \$2 million, a report must be submitted to the Director of the Department of General Services that provides justification for the use of any procurement method other than competitive sealed bidding.

**28. Construction Management (CM) Procedures**

- The Authority may enter Construction Management (CM) contracts only after it has determined in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.
- For construction projects in excess of \$2 million, a report must be submitted to the Director of the Department of General Services that provides justification for the use of any procurement method other than competitive sealed bidding.
- Prior to using a CM contract, the Authority department must receive approval from the Board of Directors.
- Procurement of a CM contract is a two-step competitive negotiation system. The agency first selects qualified offerors and then, from among them, the construction manager.

**29. Participation of Small Businesses and Minority-Owned, Women-Owned, and Service Disabled Veteran-Owned Businesses in Authority Procurement**

- This Authority policy is to assure that small businesses and businesses owned by minorities, women, and service disabled veterans have the maximum practicable opportunity to participate in Authority procurement transactions.

# Chapter 1. Introduction

## Summary

This chapter identifies the purposes of this manual, provides an overview of the principal features and requirements of the Virginia Public Procurement Act, and identifies the types of procurements subject to this manual and the Act. This chapter also defines key terms used, and provides a summary of the essential information, in this manual.

| <b>Essential Information in this Chapter</b>  |
|---|
| <ul style="list-style-type: none"><li>• This manual identifies the applicable policies and procedures for the procurement of goods and services, and is to be followed by all Authority departments.</li><li>• The primary goal and purpose of the procedures set forth in this manual is to assure that goods and services are procured in a competitive process which is fair, impartial, administratively efficient and accessible to all qualified vendors.</li></ul> |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>  |
| Section 2.2-4300(B): Purpose of the Virginia Public Procurement Act<br>Section 2.2-4300(C): Policies and principles of the Virginia Public Procurement Act<br>Section 2.2-4301: Definitions used in the Virginia Public Procurement Act<br>Section 2.2-4303: Methods of procurement<br>Section 2.2-4344: Exceptions to the requirement for competitive procurement  |

### **1-1 General**

This manual sets forth the policies and procedures of the Albemarle County Service Authority (herein after referred to as the “Authority”) for the procurement of goods and services, and is to be followed by all Authority departments.

The information contained in this manual is intended for the use and guidance of all officers and employees in the performance of their official duties. Thus, it sets forth not only what officers and employees must or should do, but also explains how those requirements or recommendations should be performed.

The purchasing office or the Authority’s attorney may, from time to time, issue memoranda and opinions pertaining to procurement that are effective until they are included in a revision to this manual or until rescinded. This edition of the manual is effective July 1, 2015 and it supersedes all previous editions.

Comments, suggestions, and questions of interpretation should be provided to the purchasing agent or the Authority's attorney.

This manual is not intended to create, and shall not be construed to create any benefit for, or expectation in, any third party.

## **1-2 The Purposes of this Manual**

This manual is based upon, and should be read in conjunction with, the Virginia Public Procurement Act (hereinafter sometimes referred to as the "Act"), which is located at Virginia Code §§ 2.2-4300 et seq. The Authority has not adopted alternative procedures to the competitive sealed bidding and competitive negotiation procedures authorized under the Act.

In addition to stating the policies and procedures of the Authority for the procurement of goods and services, this manual:

- Establishes procedures that promote competition affording every qualified vendor with a fair opportunity to obtain Authority business.
- Provides an understanding of the responsibilities, objectives, limitations and duties of the purchasing agent and the using departments.
- Conveys to employees, and through them, to vendors, a clear understanding of the Authority's purchasing policies and objectives.
- Establishes reasonable standards against which internal and external auditors can measure the performance of the purchasing office's functions.

## **1-3 Overview of the Virginia Public Procurement Act**

The principal features and requirements of the Virginia Public Procurement Act are as follows:

- Purpose of the Act: The Act enunciates the policies and procedures pertaining to the procurement of goods and services by the Authority from nongovernmental vendors.
- To whom the Act applies: The Act applies to, among others, the Authority and its departments.
- What the Act requires: The Act requires that goods and services be procured in a competitive process that is fair, impartial, and accessible to all qualified vendors. Factors to be considered in determining whether competitive principles are being satisfied include cost, quality and capability, but does not include non-work related factors.

#### 1-4 **Overview of the Procurements Subject to this Manual and the Act**

This manual and the Act have broad application to the purchase of goods and services by the Authority from nongovernmental vendors.

- **General**: This manual and the Act apply to all public contracts with nongovernmental vendors for the purchase or lease of goods, or the purchase of services, insurance or construction, each of which must be awarded after competitive sealed bidding or competitive negotiation, unless specifically exempted under the Act.
- **Procurements using nongovernmental funds are subject to manual**: This manual and the Act apply to the procurement of goods and services by the Authority even though private funds are used for the procurement.
- **Procurements by lease are subject to manual**: This manual and the Act apply to the procurement of goods and services acquired pursuant to a lease if the predominant purpose of the lease is to secure goods or services from a vendor.
- **Procurements by which the Authority is paid for allowing a service are subject to manual**: This manual and the Act apply to the procurement of services by which the Authority is paid by the vendor for allowing a service to be provided (e.g., the Authority allows the installation of a pay phone on Authority property at no cost to the Authority, and the vendor offers to pay the Authority for allowing the service).
- **Other law authorizes procurement subject to manual**: This manual and the Act may apply if another statute grants procurement authority to the Authority. Whether this manual and the Act apply shall be determined on a case-by-case basis.

Neither this manual nor the Act apply to the purchase and sale of real property.

#### 1-5 **Definitions**

The following words and terms used in this manual and the Act are defined below:

- **Bidder** means a person who submits a bid in response to an invitation for bids.

- Competitive negotiation means a method of vendor selection described in part 3 of this manual, which includes issuance of a request for proposals, public notice of the request for proposals, negotiation with selected offerors, and award.
- Competitive sealed bidding means a method of vendor selection described in part 2 of this manual, which includes issuance of an invitation for bids, public notice of the invitation for bids, a public opening and announcement of the bids received, evaluation of the bids, and award.
- 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 a contract in which a party is retained by the Authority to coordinate and administer contracts for construction services for the benefit of the Authority, and may also include, if provided in the contract, the furnishing of construction services to the Authority.
- Authority attorney means the Authority attorney or his partner or assistant.
- Dependent means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.
- Design-build contract means a contract between the Authority and a vendor in which the vendor agrees to both design and build the structure, roadway or other item specified in the contract.
- Goods means all material, equipment, supplies, printing and automated data processing hardware and software.
- Immediate family means: (1) a spouse; and (2) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.
- Informality means a minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids or the request for proposals, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
- Invitation for bids means a document issued by the purchasing agent as part of the competitive sealed bidding procedure which solicits bids for



goods or services, and which contains or incorporates by reference the specifications and contractual terms and conditions applicable to the procurement, and other information and requirements.

- Multiphase professional services contract means a contract for the providing of professional services where the total scope of the 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.
- Nonprofessional service means those services not specifically identified as a professional service.
- Offeror means a person who submits a proposal in response to a request for proposals.
- Official responsibility means the administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove, or otherwise affect a procurement transaction, or any claim resulting therefrom.
- Pecuniary interest arising from the procurement means a personal interest in a contract, whether due to being a party to the contract or due to a personal interest in a business which is a party to the contract, where the interest exists by one or more of the following:
  - Ownership in a business if the ownership interest exceeds three (3) percent of the total equity of the business.
  - Annual income that exceeds, or may reasonably be anticipated to exceed, ten thousand dollars (\$10,000) from ownership in real or personal property or a business.
  - Salary, or other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be expected to exceed, ten thousand dollars (\$10,000) annually
  - Ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property.
  - Personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business.
- Personal interest means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of: (1) ownership in a business if the ownership interest

exceeds three percent of the total equity of the business; (2) annual income that exceeds, or may reasonably be anticipated to exceed \$10,000 from ownership in real or personal property or a business; (3) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (4) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; or (5) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business.

- Personal interest in a contract means a personal interest which an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract.
- Procurement transaction means all functions that pertain to the obtaining of any goods, services, insurance or construction, including the description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
- Professional services means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering.
- Public employee means any person employed by the Authority, including elected officials and appointed members of governing bodies.
- Purchasing agent means the director of finance, or his designee.
- Request for proposals means a document issued by the purchasing agent as part of the competitive negotiation procedure which solicits proposals for goods or services, and which indicates in general terms what is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other contractual terms and conditions applicable to the procurement, including any unique capabilities or qualifications which will be required of the contractor.
- Responsible bidder or offeror means a vendor who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

- Responsive bidder means a vendor who has submitted a bid which conforms in all material respects to the invitation for bids.
- Services means any work performed by an independent contractor wherein the service rendered does not consist primarily of the acquisition of equipment or materials, or the rental of equipment of materials and supplies.
- Service disabled veteran means a veteran who (i) served on active duty in the United States military ground, naval or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.
- Using department means the department, agency or division seeking to procure goods or services through the purchasing agent.
- Vendor means a natural person, corporation, partnership, sole proprietorship, joint venture or other entity, other than a governmental entity, who has goods or services for sale, and a faith-based organization who has goods or services for sale for programs funded by a block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law § 104-193), and participates in the procurement processes identified in this manual. A vendor includes, in the appropriate context, a bidder, offeror or contractor.

Any term used in this manual which is not defined in this section shall be given its common and ordinary meaning unless the term has been defined elsewhere in the Albemarle County Code or by statute, regulation or by the Virginia Supreme Court or the Virginia Court of Appeals, and the definition is applicable to the context in which the term is used.

# Chapter 2. The Powers and Duties of the Participants in the Procurement Process

## Summary

This section describes the powers and duties of the purchasing agent, the using departments, and the Authority attorney in the procurement of goods and services. This chapter also identifies unauthorized purchases and the consequences thereof.

| <b>Essential Information in this Chapter</b>   |
|--|
| <ul style="list-style-type: none"><li>• The purchasing agent is responsible for the procurement of all goods, services, insurance and construction, unless another Authority officer or employee is expressly authorized to do so by the Code of Virginia and this manual.</li><li>• The using department is responsible for anticipating procurement needs, cooperating with the purchasing agent in the procurement process, and otherwise complying with the requirements of this manual.</li><li>• The Authority attorney is responsible for assuring that the procurement process complies with applicable laws and policies, and for reviewing all procurement contracts as to form.</li><li>• The Authority is not bound by an unauthorized procurement; the individual who makes an unauthorized procurement is personally liable unless the procurement is ratified by the board.</li></ul> |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>   |
| Section 15.2-524: Powers and duties of the purchasing agent<br>Section 15.2-1237: Review of contracts by the Authority   |

## **2-1 The Purchasing Agent**

The Director of Finance acts as the purchasing agent for the Authority.

The purchasing agent is responsible for the procurement of all goods, services, insurance and construction (except, for example, certain small purchases; see chapter 22); the management and disposal of goods; and the award of designated contracts on behalf of the Authority in accordance with the provisions of this manual and the Virginia Public Procurement Act.

### **2-1.1 The Powers and Duties of the Purchasing Agent**

The purchasing agent has the following powers and duties:

- Purchases: The power and duty to make all purchases of goods, services, insurance and construction, in a manner that is consistent with the requirements and the purposes of this manual and the Act. The power of the purchasing agent is subject to any exceptions established by the Board of Directors.
- Transfers: The power and duty to make transfers of supplies, materials and equipment between departments and officers.
- Sales: The power and duty to sell any surplus supplies, materials or equipment and to make such other sales as may be authorized by the Board of Directors. Before making any sale, the purchasing agent shall invite competitive bids under rules and regulations established by ordinance or resolution.
- Specifications or standards: The power to establish suitable specifications or standards for all supplies, materials and equipment to be purchased for the Authority; the duty to establish and maintain programs for specifications' development, contract administration, inspection and acceptance of goods, services, insurance and construction in cooperation with the using departments.
- Inspections: The power and duty to inspect, or to oversee the inspection of, all goods delivered to determine their compliance with the applicable specifications and standards.
- Source lists: The power and duty to establish sources of supply and to maintain a current file of sources of goods, services, insurance and construction to which vendors can request to be included.
- Shipments: The duty to expedite the shipment of orders.

The purchasing agent also has all powers and duties necessary and incidental to those provided above.

## **2-1.2 Promoting Vendor Relations**

In addition to the powers and duties set forth above, the purchasing agent should also promote vendor relations by:

- Giving each vendor a full, fair, prompt and courteous consultation.
- Freely exchanging information.
- Assuring that competition is open and fair.

- Assuring that specifications reflect the needs of the Authority.
- Applying the Authority's procurement policies and principles in a consistent manner.
- Observing strict truthfulness in all transactions and in all correspondence.
- Respecting the confidence of the vendor as to confidential information.
- Communicating with the vendors concerning feedback from the using agency about complaints about delivery, failure to meet specifications or modifying terms of the contract.

## **2-2 The Using Department**

Although a using department procures its goods or services through the purchasing agent (except, for example, certain small purchases; see chapter 22), it is an important participant in the procurement process.

The department head and those persons designated by the department head and approved by the purchasing agent to sign purchase requisitions shall be responsible for the following:

- Anticipate needs: Anticipate the using department's needs and determine the quantity, general type or character of supplies, materials, or equipment required.
- Develop standards and specifications: Cooperate with the purchasing office and assist in the development of standards and specifications.
- Prepare and submit requisitions: Prepare and submit purchase requisitions through the purchasing office in sufficient time to make the necessary purchases.
- Monitor receipt of orders: Notify the purchasing office of any orders that have not been received.
- Inspect goods received: Inspect goods received for compliance with the quantity ordered and the specifications, and notify the purchasing office of any discrepancies.

## **2-3 The Authority's Attorney**

The Authority's attorney is also an important participant in the procurement process, and should be consulted by the purchasing agent or the using department whenever a legal question arises.

### **2-3.1 Duties**

The Authority's attorney shall:

- Assure compliance with applicable law and policies: Assist the purchasing agent and the using departments to assure that the provisions of this manual, Authority policies and practices, the Act, and all other applicable laws are complied with in the procurement of goods and services.
- Review contracts as to form: The Authority's attorney shall review as to form all contracts for the procurement of goods and services presented to the Authority's attorney.

### **2-3.2 Assistance to the Purchasing Agent and Using Department**

The purchasing agent and the using department are encouraged to solicit the assistance of the Authority's attorney in other circumstances, including but not limited to, the following matters:

- Review invitations for bids and requests for proposals: The Authority attorney should assist the purchasing agent and the using department in the development of invitations for bids and requests for proposals, particularly when the goods or services are not commonly procured by the Authority, the expected cost of the procurement is substantial, or whenever the invitations or requests may deviate from the format or content previously reviewed and approved by the Authority's attorney.
- Consider legal issues that arise during the procurement process: The Authority's attorney should be consulted if any legal issues arise during the procurement process.
- Review contracts as to content: The Authority's attorney should review for content and comment on any contract for the procurement of goods or services, when it deems such review to be necessary or appropriate.

## **2-4 Unauthorized Procurements**

Except as otherwise provided in this manual or the Code of Virginia, no Authority employee, shall purchase or contract for any goods, services, insurance, or construction within the purview of this manual or the Code of Virginia other than by and through the purchasing agent.

### **2-4.1 Authority Not Bound by Unauthorized Procurement**

Any purchase order or contract made contrary to the provisions of this manual is not approved and the Authority shall not be bound thereby.

However, the Board of Directors reserve the right to ratify such a procurement.

### **2-4.2 Individual Personally Liable for Unauthorized Procurement**

Any person responsible for an unauthorized procurement shall be personally liable for such purchase and, if already paid for out of Authority funds, the amount may be recovered in the name of the Authority in an appropriate action instituted therefor. Ratification of the procurement by the Board of Directors shall relieve the individual of personal liability for the unauthorized procurement.



# Chapter 3. General Requirements and Policies Applicable to All Procurements: Nondiscrimination, Drug-free Workplace, Public Records, Ethics and Conflicts of Interest

## Summary

This section sets forth certain requirements and policies that apply to all procurements: the prohibition of discrimination; a vendor’s agreement to maintain a drug-free workplace; the encouragement of small businesses and businesses owned by women and minorities; the public nature of certain procurement records, ethics, and conflicts of interest.

| <b>Essential Information in this Chapter</b>   |  |
|--|--|
| <ul style="list-style-type: none"> <li>• In the procurement of goods and services, the Authority shall not discriminate against a vendor because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or other basis prohibited by state law relating to discrimination in employment.</li> <li>• The Authority welcomes and encourages the participation of small businesses and businesses owned by women and minorities in procurement transactions.</li> <li>• With limited exceptions, all proceedings, records, contracts and other public records relating to procurement transactions are open for inspection by the public.</li> <li>• All Authority officers and employees who have official responsibility for the procurement of goods, services, insurance or construction must comply with ethics requirements of the Virginia Public Procurement Act and the State and Local Government Conflict of Interests Act.</li> </ul> |  |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>   |  |
| <p>Section 2.2-3101: Definitions used in the State and Local Government Conflict of Interests Act<br/>           Section 2.2-3105 <u>et seq.</u>: Prohibited conduct regarding contracts<br/>           Section 2.2-4343.1: Discrimination against faith-based organizations prohibited<br/>           Section 2.2-4310(A): Discrimination prohibited in procurement process<br/>           Section 2.2-4310(B): Participation in procurement process by small businesses and businesses owned by women and minorities<br/>           Section 2.2-4311: Employment discrimination by vendor prohibited<br/>           Section 2.2-4312: Vendor required to maintain drug-free workplace<br/>           Section 2.2-4342: Public inspection of certain procurement records<br/>           Section 2.2-4367 <u>et seq.</u>: Ethics in public contracting</p>   |  |

### **3-1 Discrimination Prohibited**

In the procurement of goods and services, the Authority shall not discriminate against a vendor because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or other basis prohibited by state law relating to discrimination in employment. Each invitation for bids and request

for proposals must contain a statement of nondiscrimination consistent with the declaration above. The statement shall be in a form approved by the Authority attorney. In addition, each contract over \$10,000 must include a provision in which the vendor agrees not to discriminate during the performance of the contract.

In the procurement of goods and services for programs funded by a block grant provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Authority shall not: (1) discriminate against faith-based organizations on the basis of their religious character; (2) impose conditions that restrict the religious character of the faith-based organizations; or (3) impair, diminish, or discourage the exercise of religious freedom by the recipients of the goods, services or disbursements. Each invitation for bids, request for proposals, contract and purchase order shall prominently display a nondiscrimination statement indicating that the Authority does not discriminate against faith-based organizations.

Whenever the Authority makes a solicitation to specific potential vendors, the purchasing agent shall include businesses selected from a list provided by the State Department of Minority Business Enterprise.

**3-2 Maintaining a Drug-free Workplace**

Each contract over \$10,000 must include a provision in which the vendor agrees to maintain a drug-free workplace during the performance of the contract.

**3-3 Participation of Small Businesses and Businesses Owned by Women, Minorities, or Service Disabled Veterans**

The Authority welcomes and encourages the participation of small businesses and businesses owned by women, minorities, or service disabled veterans in procurement transactions.

The purchasing agent shall use and maintain the list of businesses owned by minorities, women, or service disabled veterans available for solicitation provided by the State Department of Minority Business Enterprise.

The purchasing agent must register small businesses and businesses owned by minorities, women, or service disabled veterans and shall maintain such list in the purchasing office.

**3-4 Public Inspection of Certain Records**

Subject to the exceptions set forth in section 3-4.1, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to inspection by any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq.). The purchasing agent shall not make available as public

information any materials properly designated as a trade secret or as proprietary information.

### **3-4.1 Procurement Records not Available for Public Inspection**

There are two classes of procurement records exempt from public inspection:

- Cost estimates: Cost estimates relating to a proposed procurement transaction prepared by or for the Authority are not subject to inspection.
- Trade secrets or proprietary information: Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction are not subject to inspection, subject to the procedures in section 3-4.2.

### **3-4.2 Procedure to Protect Disclosure of Trade Secrets or Proprietary Information**

In order for trade secrets or proprietary information to be protected from disclosure, the vendor must comply with the following procedure:

- Protection must be timely invoked: The vendor must invoke the protections of this section prior to or upon submission of the data or other materials to the Authority, and must designate the data or other materials to be protected and state the reasons why protection is necessary.
- Designation must be valid: If a vendor identifies all materials as a trade secret or as proprietary information, the purchasing agent may contact the vendor and request that the vendor further explain in writing why all of the materials are, in fact, trade secrets or proprietary information. Otherwise, the purchasing agent may not evaluate the merits of the designation of information as a trade secret or as proprietary information.

### **3-4.3 Timing of Public Inspection**

The timing of the public inspection of procurement records is as follows:

- Competitive sealed bidding bidders: Upon request, a bidder may inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Authority decides to reject all bids and to reopen the procurement process.
- Competitive negotiation offerors: Upon request, an offeror may inspect proposal records within a reasonable time after the evaluation and negotiation of proposals are completed, but prior to award, except in the event that the Authority decides to reject all proposals and to reopen the procurement process.
- All persons: Procurement transaction records are available for public

inspection, including inspection by competitive sealed bidding bidders and competitive negotiation offerors, after the award of the contract.

#### **3-4.4 Ensuring the Security and Integrity of Procurement Records**

An inspection of procurement records is subject to reasonable restrictions imposed by the purchasing agent to ensure the security and integrity of the records.

#### **3-5 Ethics in Public Contracting**

Each Authority officer or employee (collectively "employee") who has official responsibility for the procurement of goods, services, insurance or construction must be familiar with Virginia Code §§ 2.2-4367 through 2.2-4377 (Ethics in Public Contracting). Following is a general summary of those sections. Certain key terms used in this section are defined in section 1-5.

A willful violation of any provision listed below is a Class 1 misdemeanor, and, upon conviction, an employee must forfeit his employment, in addition to any other fine or penalty provided by law. The purchasing agent may require employees having official responsibility for procurement transactions in which they participated to annually submit for these transactions a written certification that they complied with Virginia Code § 2.2-4367 *et seq.* A knowingly false statement in a certification is punishable as described above.

##### **3-5.1 Prohibited Participation by Employees in Procurement Transactions (Virginia Code § 2.2-4369; §2.2-3103)**

Except as otherwise may be allowed by law, no employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the Authority when the employee knows one or more of the following conditions exist:

- Contemporaneous employment: The employee is contemporaneously employed by a vendor involved in the procurement transaction.
- Holding of position: The employee, the employee's partner, or any member of the employee's immediate family holds a position with a vendor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five (5) percent.

- Pecuniary interest in the procurement transaction: The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction.
- Prospective employment: The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a vendor.

**3-5.2 Solicitation or Acceptance of Gifts Prohibited; Misuse of Public Position (Virginia Code § 2.2-4371; §2.2-3103(10))**

No employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a vendor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The Authority may recover the value of anything conveyed in violation of this section.

No employee may use his public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law, provided, however, that this subdivision shall not restrict the authority of the Authority to govern conduct of its employees, and to take disciplinary action, in accordance with applicable law.

**3-5.3 Subsequent Employment with Vendor Prohibited (Virginia Code § 2.2-4370)**

No public employee or former employee having official responsibility for procurement transactions shall accept any employment with any vendor with whom the employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment with the Authority unless the employee provides written notification to the Authority, or a public official if designated by the Authority, or both, prior to commencement of employment by that vendor.

**3-5.4. Gifts by Vendors (Virginia Code § 2.2-4371)**

No vendor, including a subcontractor, shall confer upon any employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

**3-5.5. Kickbacks (Virginia Code § 2.2-4372)**

Kickbacks are prohibited as follows:

- No contractor or subcontractor shall demand or receive from any of his

suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

- No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
- If a subcontractor or supplier makes a kickback or other prohibited payment as described herein, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the Authority and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

**3-5.6 Submittal of Bid or Proposal, Disclosure of Non-Public Information to Vendor, Prohibited (Virginia Code § 2.2-4373)**

No person who, for compensation prepares an invitation for bids or request for proposals for or on behalf of the Authority shall: (1) submit a bid or proposal for that procurement or any portion thereof; or (2) disclose to any vendor information concerning the procurement which is not available to the public. However, the purchasing agent, with concurrence of the Authority attorney, may permit the person to submit a bid or proposal for that procurement or any part thereof, if it is determined that exclusion of the person would limit the number of potential vendors in a manner contrary to the best interests of the Authority.

**3-5.7. Purchase of Materials from Architect or Engineer Prohibited (Virginia Code § 2.2-4374)**

No building materials, supplies or equipment for any building or structure constructed by or for the Authority shall be sold by or purchased from any person employed as an independent contractor by the Authority to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which the architect or engineer has a persona interest as defined in section 1-5.

No building materials, supplies or equipment for any building or structure constructed by or for the Authority shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor, employed by the Authority to furnish architectural or engineering services in which such person has a personal interest as defined in section 1-5.

### **3-5.8 Misrepresentations Prohibited (Virginia Code § 2.2-4376)**

No employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

### **3-6 Conflicts of Interest**

Following is a general summary of the laws pertaining to conflicts of interest in public contracting. These laws generally prohibit officers or employees from having personal interests in the contracts.

#### **3-6.1 Members of the Board of Directors (Virginia Code § 2.2-3107)**

This section applies only to members of the Board of Directors.

No Board member shall have a personal interest in: (1) any contract with the Board; (2) any contract with the Authority which is subject to the ultimate control of the Board;

This section does not apply to:

- Employment: A Board member's personal interest in a contract of employment; provided: (1) the officer or employee was employed by the Authority prior to July 1, 1983, in accordance with the provisions of the Conflict of Interests Act, as it existed on June 30, 1983; or (2) the employment first began prior to the member becoming a member of the Board.
- Uniform prices: Contracts for the sale by the Authority of services or goods at uniform prices available to the public.
- Competitive sealed bidding: A contract awarded to a Board member as a result of competitive sealed bidding where the Board has established a need for the same or substantially similar goods through purchases prior to the member's election or appointment to the Board. However, the member shall have no involvement in the preparation of the specifications for the contract, and the remaining members of the Board, by written resolution, must state that it is in the public interest for the member to bid on the contract.

**[Section 3-6.2 Intentionally Left Blank]**

### **3-6.3 Other Authority Officers and Employees (Virginia Code § 2.2-3109)**

This section pertains to officers and employees other than members of the Board of Directors.

No other officer or employee of the Authority shall have a personal interest in a contract with the Authority other than his own contract of employment.

This section does not apply to:

- Additional contracts of employment: An employee's personal interest in additional contracts of employment with the Authority which accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of his immediate family and the employee is not in a position to influence those activities.
- Uniform prices: Contracts for the sale by the Authority of services or goods at uniform prices available to the general public.

### **3-6.4 Exceptions (Virginia Code § 2.2-3110)**

In addition to the exceptions set forth in sections 3-6.1 through 3-6.3, the following exceptions also apply:

- Real property: The sale, lease or exchange of real property between an officer or employee and the Authority; provided the officer or employee does not participate in any way as an officer or employee in the sale, lease or exchange, and this fact is set forth as a matter of public record by the Board
- Official notices: The publication of official notices.
- Sole interest is income: An officer or employee whose sole personal interest in a contract with the Authority is by reason of income from the vendor or the Authority in excess of \$10,000 per year; provided the officer or employee or a member of his immediate family does not participate and has no authority to participate in the procurement or letting of the contract on behalf of the vendor and the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of the Authority or he disqualifies himself as a matter of public record and does not participate on behalf of the Authority in negotiating the contract or in approving the contract.
- Contracts with public service corporations, financial institutions, public utilities: Contracts between the Authority and a public service corporation, financial institution, or company furnishing public utilities in which the officer or employee has a personal interest, provided the officer or



employee disqualifies himself as a matter of public record and does not participate on behalf of the Authority in negotiating the contract or in approving the contract.

- Small contracts: Contracts for the purchase of goods or services when the contract does not exceed \$500.
- Grants and similar payments: Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency.
- Personal interest in contract arising from marriage: An officer or employee whose sole personal interest in a contract with the Authority is by reason of his marriage to his spouse who is also employed by the Authority, if the spouse was employed by the Authority for five or more years prior to marrying the officer or employee.
- Employment contracts: Employment contracts or renewals thereof or to any other contracts entered into prior to August 1, 1987, which were in compliance with prior conflict of interest laws (Virginia Code § 2.1-347 et seq. or § 2.1-599 et seq.) at the time of their formation and thereafter. Those contracts shall continue to be governed by the prior laws, except that notwithstanding former Virginia Code § 2.1-348(f)(4) (in effect prior to July 1, 1983), the employment of an officer or employee and spouse or any other relative residing in the same household by the Authority is not be deemed to create a material financial interest except when one of those persons is employed in a direct supervisory or administrative position, or both, with respect to the spouse or other relative residing in his household and the annual salary of the subordinate is \$35,000 or more.

### **3-6.5 Consequences of Violation (Virginia Code § 2.2-3123)**

A contract made in violation of the foregoing sections (Virginia Code § 2.2- 3106 through § 2.2-3109) may be declared void and may be rescinded by the Board of Directors within five years of the date of such contract. In cases in which the contract is invalidated, the vendor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of rescission of a contract of sale, any refund or restitution shall be made to the Authority, whether it is contracting or selling.

Any purchase by an officer or employee made in violation of the foregoing sections (Virginia Code § 2.2-3106 through § 2.2-3109) may be rescinded by the Board of Directors within five years of the date of purchase.



# Chapter 4. Determining Which Procedure Applies

## Summary

This section briefly examines the several procedures available for the procurement of goods and services and establishes the methodology to be used to determine which procedure applies to a particular procurement.

| <b>Essential Information in this Chapter</b>  |  |
|---|--|
| <ul style="list-style-type: none"><li>• Generally, the procurement of goods or services requires using the competitive sealed bidding or competitive negotiation procedure if the costs are expected to exceed \$50,000. If the costs are not expected to exceed \$50,000, one of the three small purchase procedures applies.</li><li>• If there is only a sole source, an emergency exists, or if the goods may be procured at public auction, the competitive sealed bidding or competitive negotiation procedure need not be followed even if the costs are expected to exceed \$50,000.</li><li>• There are several types of goods and services that are exempt from the competitive sealed bidding or competitive negotiation procedure even if the costs are expected to exceed \$50,000. Legal services are the most notable goods or services in this exempt class.</li><li>• When determining which procedure applies, begin by assuming that the competitive sealed bidding procedure applies, and then determine the expected cost of the goods or services, classify what is being procured, and determine whether an excuse or exemption applies.</li></ul> |  |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>  |  |
| Section 2.2-4301: Definitions used in the Virginia Public Procurement Act<br>Section 2.2-4343(B): Compliance with conditions on federal grants or contracts<br>Section 2.2-4304: Cooperative and joint procurement<br>Section 2.2-4303(A): When competitive sealed bidding and competitive negotiation required, generally<br>Section 2.2-4303(B): Competitive negotiation required for procurement of professional services<br>Section 2.2-4303(D): When competitive negotiation available in lieu of competitive sealed bidding<br>Section 2.2-4303(E): Procurement from a sole source<br>Section 2.2-4303(F): Procurement in an emergency<br>Section 2.2-4303(G): Small purchases<br>Section 2.2-4303(J): Reverse auctioning<br>Section 2.2-4305: Competitive bidding on state-aid projects<br>Section 2.2-4344: Exceptions to the requirement for competitive procurement   |  |

### 4-1 General

There are several possible procedures that may apply to a particular

procurement. If the expected costs of the goods or services are expected to exceed \$50,000, most procurements require a competitive procedure such as the competitive sealed bidding procedure or the competitive negotiation procedure. The small purchase procedures set forth in chapter 22 apply when the expected costs of the goods or services are expected to be \$50,000 or less. There are certain circumstances, such as emergencies, and certain goods or services, such as legal services, which are excused or exempted from these competitive procedures.

## **4-2 The Formal Competitive Procedures**

There are three formal competitive procedures available: competitive sealed bidding, competitive negotiation for professional services, and competitive negotiation for goods or nonprofessional services. Each are briefly described below, and discussed in more detail in parts 2 and 3.

### **4-2.1 Competitive Sealed Bidding for Goods or Nonprofessional Services**

Competitive sealed bidding is a method of vendor selection that is used when the cost of the goods or nonprofessional services is expected to exceed \$50,000. This procedure has five elements: (1) the issuance of an invitation for bids; (2) public notice; (3) public opening of sealed bids; (4) evaluations of bids; and (5) award. This procedure is described in more detail in part 2, beginning with chapter 5.

### **4-2.2 Competitive Negotiation for Professional Services**

Competitive negotiation for professional services is the method of vendor selection used only for the procurement of services within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering where the cost of the services is expected to exceed \$50,000. This procedure has four elements: (1) the issuance of a request for proposals; (2) public notice; (3) negotiations; and (4) award.

These elements are described in more detail in part 3, beginning with chapter 11.

### **4-2.3 Competitive Negotiation for Goods or Nonprofessional Services**

Competitive negotiation for goods or nonprofessional services is the method of vendor selection that may be used in lieu of the competitive sealed bidding procedure for the procurement of goods or services, other than professional services, where the cost of the goods or services is expected to exceed \$50,000. This procedure has four elements: (1) the issuance of a request for proposals; (2) public notice; (3) negotiations; and award. These elements are described in more detail in part 3, beginning with chapter 11.

**Table 4-1**

| <b>Thresholds for Applicability of the Competitive Sealed Bidding<br/>And Competitive Negotiation Procedures</b>                           |  |
|--|--|
| <b>Competitive Sealed Bidding</b>  | <b>Competitive Negotiation</b>   |
| <p>Goods or nonprofessional services, including insurance, expected to exceed \$50,000</p> <p>Construction expected to exceed \$50,000</p> | <p>Professional services expected to exceed \$50,000</p> <p>Goods or nonprofessional services, including insurance, where it is expected to exceed \$50,000</p> <p>The construction of highways and any draining, dredging, excavation, grading or similar work on real property</p> |

**4-3 Procurements Excused from Formal Competitive Procedures**

There are three circumstances when compliance with the competitive sealed bidding or competitive negotiation procedure is excused, even though the cost of the goods or services are expected to exceed \$50,000.

**4-3.1 Sole Source**

The sole source procedure may be used in lieu of either the competitive sealed bidding or the competitive negotiation procedure when there is only one source practicably available for that which is to be procured. This procedure is described in more detail in chapter 19.

**4-3.2 Public Auction**

Goods, products and commodities may be procured at a public auction if the purchasing agent determines in advance and in writing that the procurement by public auction is in the best interests of the Authority. The public auction procedure is described in more detail in chapter 20.

**4-3.3 Emergency**

The emergency procedure may be used in lieu of either the competitive sealed bidding or the competitive negotiation procedure when there is an emergency. Emergencies include, but are not limited to, natural disasters and situations when goods or services are needed immediately, even when the emergency is self-created by the using department. The emergency procurement procedure is described in more detail in chapter 21.

#### 4-4 **Goods and Services Exempt from Formal Competitive Procedures**

- The Virginia Public Procurement Act exempts several goods and services from the competitive sealed bidding and competitive negotiation procedures, even though the expected cost of the goods or services may exceed \$50,000. These exempt goods and services are:
- Legal services: Legal services, provided that the pertinent provisions of Virginia Code § 2.2-500 et seq. (pertaining to the legal services of the Attorney General) remain applicable.
- Litigation related services: Expert witnesses and other services associated with litigation or regulatory proceedings.
- Insurance purchased through an association: If insurance is purchased through an association of which the Authority is a member, if the association was formed and is maintained for the purpose of promoting the interest and welfare of, and developing close relationships with, similar public bodies. The association must obtain the insurance using competitive principles. The purchasing agent must make a determination in advance after reasonable notice to the public and state in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public and document the basis for this determination.
- Goods produced or services performed by the disabled: Goods produced or services performed by the disabled, if produced or performed by persons, or in schools or workshops under the supervision of the Virginia Department for the Visually Handicapped or by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.
- Goods or services for recipients of certain public welfare programs: Goods or services for an individual recipient of a public assistance program defined in Virginia Code § 63.1-87, the fuel assistance program, a person receiving services from a community services board as defined in Virginia Code § 37.1-1, or if the Authority is purchasing services under the Comprehensive Services Act for At-Risk Youth and Families under Virginia Code § 2.2-5200 et seq., may be procured without using a competitive procedure. However, the bulk procurement of goods or services for use by such recipients must be competitively procured.
- Extension of an existing contract: The purchasing agent may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

#### **4-5 Determining Which Procedure Applies**

The following steps should be taken to determine which procurement procedure applies:

##### **4-5.1 Determine the Expected Cost of the Goods or Services**

The first step is to identify the expected cost of the goods or services to be procured. If the cost of the goods or services is expected to exceed \$50,000, then a formal competitive procedure applies unless the procurement is otherwise excused or exempted. If the expected cost of the goods or services is \$50,000 or less, then one of the small purchase procedures apply.

- Cost estimated by the using department: The using department shall determine the expected cost of the goods or services to be procured, and present that determination to the purchasing agent in writing.
- Review of cost estimate by the purchasing agent: The purchasing agent shall review the determination of expected cost made by the using department if the expected cost is determined to be greater than \$15,000, and may review any other determination of expected cost made by the using department. The purchasing agent should independently determine the expected cost of the goods or services.

##### **4-5.2 Classify What is Being Procured**

The second step requires that the purchasing agent classify what goods or services are sought to be procured, and identify whether professional services are sought. When determining which procedure applies, the purchasing agent should assume that the competitive sealed bidding procedure applies, and then identify the basis, if any, for another procedure, an excuse, or exemption, to apply.

- Goods: Goods are procured by the competitive sealed bidding procedure. However, goods may be procured by the competitive negotiation procedure for goods or nonprofessional services.
- Nonprofessional services: Nonprofessional services are procured by the competitive sealed bidding procedure. However, nonprofessional services may be procured by the competitive negotiation procedure for goods or nonprofessional services.

Table 4-2

| <b>Factors to Consider in Determining Whether to Use the Competitive Sealed Bidding Procedure Advantageous</b>  |
|---|
| Whether the contract needs to be other than a fixed-price type  |
| Whether oral or written discussions may need to be conducted with vendors concerning technical and price aspects of their proposals   |
| Whether vendors may need to be afforded the opportunity to revise their proposals, including price  |
| Whether the market will respond better to a solicitation permitting not only a range of alternative proposals, but evaluation and discussion of them before making the award                    |
| Whether the award may need to be based upon a comparative evaluation of differing price, quality, and contractual factors in order to determine the most advantageous offering to the Authority |
| Whether the primary consideration in determining the award may not be price   |

- Professional services: Services to be performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering, must be procured by the competitive negotiation procedure for professional services.
- Construction: Construction is procured by the competitive sealed bidding procedure; except that the construction of highways and any draining, dredging, excavation, grading or similar work upon real property may be procured by the competitive negotiation procedure for goods or nonprofessional services if the purchasing agent determines in advance and in writing that the competitive sealed bidding procedure is either not practicable or not fiscally advantageous to the public.



**Table 4-3**

| <b>Comparison of the Competitive Negotiation and Competitive Sealed Bidding Procedures</b>  |   |
|---|---|
| <b>Competitive Negotiation</b>  | <b>Competitive Sealed Bidding</b>   |
| <p><b>Advantages</b><br/>Evaluation, interview and negotiation processes allow in-depth analysis of every offeror's qualifications and capabilities</p> <p>If the price is too high, the scope of work or the specifications and price may be negotiated to meet the Authority's needs</p> <p>The ability to negotiate the price is an effective technique to offset potential inflated prices in a market with little or no competition</p> <p><b>Disadvantages</b><br/>Evaluation and award process can be lengthy and complicated</p> <p>Vendors evaluated by proposals and negotiations; the process must be managed carefully to assure objective selection process</p> <p>Authority staff can be at a disadvantage in negotiations, particularly when dealing with experienced vendors with trained negotiators</p> | <p><b>Disadvantages</b><br/>Only the lowest responsive and responsible bidder may be considered for award, regardless of the qualifications of the other bidders or how close their price may be to that of the lowest bidder</p> <p>If the price is too high, the Authority may either negotiate with the low bidder to reduce the price to the amount budgeted, or cancel the procurement</p> <p>The inability to negotiate the price, except when the bid price exceeds the amount budgeted, may result in paying inflated prices in a market with little or no competition</p> <p><b>Advantages</b><br/>Evaluation and award process is simple; determination of lowest responsive and responsible bidder generally quickly determined, contract applying objective criteria</p> <p>Vendors evaluated by contents of bids only</p> <p>No negotiations except with lowest responsive and responsible bidder when the low bid exceeds available funds</p> |

- Insurance: Insurance shall be procured by the competitive sealed bidding procedure. However, insurance may be procured by the competitive negotiation procedure for goods or nonprofessional services if the purchasing agent determines in advance and in writing that the competitive sealed bidding procedure is either not practicable or not fiscally advantageous to the public.

**4-5.3 Determine Whether an Excuse Applies**

The third step requires that the purchasing agent determine whether compliance with the competitive sealed bidding or competitive negotiation procedure may be excused as follows:

- Goods: Goods may be procured without complying with the competitive sealed bidding or competitive negotiation procedures if there is only a sole source, an emergency exists, or if it is determined to be in the best interests of the public to procure the goods at a public auction sale.
- Services, construction and insurance: Services, construction and insurance may be procured without complying with the competitive sealed bidding or competitive negotiation procedures if there is only a sole source or an emergency exists.

These excuses are described in more detail in section 4-3.

#### **4-5.4 Determine Whether an Exemption Applies**

The final step requires that the purchasing agent determine whether compliance with the competitive sealed bidding or competitive negotiation procedure may be exempted as follows:

- Goods: Goods produced by certain disabled persons, schools and workshops and goods for an individual recipient of certain public welfare programs may be procured without using a competitive procedure.
- Services: Services performed by certain disabled persons, schools and workshops, legal services, litigation related services, and the extension of existing contracts for services may be procured without using a competitive procedure.
- Insurance: Insurance purchased through an association to which the Authority is a member may be procured without using a competitive procedure.
- Other: Enabling legislation for the procurement of particular goods or services may authorize the goods or services to be procured without using a competitive procedure.

These exemptions are described in more detail in section 4-4.

**Table 4-4**

| <b>Circumstances When the Competitive Sealed Bid and Competitive Negotiation Procedures may be Excused</b> |  |
|--|--|
| <b>Circumstances</b>   | <b>Procedural Requirements</b>   |
| Insurance  | Determine in writing in advance that competitive sealed bidding and competitive negotiation processes not practicable or fiscally advantageous; procure through broker or agent selected through competitive negotiation process |
| Sole source  | Determine in writing that only one source practicably available; post public notice or publish notice in newspaper   |
| Emergency  | Determine in writing the basis for the emergency and the selection of the contractor; post public notice or publish notice in newspaper  |
| Single-term contract less than or equal to \$50,000  | Establish written purchase procedures which so provide   |
| Goods, products or commodities purchased at public auction   | Determine in writing in advance that the purchase is in the best interests of the public   |

**4-6 Cooperative and Joint Procurements and Procurements Using Federal or State Money**

The Authority may procure goods or services in cooperation with other public bodies, and may procure goods, services or construction with the assistance of federal grants or contracts, or state-aid, as set forth below:

**4-6.1 Joint Procurement:**

The Authority may participate in, sponsor, conduct or administer a joint procurement agreement with one or more other public bodies, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction.

**Cooperative Procurement:**

The Authority may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies, except for (1) contracts for architectural or engineering services, and (2) construction.

The procedures of the Virginia Public Procurement Act and this manual or the procurement manual of another party public body shall apply.

#### **4-6.2 Procurements Funded by Federal Grants or Contracts**

The purchasing agent may procure goods or services that involve the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations inconsistent with the Virginia Public Procurement Act and this manual.

Prior to issuing a notice of the invitation for bids or request for proposals, the purchasing agent shall obtain from the Board of Directors, a written determination: (1) that acceptance of the grant or contract funds under the applicable conditions is in the public interest; and (2) identifying the specific provisions of the Virginia Public Procurement Act that are in conflict with the conditions of the grant or contract.

#### **4-6.3 State-Aid Projects**

The purchasing agent may procure the construction of any building or for an addition to or improvement of an existing building for which state funds of \$50,000 or more, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction, using either the competitive sealed bidding procedure or the competitive negotiation procedure for goods or nonprofessional services. The Virginia Public Procurement Act and this manual apply to these procurements.

#### **4.7 Reverse Auctioning**

Reverse auctioning is a procurement method where bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder.

During the bidding process, bidders' prices are revealed and bidders have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

# Chapter 5. Competitive Sealed Bidding: Procedure

## Summary

This chapter provides an overview of the procedure for procuring goods and nonprofessional services using the competitive sealed bidding procedure. Where the cost of the goods or services to be procured is expected to exceed \$50,000, the competitive sealed bidding procedure is the applicable procedure, unless another procedure is expressly authorized.

### **Essential Information in this Chapter**

The five key procedural steps in the competitive sealed bidding procedure are:

- Preparation of the invitation for bids: The preparation of an invitation for bids which contains or incorporates by reference the specifications and contractual terms and conditions applicable to the procurement, and a statement of any requisite qualifications of potential contractors.
- Issuance and public notice of the invitation for bids: The public notice of the invitation for bids is given at least ten days prior to the date set for the receipt of the bids by posting the notice in a public area, or publishing the notice in a newspaper of general circulation, or both. The purchasing agent also may solicit bids directly using the Authority's "bidder list" which includes businesses selected from a list made available by the Department of Minority Business Enterprise.
- Public opening and announcement of all bids timely received: All bids timely received are opened in public at the time, date, and place stated in the public notice and the bid prices are read aloud.
- Evaluation of the bids: The bids and the qualifications of the bidders are examined by the purchasing agent for compliance with the requirements set forth in the invitation for bids.
- Award to the lowest responsive and responsible bidder: After the evaluation of all bids and the bidders, the award is made to the lowest responsive and responsible bidder who meets the requirements set forth in the invitation for bids.

### **Key References to the Code of Virginia Applicable to this Chapter**

Section 2.2-4301: Definitions of competitive sealed bidding and other key terms  
Section 2.2-4301: Award; competitive sealed bidding  
Section 2.2-4303(A): When competitive sealed bidding required, generally

## **5-1 General**

The competitive sealed bidding procedure may apply if the cost of the goods, nonprofessional services, construction or insurance is expected to exceed \$50,000. See chapter 4 for a discussion of when goods, nonprofessional services, construction and insurance may be procured by the competitive sealed bidding procedure.

**Table 5-1**

| <b>The Eleven Steps in the Competitive Sealed Bidding Procedure</b>  |
|--|
| <ol style="list-style-type: none"><li>1. Identify the goods or services to be procured</li><li>2. Prepare the invitation for bids</li><li>3. Establish the procurement schedule</li><li>4. Compile a list of vendors</li><li>5. Issue the invitation for bids and provide public notice thereof</li><li>6. Conduct pre-bid conferences or site visits, if warranted</li><li>7. The submittal of bids</li><li>8. The receipt of bids</li><li>9. The opening of bids</li><li>10. The evaluation of bids</li><li>11. The contract award</li></ol> |

The remaining sections of this chapter are a step-by-step outline of the competitive sealed bidding procedure. The procedure to be used for a particular procurement may need to be modified to fit that procurement.

**5-2 Identify the Goods or Services to be Procured**

The using department must identify the goods or services to be procured. It is important to develop a comprehensive definition of the goods or services. Goods should be defined using the procedure identified in chapter 6. Services should be defined using the procedure identified in chapter 12.

**5-3 Prepare the Invitation for Bids**

The invitation for bids shall be prepared by the using department and the purchasing agent. Before drafting a complex invitation for bids, particularly one for the procurement of services, it is recommended that the using department prepare a work statement. The work statement should identify the required goods or services (broken down by tasks) to be procured in a logical sequence, assist in establishing realistic milestones or delivery schedules, and help determine supplier cost realism. Each task of the work statement should be coordinated with the invitation for bids, and the numerical coding of tasks in the work statement and task descriptions should be identical or cross-referenced. The invitation for bids should be as comprehensive as possible because the more complete it is, the better the chances are that the vendors will understand what the Authority desires to procure and what relevant experience and qualifications it should include in its bid. The invitation for bids must, at a minimum:

- Contain or incorporate by reference the specifications.
- Contain or incorporate by reference the contractual terms and conditions applicable to the procurement.

- Contain a statement of any requisite qualifications of the potential vendors.

A comprehensive description of the elements of an invitation for bids is set forth in chapter 6.

#### **5-4 Establish the Procurement Schedule**

The purchasing agent and the using department should establish a schedule that will assure that the procurement is completed on or before the date the goods or services are required. To do so, the purchasing agent and the using department should consult and determine the completion date and then identify the milestones and the dates by which each milestone should be achieved in order to assure that the procurement is timely completed. The key milestones and the minimum amount of time that should be allowed for each milestone are:

- Preparation of the bid documents: Allow at least fifteen workdays for the preparation of bid documents and the issuance of a written invitation for bids.
- Public notice period and the date for receipt of bids: Allow at least ten calendar days for the public notice of the invitation for bids prior to the date set for the receipt of bids.
- Evaluation of bids and issuance of notice of award: Allow at least five work days for the evaluation of bids, and then issue notice of the award.
- Execution of contract: Allow at least ten calendar days for the execution of the contract after the notice of award of the contract.

The purchasing agent and the using department should allow more time at each stage identified above for procurements of goods or services that are not ordinarily procured by the Authority, procurements that are complex, and procurements that require bidders to submit substantial amounts of information for evaluation.

#### **5-5 Compile a List of Vendors**

The purchasing agent and the using department should compile a list of vendors from staff knowledge of local vendors, and through directories and lists of vendors. The purchasing agent should send invitations for bids directly to these vendors, in addition to the public notice of the invitations for bids that will otherwise be provided.

#### **5-6 Issue the Invitation for Bids and Provide Public Notice Thereof**

Public notice of an invitation for bids shall be given as provided below:

- Manner of giving public notice: The purchasing agent shall provide public notice of an invitation for bids by posting in a designated public area, or publication in a newspaper of general circulation, or both. Public notice may also be published on the Virginia Department of General Services' central electronic procurement website and other appropriate websites. In addition, the purchasing agent may solicit bids directly from potential vendors, and shall include businesses selected from the list provided by the Department of Minority Business Enterprise.
- Notice period: The public notice shall be given at least ten days prior to the date set for receipt of bids.
- Contents of the notice: The notice shall contain, at a minimum, the following information: (1) the name of the purchasing entity; (2) a brief description of the goods or services to be procured; (3) the date and time of the bid opening; (4) the requisite qualifications for bidders, if applicable; (4) the date and time of the pre-bid conference, if applicable; (6) the name of the purchasing agent; (7) the location where bid documents can be obtained; and (8) the legal authority for the procurement.

These are minimum requirements, and the purchasing agent may provide any additional notice that he deems appropriate.

#### **5-7 Conduct Pre-bid Conferences or Site Visits, if Warranted**

A pre-bid conference is a meeting among the purchasing agent, the using department and prospective vendors during which the purchasing agent and the using department review the specifications in detail, explain the scope, objectives and techniques of the procurement, emphasize critical elements of the invitation for bids, and encourage input from the vendors. A site visit allows the vendors to observe physical characteristics of the land or of structures that are relevant to the procurement. A pre-bid conference and site visit are hereafter collectively referred to as a "pre-bid conference."

A pre-bid conference may resolve ambiguities, unforeseen and nonessential restrictiveness in the specifications, or technical errors. For purposes here, a pre-bid conference includes a site visit.

- When a pre-bid conference should be held: Pre-bid conferences may be particularly advisable when the Authority seeks to procure goods that are highly technical or complex or for consultant services contracts.
- Notice of the pre-bid conference: If a pre-bid conference is conducted, the invitation for bids must provide the time, date and location of the conference. The conference should be held as soon as possible after the invitation for bids is issued.
- Attendance at a pre-bid conference: Attendance of vendors at pre-bid conferences should be discretionary, not mandatory, in order to assure



that qualified vendors who are unable to attend are not excluded from bidding. If attendance is mandatory, only those bids from vendors represented at the pre-bid conference shall be accepted.

- Oral representations at the pre-bid conference: The purchasing agent should make a written note of all inquiries and points of contention raised by the prospective bidders. Clarification may be provided at the pre-bid conference so long as the specifications or conditions are not altered. Oral representations made at the pre-bid conference by the purchasing agent or the using department shall not be binding on the Authority. All material clarifications of any provision of the invitation for bids, or the amendment of a specification or condition of the invitation for bids, shall be made only be in writing as an addendum, as provided herein.

These are minimum requirements. The purchasing agent may add any additional requirements to a pre-bid conference that he deems appropriate.

## **5-8 The Submittal of Bids**

Bids submitted shall comply with the following:

- Use of bid form: All bidders shall use the bid form included in the invitations for bids when submitting their bid prices.
- Changes to the bid form: All erasures, interpolations, and other changes in the bid form shall be signed or initialed by the bidder.
- Oral, telephonic, or faxed bids not acceptable: The purchasing agent shall not accept oral bids nor bids received by telephone, fax, or other form of electronic transmission.
- Deviations: Bids containing conditions, omissions, erasures, alterations, or items not called for in the bid may be rejected by the Authority as being incomplete.
- Bid form must be signed: The bid form must be signed in order to be considered. If the bidder is a corporation, the bid must be submitted in the name of the corporation, not the corporation's trade name. The bidder must indicate the corporate title of the individual signing the bid.
- Bid must be submitted in sealed opaque envelope: The bid form and all other documents required to be submitted as part of the bid shall be enclosed in a sealed opaque envelope. The envelope containing the bid should be sealed and marked with the invitation for bids number, the hour and date upon which the bid must be received and the bidder's Virginia contractor registration number (if required).

## 5-9 The Receipt of Bids

The purchasing agent shall receive bids only as provided as follows:

- Bids must be timely received in purchasing office: All sealed bids shall be received in person, through the mail, or by parcel service, in the purchasing office, until, but no later than, the time and date set for the receipt of bids in the invitation for bids. The time stamp clock in the purchasing office shall be the sole clock used to determine whether a bid is timely received.
- Timely receipt of bids sole responsibility of vendors: It shall be the sole responsibility of the vendor under all circumstances to assure that its bid is timely received. The Authority assumes no responsibility in assuring that bids and proposals sent by mail or by parcel service and delivered to the Authority Office Building will be timely received and time-stamped in the purchasing office.
- Bids must be time stamped: The time for the receipt of bids shall be determined by the time written on the bid upon receipt. Vendors are responsible for assuring that their bids are recorded by purchasing office personnel by the time and date for which bids are to be received.
- Bids must be kept in secure location until opened: All bids received and time stamped will be kept in a secure location in the purchasing office until the time and date set for the opening of bids.
- Identity of bidders confidential: Prior to the time and date of opening, the identity of the vendors submitting bids and the number of bids received is confidential, and may be disclosed only to Authority officials only when disclosure is considered necessary for the proper conduct of the bidding process.
- Inadvertent opening of bid: If a bid envelope does not contain the proper identification, and it is inadvertently opened in advance of the prescribed bid opening, the purchasing agent should write an explanation of the inadvertent opening on the envelope, with the invitation number, time and date of opening. The envelope should be resealed and deposited with the other bids.
- Late bids: Late bids shall not be considered under any circumstances, and shall be returned unopened to the sender.

## **5-10 The Opening of Bids**

The purchasing agent shall open bids according to the following procedure:

- Bids opened and read aloud: Except for bids for construction contracts, all bids timely received in the purchasing office shall be opened and publicly read aloud at the time and date established for such opening in the invitation for bids. Bids for construction contracts may be opened one day following the date and time established for the receipt of bids, if provided for in the invitation for bids.
- Information recorded: The purchasing agent shall record the following information for each competitive sealed bid received and opened: (1) name of vendor; (2) bid prices, delivery, and payment terms; (3) acknowledgment of addenda, if any; (4) bid security received or not, if required; (5) contractor registration number, if required; (6) exceptions taken by the vendor, if allowed; and (7) any other information the purchasing agent deems pertinent.
- Transmittal of bids: The purchasing agent shall promptly transmit to the using department the recorded information for each bid and at least one copy of each bid received for evaluation. The purchasing agent should allow sufficient time for the evaluation of the bids, which should be based upon the number of bids received, the complexity or number of items being evaluated and any time constraints that have to be met.

## **5-11 The Evaluation of Bids**

The bids timely received shall be examined by the purchasing agent for compliance with the requirements set forth in the invitation for bids. The purchasing agent should first review each bid to determine whether it has facial deficiencies that preclude it from being further considered.

Bids are evaluated to determine the lowest responsive and responsible bidder. The evaluation is based upon the requirements set forth in the invitation for bids, which may include special qualifications of potential vendors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

The procedure for evaluating bids is discussed in more detail in chapter 9.

## 5-12 The Contract Award

After the bids have been evaluated, the contract is awarded to the lowest responsive and responsible bidder according to the following procedure:

- Notice of intent to award: The purchasing agent shall post in a public place a written announcement of the decision to award, which may be identified as a notice of intent to award. The notice of intent to award shall also include a statement that the public records pertaining to the procurement have been and are available for inspection by those vendors participating in the procurement process. The purchasing agent is not required to provide individual notice of the intent to award to any participating vendor; rather, it is each vendor's duty to ascertain when the notice of intent to award is issued and posted.
- Protest period: The receipt of the notice of intent to award by a vendor shall commence a ten-day period in which a vendor who desires to protest the decision to award a contract may do so, as provided in chapter 25.
- Contract award if no timely protest received: The purchasing agent shall not award a contract until the protest period has expired. After the protest period has expired, and if no vendor has protested the decision to award, the purchasing agent shall award the contract to the vendor identified in the notice of intent to award.
- Contract award if timely protest received: If a written bid protest is timely received, the purchasing agent shall take no further action to award the contract unless, upon prior consultation with the Authority's attorney, the purchasing agent determines in writing that proceeding without delay is necessary to protect the public interest or unless the bid would expire. The written determination shall be placed in the contract file.
- Contract award if legal action brought: If a legal action is brought by a vendor, actual or prospective, as provided in Virginia Code § 2.2-4364, the purchasing agent shall take no further action to award the contract unless, upon prior consultation with the Authority's attorney, the purchasing agent determines in writing that proceeding without delay is necessary to protect the public interest or unless the bid would expire. The written determination shall be placed in the contract file.

In his discretion, and if time is of the essence, the purchasing agent may award a contract without first posting a notice of intent to award. The purchasing agent may consult with the Authority's attorney as to any matter pertaining to the decision to award a contract.

# Chapter 6. Competitive Sealed Bidding: Elements of an Invitation for Bids

## Summary

This chapter identifies the minimum elements of an invitation for bids when procuring goods or services using the competitive sealed bidding procedure. This chapter also identifies strategies for detecting and preventing collusive bidding.

| <b>Essential Information in this Chapter</b>  |
|---|
| <ul style="list-style-type: none"><li>• The competitive sealed bidding procedure formally begins when the invitation for bids is issued.</li><li>• The invitation for bids must, at a minimum, describe the goods or services to be procured, and identify the applicable contractual terms and conditions, the minimum qualifications for the successful vendor, and the criteria by which each bid will be evaluated.</li></ul> |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>  |
| Section 2.2-4301: Definitions of competitive sealed bidding and other key terms<br>Section 2.2-4303(A): When competitive sealed bidding required, generally   |

### 6-1 General

The competitive sealed bidding procedure formally begins when the purchasing agent issues an invitation for bids. The invitation for bids defines the responsibilities of the vendor as well as those of the Authority, describes the requirements for performance, and identifies the criteria against which the vendor will be measured. At a minimum, the invitation for bids must contain:

- A description of the goods or services to be procured.
- The contractual terms and conditions applicable to the procurement, or incorporate those terms and conditions by reference.
- A statement of any requisite qualifications of the potential vendors.
- A statement describing the criteria by which each bid will be evaluated.

The following sections discuss in detail each of the elements of an invitation for bids. The level of detail contained in an invitation for bids depends in part on the nature of the particular procurement.

**Table 6-1**

| <b>The Nine Elements of an Invitation for Bids</b>   |
|--|
| <ol style="list-style-type: none"><li>1. The Introduction</li><li>2. General information</li><li>3. Description of the goods or services to be procured</li><li>4. The minimum qualifications of a vendor</li><li>5. Contractual terms and conditions</li><li>6. Minimum standards of a bid</li><li>7. Required elements of a bid</li><li>8. Submittal requirements</li><li>9. Evaluation criteria</li></ol> |

**6-2 The Introduction**

The introduction to the invitation for bids provides prospective vendors with general, but important, information pertaining to the procurement. The introduction should contain the following:

- Identifying information: Provide the full names of the Authority and the using department, the name of the project, and the invitation for bids number assigned by the purchasing agent.
- Summary description of the goods or services: Briefly describe what is being procured.
- Summary explanation for the procurement: Briefly explain why the using department is procuring the goods or services. The explanation may include, as appropriate, information about the goals and objectives of the using department and how the procurement relates to the department's goals and objectives, a summary of the functions to be supported by the goods or services, or a statement that the goods will supplement or replace existing equipment.

The information provided in the introduction should be stated in clear, simple, concise language. Information that is not directly related to the procurement should not be included.

**6-3 General Information**

The general information section of the invitation for bids should provide information about the procurement process and instructions as to how to respond to the invitation for bids. This section should contain the following information:

- Anticipated procurement schedule: The anticipated procurement schedule, setting forth each milestone from the date bids must be received to the date performance of the contract will begin.

- Procurement procedure: A brief description of the competitive sealed bidding procedure applicable to the procurement.
- Proposal requirements: A statement that each bid must be prepared and submitted as provided in the invitation for bids.
- Designate proprietary information: A statement that vendors may designate those portions of the bids which contain trade secrets or other proprietary data which may remain confidential in accordance with state law.
- Identify references: Identify all documents pertinent to the procurement, such as studies, feasibility studies, surveys, drawings, plans, configurations, specifications and standards, government regulations and correspondence, and when and where the reference documents are available to prospective vendors.
- Identify the contract: Identify the proposed contract that will be used for the procurement.
- Identify contact persons: Identify each Authority contact person and his mailing address, email address, telephone number and fax number. The purchasing agent should be identified as the contact person for procedural questions pertaining to the procurement, and a representative of the using department should be identified as a contact person for questions pertaining to the goods or services to be procured.
- Solicit comments: A statement soliciting comments from all prospective vendors about the invitation.
- Information pertaining to addenda: A statement informing prospective vendors that inquiries relating to the interpretation and technical details of the invitation must be in writing and must be received by the purchasing agent, not the using department, at least seven days prior to the date bids must be received. The statement shall include a provision advising prospective vendors to contact the purchasing agent five days before the date bids must be received to ascertain whether addenda have been issued.
- Right to waive informalities: A statement that the purchasing agent may waive informalities in any bid.
- Right to cancel the procurement or reject all offers: A statement that, at any time prior to award of the contract, the purchasing agent may cancel the invitation for bids for any reason, or reject any or all of the proposals, as provided by law.

The purchasing agent should include any other general information when appropriate for a particular procurement, such as anticipated funding or budgeting requirements.

#### **6-4 Description of the Goods or Services to be Procured**

The goods or services to be procured should be described in detail. If goods are being procured, the description should be in the form of a specification developed pursuant to chapter 7.

If services are being procured, the description should state in simple non- technical terms the services to be performed by the vendor. The description should include the following information:

- Deliverables: All items to be delivered and services to be performed by the vendor, including operating manuals, training, repair parts, software and reports. The services to be performed should be identified by each required task, set forth in a logical sequence. The description should state whether alternate items may be bid.
- Mandatory approaches: If a service must be performed in a particular manner, it must be identified.
- Quality assurance: Identify quality assurance requirements applicable to performance of all items to be delivered and services to be performed.
- Questions requiring answers: Identify all questions that the Authority has that require answers.

This list is not exhaustive. The primary purpose of the description is to inform prospective vendors what the Authority desires to procure.

#### **6-5 Minimum Qualifications of Vendors**

The invitation for bids shall specify the requisite qualifications of the successful vendor by identifying the minimum necessary experience, background, or expertise in the area of the procurement. The qualifications will vary depending on the goods or services to be procured. However, they may not be so onerous so as to restrict competition. The qualifications of vendors are discussed in more detail in chapter 23.

#### **6-6 Contract Terms and Conditions**

The contract terms and conditions contained in an invitation for bids shall be only those terms and conditions developed by the purchasing agent and the Authority's attorney. The using department shall not substitute any term or condition.



- General contract terms and conditions: The invitation for bids shall contain general terms and conditions for doing business with the Authority that apply to all procurements by the Authority.
- Specific terms and conditions: The invitation for bids shall also contain terms and conditions that are specific to the procurement.

These terms and conditions are set forth in the Appendix, and are subject to change from time to time by the purchasing agent and the Authority's attorney.

#### **6-7 Minimum Standards of a Bid**

The invitation for bids shall include a section that sets forth the required standards of a bid to assure that the Authority receives information from each vendor in a consistent format. The minimum standards of a bid are as follows:

- Bid must be in writing: The bid shall be in writing, in legible text.
- Bid must be in a standard format: The bid shall be in a standard format, provided by the Authority. The reasons for this requirement are: (1) to place vendors of different sizes on a more equal basis; and (2) to assist the purchasing agent, the using department and the selection committee in its evaluation of the bids, since all vendors will provide similar information and it will be easier to make comparisons and determine which vendors are less qualified.

The purchasing agent may impose other standards including, but not limited to, page limitations.

#### **6-8 Required Elements of a Bid**

The invitation for bids shall include a section that sets forth the required elements of a bid to assure that the Authority receives relevant information from each vendor. The required elements of a bid are as follows:

- Identification of vendor: The name of the vendor, the location of the vendor's principal place of business and, if different, the place of performance of the proposed contract.
- Identification and experience of key personnel: The names, abilities, qualifications and experience of all personnel who would be assigned to work on the project. This element is required for the procurement of services, but may be waived for the procurement of goods.
- Discussion of the project: A statement of the vendor's understanding of the problem, the work to be done, or the program, and the approach to be used to achieve the objectives of the procurement. For the procurement of services, this discussion should also include

a plan giving as much detail as is practical explaining how the services will be performed. The plan should include a list of the key verifiable milestones in the project.

- Price: The price of the goods or services to be procured, including those for any optional items identified in the invitation for bids.
- Identification of prior experience: Identification of all other contracts under which goods or services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time.

Other elements may be required, in the discretion of the purchasing agent. In requiring additional elements, the purchasing agent should consider the evaluation criteria established for the procurement, in order to assure that the proposals will address all of the evaluation criteria.

#### **6-9 Submittal Requirements**

The invitation for bids shall identify all of the bid submittal and receipt requirements identified in sections 5-7 and 5-8.

#### **6-10 Evaluation Criteria**

The invitation for bids shall specify the criteria that will be applied to determine whether a bidder is responsive and responsible. For the procurement of goods and services other than construction and professional services, the evaluation criteria may include best value concepts, which allow consideration of the overall combination of quality, price and other elements that in total are optimal relative to the Authority's needs. These other elements include, but are not limited to, the requisite qualifications of the successful vendor, life cycle costing, value analysis and any other criteria that are helpful in determining acceptability of the goods or services, such as quality, workmanship, delivery, and suitability for the particular purpose.

#### **6-11 Detecting and Preventing Collusive Bidding**

Collusive bidding is a practice among multiple vendors whereby they agree on the cost of the goods or services that the Authority desires to procure. Collusive bidding is contrary to the competitive procurement process and may violate state and federal law.

- Common forms of collusive bidding: One of the most common forms of collusive bidding is an agreement between the vendors to adhere to published price lists or to other predetermined prices. Another common form of collusive bidding is one in which competing firms collaborate to pre-select the low bidder each time the bidding occurs.

- Detecting collusive bidding: Collusive bidding can be detected by analyzing the patterns of awards over a long period of time. In addition, a pattern of identical bidding among the same group of vendors is sufficient cause for suspicion to be raised.
- Preventing collusive bidding: The purchasing agent can take several actions to combat the collusive actions of vendors: (1) state in the invitation for bids that identical bids or bids which otherwise appear suspicious will be reported to the Attorney General's Office; (2) include in the invitation for bids items that are not price controlled and award the contract on an aggregate or low-total basis if "fair-traded" or other manufacturer-price maintained items are involved; (3) award the contract to the vendors located furthest from the point of delivery when identical bids include delivery costs; (4) reject all bids, and re-advertise with a statement that the previous bids were identical and, therefore, unacceptable; and (5) contact the Attorney General's Office and Report suspicions if flagrant "price fixing" is suspected.

A combination, conspiracy or agreement among vendors to raise or otherwise fix the price of goods or services is a Class 6 felony. (Virginia Code § 59.1-68.7)  
Filing a knowingly false certificate of non-collusion is also a Class 6 felony. (Virginia Code § 18.2-498.4)

# Chapter 7. Competitive Sealed Bidding: Specifications

## Summary

This chapter outlines the method to develop specifications, which are the description of the goods or services to be procured. Included in this chapter are discussions of the purpose for developing appropriate specifications, the types of specifications, sources to assist in developing specifications, the task of writing specifications, and the use of brand names.

| Essential Information in this Chapter   |  |
|---|--|
| <ul style="list-style-type: none"><li>• A specification is a description of the physical or functional characteristics of the goods or services to be procured.</li><li>• Performance specifications are the preferred form of specifications.</li><li>• The using department has the primary responsibility for writing specifications.</li><li>• Specifications should be written in clear, simple language, free of vague terms or those subject to variation in interpretation.</li><li>• The using department should use brand name specifications with caution.</li></ul> |  |
| Key References to the Code of Virginia Applicable to this Chapter   |  |
| Section 2.2-4301: Definitions of competitive sealed bidding and other key terms<br>Section 2.2-4303(A): When competitive sealed bidding required, generally<br>Section 2.2-4315: Use of brand names   |  |

### 7-1 General

A specification is a description of the physical or functional characteristics of the goods or services desired to be procured. Specifications also describe the proper quality level of the goods or services and, because of their nature as public records, provide a check on the exercise of official discretion in the evaluation and award of bids. Viewed functionally, specifications are a device for assuring that the goods or services to be procured will be of a quality suitable for their intended uses.

### 7-2 Types of Specifications

There are three types of specifications:

- Performance specifications: Performance specifications describe the capabilities that the goods or services must satisfy.

- Design specifications: Design specifications describe the physical and other characteristics of the goods or services.
- Brand name specifications: Brand name specifications cite a brand name, a model number, or some other designation that identifies a specific product of a manufacturer as an example of the quality level desired, and goods equaling or surpassing the quality level are understood to be acceptable.

Performance specifications are the preferred form of specification.

### **7-3 The Purpose for Specifications**

A properly developed specification should do four things: (1) identify minimum requirements; (2) allow for a competitive bidding process; (3) for goods, identify objective standards to allow them to be tested for compliance with the specifications; and (4) provide for an equitable award at the lowest possible cost.

### **7-4 Sources for Developing Specifications**

The following are sources from which specifications may be obtained:

- The qualified staff of the using department.
- Salespersons.
- Federal agencies, such as the Federal Supply Service.
- Other state and local governments.
- The National Institute of Governmental Purchasing.
- Responsible associations of users, manufacturers, technical societies and associations.
- A staff engineer.

This list is not exhaustive. The purchasing agent and the using department should use caution in relying upon specifications for goods provided by salespersons because they may identify a single or limited number of goods being promoted by the salesperson.

### **7-5 Specification Writing**

The using department has the primary responsibility for writing specifications, which shall be subject to review by the purchasing agent. Specifications should be written in clear, simple language, free of vague terms or those

subject to variation in interpretation. The use of abbreviations should be restricted to those in common usage and not subject to possible misunderstanding.

- Appropriate level of detail: Specifications must be as detailed as practicable in order to assure: (1) potential bidders are bidding on the same goods or services and on the same terms; (2) there is a framework within which potential bidders can adequately assess the risks and rewards of making a bid; (3) there is protection against the possibilities for fraud inherent in vague or indefinite specifications; (4) the requisites for the formation of a binding contract are satisfied; and (5) there is a standard for review of the responsiveness of the bid awarded the contract.

However, specifications should not be so narrowly drafted that they thwart competition. A specification that confines bidding to a single vendor is not acceptable unless there is truly only a sole source.

- Identify essential characteristics: To provide a common basis for bidding, specifications should set out the essential characteristics of the goods or services being procured so that all bidders know exactly what is wanted and can accurately compute their bids. The specifications should identify those measurable physical, functional, and quality characteristics that meet the requirements and are common to at least two manufacturers.

The goods or services to be procured should be able to perform as necessary and be as durable as needed, but they should not have unessential frills or status features. Including nonessential characteristics or omitting essential characteristics should be avoided because the practice is wasteful. Including nonessential characteristics may also result in a specification that is so restrictive that it defeats the object of fostering competition.

- Identify the minimum level of experience: The specifications should establish a minimal level of experience of a bidder, require that the bidder submit at least three references, and that it summarize all performance experience with the Authority.

## **7-6 The Use of Brand Names**

The using department should use brand name specifications with caution because they may lessen objectivity in the process of evaluation and award, may reduce equality of opportunity among bidders, and may discourage competition. If brand name specifications are used:

- Several brand names should be given, to the extent possible.
- Brand names known throughout the industry should be used so that the desired quality level is known to potential bidders.

- Salient characteristics should be identified that will be used to compare brands and to determine the award, but the specification should be clear that these factors are not the total consideration.
- State that the brand identified is used merely as a specification and not as a statement of a preference for the specific product identified.
- State that, unless otherwise stated, items equal to the identified brand name will be acceptable, considering quality, workmanship, economy of operation, and suitability for the purpose intended.
- Caution should be used to insure that the brand, make of material, manufacturer, device or equipment specified does not exclude other goods because of a particular patented feature.

# Chapter 8. Competitive Sealed Bidding: Addenda, Modifications, and Withdrawals

## Summary

This chapter addresses situations in which the invitation for bids is revised by an addendum or the bid submitted by a vendor is either modified or withdrawn. The modification and withdrawal of bids both before and after the bid opening are covered in this chapter.

| <b>Essential Information in this Chapter</b>   |  |
|--|--|
| <ul style="list-style-type: none"><li>• The purchasing agent may modify an invitation for bids by issuing a written addendum no later than five calendar days prior to the date bids must be received; if the addendum modifies the date bids must be received, it may be issued at any time prior to that date.</li><li>• A bid may be modified or withdrawn by the vendor any time prior to the time and date bids must be received.</li><li>• After bid opening, the purchasing agent may allow a vendor to withdraw its bid without prejudice if clear and convincing evidence supports the existence of an error.</li><li>• After bid opening, the purchasing agent may allow mistakes other than clerical errors to be corrected only if the evidence of the mistake and of the bid actually intended is clear and convincing.</li></ul> |  |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>   |  |
| Section 2.2-4301: Definitions of competitive sealed bidding and other key terms<br>Section 2.2-4303(A): When competitive sealed bidding required, generally<br>Section 2.2-4330: Withdrawal of bid due to error  |  |

### **8-1 General**

Once the invitation for bids is issued, the course of the procurement process is still subject to change. It may become apparent to the purchasing agent or the using department that the invitation contains an omission or an ambiguity that must be corrected or clarified prior to the date that bids must be received. A vendor may realize after its bid has been submitted that it contains errors or omissions that must be corrected or that compel the vendor to desire to withdraw its bid altogether.

### **8-2 Amending an Invitation for Bids by Addendum**

If, after the invitation for bids is issued but prior to the receipt of bids, the invitation must be amended or clarified, the purchasing agent may issue addenda that modify the invitation. The following procedures shall apply:



- Authority to issue an addendum: The purchasing agent shall have the sole authority to issue an addendum.
- Initiation of an addendum: An addendum may be initiated by the purchasing agent in his discretion, upon his own determination of the need, upon the request of the using department, or upon the request of a prospective bidder who requests clarification of a provision of the invitation for bids.
- Addendum must be in writing: All addenda shall be in writing. No oral modification of any provision of an invitation for bids shall be permitted.
- Timing of issuance of addendum: If the purchasing agent determines that an addendum is necessary, it shall be issued no later than five calendar days prior to the date bids must be received. An addendum extending the date for the receipt of bids or withdrawing the invitation for bids may be issued any time prior to the date bids must be received.
- Notifying prospective bidders about addendum: An addendum shall be provided to all potential bidders who were provided an invitation for bids. Acceptable means of providing addenda to potential bidders are hand delivery, first class mail, fax with telephone confirmation of receipt, or other means designed to assure receipt of the addenda as soon as possible.
- Changing the date bids must be received: When issuing an addendum, the purchasing agent should consider the effect on the time for prospective bidders to prepare their bids. If additional preparation time is likely to be required by the potential bidders, the addendum should also extend the date bids must be received by a reasonable period of time.

### **8-3 Modifying or Withdrawing a Bid Prior to Bid Receipt Date and Time**

A bid may be modified or withdrawn by the vendor, subject to the following requirements:

- Notification: The vendor shall notify the purchasing agent in writing of its intentions to modify or withdraw its bid.
- Time to modify: If the vendor modifies its bid, it must submit and the purchasing office must receive the corrected sealed bid before the deadline for receipt of bids.
- Time to withdraw: If the vendor withdraws its bid, it must submit and the purchasing office must receive a written notice of withdrawal before the deadline for receipt of bids.

- Amount of bid may not be revealed: A vendor who withdraws or modifies a bid shall not reveal the amount of the bid. If the amount of the bid is revealed by the vendor, the bid shall be invalid. An attempt to modify a bid by writing on the exterior of the bid envelope shall render the bid invalid.
- Resubmittal of withdrawn bid: Withdrawn bids may be resubmitted to the purchasing agent up to the time and date bids must be received.

A bid may not be withdrawn after the time and date bids must be received and for sixty days thereafter; except that a bid may be withdrawn as otherwise provided in section 8-4.

#### **8-4 Withdrawing a Bid After Bid Opening**

When a mistake in a bid is discovered by the vendor or by the purchasing agent or using department after the bid opening, and it is an obvious mistake, then the purchasing agent shall notify the vendor of the mistake and request that the bid be verified. If the vendor acknowledges the mistake and requests relief, the purchasing agent shall proceed in the following manner:

The purchasing agent may allow a vendor to withdraw its bid without prejudice if clear and convincing evidence supports the existence of an error. If there is significant and obvious disparity between the prices of the lowest bidder and of the others, the lowest bidder may be permitted to withdraw without prejudice, upon submission of evidence that a non-intentional error occurred.

##### **8-4.1 Withdrawal Due to Error, Other than Construction Bids**

For all bids other than construction bids, the following procedure shall apply when a vendor seeks to withdraw its bid after bid opening:

- Notice of claim to withdraw: The vendor shall give written notice of its claim to withdraw its bid to the purchasing agent within two business days after the conclusion of the bid opening procedure and shall submit original work papers with the notice. The mistake shall be proven only from the original work papers, documents and materials delivered to the purchasing agent with the vendor's written request to withdraw its bid.
- Verification of error: The purchasing agent shall inspect the written evidence submitted by the vendor with the request, verify that an error occurred, and determine the nature of the error.
- Withdrawal if bid price substantially lower: The purchasing agent may allow a vendor to withdraw its bid from consideration if the price bid was substantially lower than the next low responsive bid due solely to a mistake therein, provided the bid was submitted in good faith and the mistake was a clerical mistake as opposed to a judgmental mistake,

and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work or material made directly in the compilation of the bid. The unintentional arithmetic error or unintentional omission must be clearly shown by objective evidence drawn from an inspection of the original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. Examples of such mistakes include errors in price extension, placement of decimal points, reversal of prices, F.O.B. destination, and F.O.B. point of origin.

- Identification of interests: Before the purchasing agent allows a vendor to withdraw, the vendor shall identify in writing all other corporations, partnerships, sole proprietorships or other like businesses in which it has an interest.
- If withdrawal allowed, award to next lowest bidder: If the purchasing agent allows a bid to be withdrawn, he shall award the contract to the next lowest responsive and responsible bidder, or may reject all bids.
- No withdrawal when second low bidder is the same bidder: No bid shall be withdrawn when the result would be to award the contract to the same vendor, who submitted another bid.
- Participation in procurement by withdrawn bidder prohibited: A vendor who is permitted to withdraw its bid may not, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the vendor to whom the contract is awarded or otherwise benefit directly or indirectly from the performance of the project.
- Notification to vendor if withdrawal denied: If the purchasing agent denies the withdrawal of a bid under this section, he shall notify the vendor in writing, stating the reasons for the denial and award the contract to that vendor at the bid price, provided that the vendor is a responsible and responsive bidder.

#### **8-4.2 Withdrawal Due to Error, Construction Bids**

The following procedure shall apply when a vendor seeks to withdraw its bid for construction after bid opening.

- Claim of error: A vendor shall give written notice to the purchasing agent of its claim of right to withdraw its bid within two business days after the conclusion of the bid opening procedure.

- Submittal of papers, documents and materials: The vendor shall submit to the purchasing agent with its claim of error its original work papers, documents and materials used in the preparation of the bid.
- Verification of error: The purchasing agent shall inspect the written evidence submitted by the vendor with the request, verify that an error occurred, and determine the nature of the error.
- Withdrawal if bid price substantially lower: A vendor for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw its bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgmental mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid.

The unintentional arithmetic error or unintentional omission must be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. A mistake shall be proved only from the original work papers, documents, and materials delivered to the purchasing office as required herein.

If a bid contains both clerical and judgment mistakes, a vendor may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid.

- Identification of interests: Before the purchasing agent allows a vendor to withdraw, the vendor shall identify in writing all other corporations, partnerships, sole proprietorships or other like businesses in which it has an interest.
- If withdrawal allowed, award to next lowest vendor: If the purchasing agent allows a bid to be withdrawn, he shall award the contract to the next lowest remaining bid.
- No withdrawal when second low vendor is the same vendor: No bid shall be withdrawn when the result would be to award the contract to the same bidder or of another vendor in which the ownership of the withdrawing bidder is more than five percent.

- Participation in procurement by withdrawn vendor prohibited: A vendor who is permitted to withdraw its bid may not, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the vendor to whom the contract is awarded or otherwise benefit directly or indirectly from the performance of the project.
- Notification to vendor if withdrawal denied: If the purchasing agent denies the withdrawal of a bid under the provisions of this section, he shall notify the vendor in writing stating the reasons for its decision and award the contract to the vendor at the bid price, provided the vendor is a responsible and responsive bidder.

#### **8-5 Modifying a Bid After Bid Opening**

The correction of mistakes other than clerical errors after a bid opening is not permitted except where evidence of the mistake and of the bid actually intended is clear and convincing on the face of the bid, and the bid as received and as actually intended and corrected is the lowest bid received. Where clear and convincing evidence of a mistake is not present, the vendor shall not be permitted to correct its error.

If the vendor fails to enter into a contract with the Authority, its bond or bid deposit should be forfeited.

# Chapter 9. Competitive Sealed Bidding: Evaluating Bids

## Summary

This chapter describes the steps to be taken in order to properly evaluate each bid received in response to an invitation for bids. The two key determinations in the evaluation process are whether the bid is responsive to the invitation, and whether the apparent low bidder is responsible.

| <b>Essential Information in this Chapter</b>  |
|---|
| <ul style="list-style-type: none"><li>• Bids are evaluated upon the criteria set forth in the invitation for bids.</li><li>• A responsive bid is one that is in substantial conformance with the requirements of the invitation for bids.</li><li>• The determination of whether a bid is responsive is made at the time the bid is opened.</li><li>• The purchasing agent may waive informalities in bids.</li><li>• A responsible vendor is one who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance.</li><li>• In determining the bid price, the initial costs and other cost factors must be considered.</li><li>• If the bid from the lowest responsive and responsible bidder exceeds available funds, the purchasing agent and the using department may negotiate with the bidder to obtain a contract price within available funds.</li></ul> |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>  |
| Section 2.2-4301: Definitions of competitive sealed bidding and other key terms<br>Section 2.2-4303(A): When competitive sealed bidding required, generally<br>Section 2.2-4318: Negotiation with lowest responsive and responsible bidder; available funds exceeded<br>Section 2.2-4319(B): Authority to waive informalities in bids<br>Section 2.2-4324: Tie bids<br>Section 2.2-4359: Determination of nonresponsibility   |

### 9-1 General

Bids are evaluated to determine the lowest responsive and responsible bidder. The evaluation is based upon the criteria set forth in the invitation for bids, which may include special qualifications of potential vendors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

## 9-2 Evaluating a Bid's Responsiveness

A responsive bid is one that is in substantial conformance with the requirements of the invitation for bids. The determination of whether a bid is responsive is made at the time the bid is opened, i.e., there is no opportunity for the vendor to provide information to the purchasing agent after the bid is opened in order to make the bid responsive.

The purchasing agent and the selection committee, if one is established for the procurement, shall evaluate each bid received to determine whether it contains all of the information and supporting documentation required by the invitation for bids. This evaluation shall consist of the following:

- Determine whether all required information included in bid: The purchasing agent shall determine whether all information required by the invitation for bids is included in the bid. This information includes, to the extent required for a particular procurement, a completed bid form, a certificate of noncollusion, and a bid security.
- Determine whether documents are properly signed: The purchasing agent shall determine whether documents submitted with the bid are properly signed by the vendor or by an authorized agent thereof.
- Determine whether the goods or services generally comply with the specifications: The purchasing agent shall determine whether the goods or services offered by the vendor generally comply with the specifications in the invitation for bids.
- Identify all exceptions, qualifications, errors or omissions in the bid: The purchasing agent shall identify all exceptions and qualifications in the bid to the Authority's procurement requirements identified in the invitation for bids, as well as all errors or omissions.

## 9-3 Nonresponsive Bids

If the purchasing agent determines that a bid does not satisfy all of the requirements stated in section 9-2, the bid shall be determined to be nonresponsive unless the defect may be waived as an informality as provided in section 9-4. The following are examples of defects in a bid that may render the bid nonresponsive:

- Substitution of terms and conditions: The vendor substitutes its standard terms and conditions for the Authority's, unless the Authority reserves the right in the invitation for bids to consider such terms and conditions.
- Limitation of liability: The vendor qualifies its bid in such a manner so as to nullify or limit its liability to the Authority.

- Failure to comply with delivery schedule: The vendor fails to offer to meet the Authority's required delivery schedule.
- Pricing defects: The vendor qualifies its prices in such a manner that its bid price cannot be determined, e.g., "the price in effect at time of delivery"; or the price is not stated in conformance with the required bid format, or the vendor qualifies the price to protect the vendor from unknown future market conditions.
- Qualification of bid to be contingent on another contract award: The vendor makes its bid contingent upon it receiving an award on another bid currently under consideration.
- Shift of burden to determine conformity with specifications: The vendor makes the Authority responsible for determining whether the vendor's goods conform to the specifications.
- Failure to furnish bid surety: The bid fails to furnish bid surety, if required.
- Limitation of County's rights: The bid attempts to limit the rights of the Authority under any contract clause.
- Vendor is debarred: The vendor is currently listed among debarred vendors.
- Conflict of interest or collusion: There is a reasonable basis to suspect either a conflict of interest or collusion among vendors.
- Failure to include expressly required materials: The vendor fails to submit required information, literature, samples, or affidavits with the bid that were expressly required in the invitation for bids.
- Failure to sign the bid: The bid is not signed by the vendor or an authorized agent of the vendor.
- Advance payment: The bid contains a condition that requires payment in advance.
- Alternate item bid when not authorized: The bid proposes an alternate item when alternate items are not authorized by the invitation for bids.

This list is not exhaustive.



## 9-4 Informalities

An informality is a minor defect or variation of a bid from the exact requirements of the invitation for bids that does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured, unless the requirement was expressly required by the invitation for bids. The purchasing agent may waive informalities in bids.

The purchasing agent shall consider the following three factors in determining whether a defect is an informality:

- Nature of the defect: Determine whether the defect affects the price, quantity, quality, or delivery schedule or important policy, such as the provision of a valid bid bond. If the defect is only a matter of form or is an immaterial variation from the exact requirements of the invitation for bids, then the informality is minor.
- Significance of the defect: If the defect affects price, quantity, quality, or delivery schedule, determine how significant the defect is. In order that for the defect to be waived as an informality, it must have trivial or no effect on these factors.
- Creation of unfair competitive advantage: If the defect potentially gives the apparent low bidder an unfair competitive advantage, then the defect is material. Thus, a waiver of a defect may not affect the relative standing of vendors or be otherwise prejudicial to them.

Following are examples of informalities that may be waived by the purchasing agent, depending on the particular circumstances of the procurement:

- Failure to furnish with the bid required information regarding the vendor's qualifications to perform the contract.
- Failure to submit descriptive information on the goods or services offered.
- Failure to return the proper number of executed bids or attachments thereto, including certifications and affidavits.
- Failure to return a bid addendum or amendment if, on the face of the bid, the vendor acknowledges receipt of the addendum or amendment, or if the addendum or amendment has a material effect on the vendor's liability under the terms of the contract.
- Failure to properly sign a bid bond.
- Failure to properly notarize signatures.
- Inclusion of a separate, but inapplicable, tax charge.

This list is not exhaustive.

**9-5 Determining Whether a Vendor is Responsible**

A responsible vendor is one who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance. Put another way, responsibility includes the capacity to perform, the financial ability to perform, and the integrity, perseverance and tenacity of the vendor. The applicable criteria to determine responsibility, investigating whether a vendor is responsible, and the procedure to follow if a vendor is determined to be not responsible, is set forth in chapter 23.

**9-6 Determining the Low Bidder. Generally**

In determining the apparent low bidder, the purchasing agent shall first review each bid for clerical errors in the calculation of the bid price. The purchasing agent shall then determine which bid will require the least expenditure of funds, considering not only initial costs, but also the following:

- Operational costs: The purchasing agent shall evaluate the operational costs for the goods being purchased.
- Taxes: Although the Authority is exempt from paying federal excise or state sales taxes on purchases, it is subject to such taxes paid on materials that are installed and become a part of real property. Thus, the purchasing agent shall consider the applicable taxes.
- Prompt payment discounts: The purchasing agent shall consider prompt payment discounts offered by the vendor, but only if the vendor allows at least twenty days for the prompt payment after the goods or services are received or after the invoice is received, whichever is later.
- Shipping costs: If the destination of the goods is other than the F.O.B. point, the purchasing agent shall consider the shipping costs.
- Costs related to multiple versus aggregate award: If the invitation for bids provided that awards could be made to more than one vendor, the purchasing agent shall consider the expenses associated with the administration of multiple contracts.

## **9-7 Determining the Low Bidder, Special Situations**

In addition to the factors set forth in section 9-6, the purchasing agent shall consider other factors in order to determine the low bidder in the special situations described below:

### **9-7.1 Single Bid Received**

An invitation for bids that yields only a single bid from a responsive and responsible bidder may be caused by one or more reasons:

- The goods or services to be procured are a sole source item.
- The specifications were too restrictive and could be met by only one vendor.
- The availability of the goods or services to be procured is controlled through territorial franchising arrangements controlled by the manufacturer.
- A poor selection was made of potential vendors.

If a single bid is received, the purchasing agent should question those potential vendors who failed to respond to ascertain their reasons for not submitting a bid. If the specifications are determined to be the cause, the purchasing agent should consider rejecting the sole bid received and renew the procurement with revised specifications. If the cause for the sole bid was a poor selection of potential vendors, the purchasing agent should reject the bid and renew the procurement process with a new search for possible qualified vendors.

### **9-7.2 Alternate Items Bid**

A vendor who does not have the goods or services that meet the specifications of the invitation for bids, but who has goods or services that the vendor thinks are reasonably close, may offer those goods or services as an alternate. Alternate items may be bid because:

- The Authority's specifications are obsolete.
- The vendor's policies allow it to accept only the contracts that conform to their own corporate terms and conditions.

If an alternate item functionally meets or exceeds the specifications, and alternate items are authorized by the invitation for bids, the purchasing agent may consider the alternate item. If the alternate item bid is selected, the purchasing agent shall make a written determination justifying the acceptance of the alternate item bid.

### 9-7.3 All or None Bids

The all or none bid is one in which the vendor and not the Authority qualifies the bid by stipulating that it will only accept a contract for all items on the bid. If all or none bids are to be accepted, the invitation for bids must expressly so state. The purchasing agent should consider the following factors before determining to accept an all or none bid:

- Total is lowest: Whether the total for all of the individual vendor's low-bid items amount to less than the total for the all or none bidder.
- Administrative costs: Whether it is to the Authority's advantage to avoid the excessive administrative costs associated with making multiple awards.
- Fairness: Whether all other vendors would be treated fairly if the award was made to the lower all or none bidder.

### 9-8 Tie Bids

In the event of tie bids, the purchasing agent shall break the tie using the following three-step procedure:

- Preference to local businesses: Preference shall be given to the vendor who bids goods, services and construction produced within Albemarle County or provided by persons, firms or corporations having principal places of business in Albemarle County.
- Preference to state businesses: If granting a preference to a local business as provided in the paragraph above does not break the tie, then preference shall be given to the vendor who bids goods produced in Virginia or goods, services or construction provided by Virginia persons, firms or corporations having principal places of business in Virginia.
- Drawing lots: If granting a preference to a state business as provided in the paragraph above does not break the tie, then the tie shall be broken by drawing lots.

### 9-9 Procedure if All Bids Exceed Available Funds

If the bid from the lowest responsive and responsible bidder exceeds available funds, the purchasing agent and the using department may negotiate with the bidder to obtain a contract price within available funds, using the following procedure:

- Determination by using department and proposed reduction in scope: The using department shall provide the purchasing agent with a written determination that the apparent low bid exceeds available funds. This

determination shall be confirmed in writing by the purchasing agent. The using department shall also provide the purchasing agent with a suggested reduction in scope for the proposed purchase.

- Suggested reduction in scope: The purchasing agent shall advise the apparent low bidder in writing that its bid exceeds available funds. The purchasing agent shall also suggest a reduction in scope for the proposed procurement and invite the apparent low bidder to amend its bid proposal based upon the proposed reduction in scope.
- Addendum to bid: The apparent low bidder may submit an addendum to its bid, which shall include the change in scope of the proposed procurement, the reduction in price, and the new contract value.
- Evaluation of addendum: If the proposed addendum is acceptable, the contract may be awarded within the funds available to the apparent low bidder.
- Negotiations: The purchasing agent and the using department may conduct informal discussions with the apparent low bidder for purposes of obtaining a contract within the available funds.
- Rejection of all bids if negotiations fail: If the Authority and the apparent low bidder cannot negotiate a contract within available funds, then the purchasing agent shall reject all bids as provided in chapter 10.

# Chapter 10. Competitive Sealed Bidding: Canceling the Procurement or Rejecting All Bids

## Summary

This chapter identifies the circumstances and establishes the procedure when it is necessary or desirable to cancel the invitation for bids or to reject all bids.

| Essential Information in this Chapter   |
|---|
| <ul style="list-style-type: none"><li>• At any time prior to award of the contract, the purchasing agent may cancel the invitation for bids or reject any or all of the bids.</li><li>• The purchasing agent may cancel the invitation for bids or reject any or all of the bids for any reason, except to avoid awarding a contract to a particular responsive and responsible bidder.</li></ul> |
| Key References to the Code of Virginia  |
| Section 2.2-4301: Definitions of competitive sealed bidding and other key terms<br>Section 2.2-4303(A): When competitive sealed bidding required, generally<br>Section 2.2-4319(A): Authority to cancel or reject all bids  |

### 10-1 General

At any time prior to award of the contract, and for any reason except as provided in section 10-3, the purchasing agent may cancel the invitation for bids or reject any or all of the bids.

### 10-2 Circumstances When Cancellation or Rejection is Justified

Following is a list of circumstances in which cancellation or rejection may be considered:

- Invitation for bids too narrowly written: The purchasing agent may consider canceling the invitation for bids or rejecting all bids if he determines that the specifications or other requirements of the invitation for bids were written in such a way that precluded a reasonable pool of vendors from submitting bids. The purchasing agent should consider canceling the invitation for bids or rejecting all bids if the number of bids received is inadequate to assure that the procurement process is competitive.
- Ambiguous instructions: The purchasing agent may consider canceling the invitation for bids or rejecting all bids if, upon review of the bids, it is apparent that numerous vendors were determined to be nonresponsive for a similar reason, and it is determined that the cause for the

non-responsiveness may be the result of ambiguous instructions in the invitation for bids. The purchasing agent should consider rejecting all bids if it is determined that there is an inadequate number of responsive bidders.

- Substantial omission in the specifications: The purchasing agent may consider rejecting all bids if it is determined that an essential requirement was omitted from the specifications. The purchasing agent should consider cancellation or rejection if the purchasing agent is unable to determine whether the goods or services will meet the Authority's needs absent compliance with the omitted requirement or if, in taking into account the omitted requirement during the bid evaluation process, fairness, impartiality or competitiveness in the procurement process is compromised.
- All prices bid exceed available funds: The purchasing agent should not consider canceling the invitation for bids or rejecting all bids if the price bid by the apparent low bidder exceeds available funds unless the purchasing agent and the selection committee have first negotiated with the apparent low bidder pursuant to section 9-9.
- Reasonable suspicion of collusive bidding: The purchasing agent should reject all bids if a reasonable suspicion exists that collusive bidding has occurred, based upon the guidelines set forth in section 6-11.

This list is not exhaustive.

### **10-3 Circumstances When Cancellation or Rejection is Prohibited**

The purchasing agent shall not cancel an invitation for bids or reject all bids solely to avoid awarding a contract to a particular responsive and responsible bidder.

### **10-4 Procedure to Cancel the Invitation for Bids or to Reject All Bids**

If the invitation for bids is canceled, or if any or all of the bids received are rejected, the purchasing agent shall state his reasons in writing and place it in the contract file.

# Chapter 11. Competitive Negotiation: Procedure

## Summary

This chapter provides an overview of the procedure for procuring goods and services using the competitive negotiation procedure. The competitive negotiation procedure is permitted for the procurement of goods and services other than professional services (“nonprofessional services”) if the cost of the goods or services is expected to exceed \$50,000. The competitive negotiation procedure is required for the procurement of professional services if the cost of the services is expected to exceed \$50,000.

### **Essential Information in this Chapter**

The three key procedural steps in the competitive negotiation procedure are:

- Preparation of the request for proposals: The preparation of a request for proposals (“RFP”), which states in general terms that which is sought to be procured, specifies the factors which will be used in evaluating any proposal, including any unique capabilities or qualifications which will be required of the vendor, and contains or incorporates by reference other applicable contractual terms and conditions.
- Issuance and public notice of the RFP: The public notice of the RFP is given at least ten days prior to the date set for the receipt of the proposals by posting the notice in a public area, or publishing the notice in a newspaper of general circulation, or both. The purchasing agent also may solicit proposals directly using the Authority’s “offeror list,” which includes businesses selected from a list made available by the Department of Minority Business Enterprise.
- Negotiation and award: The purchasing agent or the selection committee negotiates with vendors who are determined to be qualified, responsible and suitable. The negotiation procedure for the procurement of goods and nonprofessional services is different from that for the procurement of professional services.

### **Key References to the Code of Virginia Applicable to this Chapter**

Section 2.2-4361: Definitions of competitive negotiation and other key terms  
Section 2.2-4303(A): When competitive negotiation required, generally  
Section 2.2-4303(C): Availability in lieu of competitive sealed bidding, generally  
Section 2.2-4303(C)(1): Availability in lieu of competitive sealed bidding, insurance  
Section 2.2-4303(C)(2): Availability in lieu of competitive sealed bidding, construction

## **11-1 General**

The competitive negotiation procedure for goods and nonprofessional services may be used if the cost of the goods or services is expected to exceed \$50,000.



The competitive negotiation procedure is required for the procurement of professional services if the cost of the services is expected to exceed \$50,000.

**Table 11-1**

| <b>The Fourteen Steps in the Competitive Negotiation Procedure</b>  |
|---|
| <ol style="list-style-type: none"><li>1. Identify the goods or services to be procured</li><li>2. Create the selection committee and prepare the request for proposals</li><li>3. Establish the procurement schedule</li><li>4. Compile a list of vendors</li><li>5. Issue the request for proposals and provide public notice thereof</li><li>6. Conduct pre-proposal conferences or site visits, if warranted</li><li>7. The submittal of proposals</li><li>8. The receipt of proposals</li><li>9. The evaluation of proposals</li><li>10. Develop a list of vendors with whom to negotiate</li><li>11. Arrange a tour of the site or the facility, if applicable</li><li>12. Conduct negotiations</li><li>13. Rank vendors of professional services</li><li>14. Negotiate a contract</li></ol> |

The remaining sections of this chapter are a step-by-step outline of the competitive negotiation procedure. The procedure to be used for a particular procurement may need to be modified to fit that procurement.

### **11-2 Identify the Goods or Services to be Procured**

The using department must identify the goods or services to be procured. It is important to develop a comprehensive definition of the goods or services to be procured. Goods should be defined using the procedure identified in chapter 6. Services should be defined using the procedure identified in chapter 12.

### **11-3 Create the Selection Committee and Prepare the Request for Proposals**

A selection committee should be established, composed of competent individuals who are able to make an intelligent selection decision based on factual information. The three key roles of the selection committee are to assist in developing the request for proposals (“RFP”), evaluate the proposals and conduct interviews and negotiations with vendors.

The RFP shall be prepared by the using department and the purchasing agent, and then be reviewed by the selection committee. Before drafting a complex RFP, it is recommended that the using department prepare a work statement. The work statement should identify the required goods or services (broken down

by tasks) to be procured in a logical sequence, assist in establishing realistic milestones or delivery schedules, and help determine supplier cost realism. Each task of the work statement should be coordinated with the RFP, and the numerical coding of tasks in the work statement and task descriptions should be identical or cross-referenced. The selection committee should critically review the description of the goods or services to be procured and the evaluation criteria and determine how, if at all, the evaluation criteria should be weighted.

The RFP should be as comprehensive as possible because the more complete it is, the better the chances are that the vendors will understand what the Authority desires to procure and what relevant experience and qualifications it should include in its response and highlight during discussions and negotiations.

The RFP must, at a minimum:

- State in general terms the goods or services that will be procured.
- Specify the criteria that will be used to evaluate the proposals, including any unique capabilities or qualifications that will be required of the vendor.
- Contain or incorporate by reference the contractual terms and conditions applicable to the procurement.

A comprehensive description of the elements of an RFP is set forth in chapter 12.

#### **11-4 Establish the Procurement Schedule**

The purchasing agent and the using department should establish a schedule that will assure that the procurement is completed on or before the date the goods or services are required. To do so, the purchasing agent and the using department should consult and determine the completion date and then identify the milestones and the dates by which each milestone should be achieved in order to assure that the procurement is timely completed. Seven to ten weeks should be allowed for the entire procurement process in order to allow proper planning and administration at each step of the selection process.

The key milestones and the minimum amount of time that should be allowed for each milestone are:

- Preparation of the RFP documents: Allow at least fifteen work days to prepare the RFP documents and issue a written RFP.
- Public notice period and the date for receipt of proposals: Allow at least ten calendar days to provide public notice of the RFP prior to the date set for the receipt of proposals.
- Evaluation of proposals, negotiation and issuance of notice of award: Allow at least fifteen work days to evaluate proposals, conduct interviews

and negotiations, and issue a notice of the award.

- Execution of contract: Allow at least ten work days to execute the contract after the notice of award of the contract.

The purchasing agent and the using department should allow more time at each stage identified above for procurements of goods or services that are not commonly procured by the Authority, procurements that are complex, and procurements that require the vendors to submit substantial amounts of information for evaluation.

#### **11-5 Compile a List of Vendors**

The purchasing agent and the using department should compile a list of vendors from staff knowledge of local vendors and through directories and lists of vendors. The purchasing agent should send RFPs directly to these vendors, in addition to the public notice of the RFP that will otherwise be provided.

#### **11-6 Issue the RFP and Provide Public Notice Thereof**

Public notice of an RFP shall be given as provided below:

- Manner of giving public notice: The purchasing agent shall provide public notice of an RFP by posting in a designated public area, or publication in a newspaper of general circulation, or both. In addition, the purchasing agent may solicit proposals directly from potential vendors, and shall include businesses selected from a list made available by the Department of Minority Business Enterprise. Public notice may also be published on the Virginia Department of General Services' central electronic procurement website and other appropriate websites.
- Notice period: The public notice shall be given at least ten calendar days prior to the date set for receipt of proposals.
- Contents of the notice: The notice shall contain, at a minimum, the following information: (1) the name of the purchasing entity; (2) a brief description of the goods or services to be procured; (3) the date and time set for receipt of proposals; (4) the requisite qualifications for vendors, if applicable; (5) the date and time of the pre-proposals conference, if applicable; (6) the name of the purchasing agent; (7) the location where RFP documents can be obtained; and (8) the legal authority for the procurement.

These are minimum requirements, and the purchasing agent may provide any additional notice that he deems appropriate.

## 11-7 Conduct Pre-proposal Conferences or Site Visits, if Warranted

A pre-proposal conference is a meeting among the purchasing agent, the selection committee and prospective vendors during which the purchasing agent and the selection committee review the specifications or the work statement in detail, explain the scope, objectives and techniques of the procurement, emphasize critical elements of the RFP, and encourage input from prospective vendors. A site visit allows prospective vendors to observe physical characteristics of the land or of structures that are relevant to the procurement. A pre-proposals conference and site visit are hereafter collectively referred to as a "pre-proposal conference."

A pre-proposal conference may resolve ambiguities, unforeseen and nonessential restrictiveness in the specifications or the work statement, or technical errors. The following are several principles that shall govern pre-proposal conferences and issues related thereto:

- When a pre-proposal conference should be held: Pre-proposal conferences may be particularly advisable when the Authority seeks to procure goods that are highly technical or complex or for consultant services contracts.
- Notice of the pre-proposal conference: If a pre-proposal conference is conducted, the public notice and the RFP must provide the time, date and location of the conference. The conference should be held as soon as possible after the RFP is issued.
- Attendance at a pre-proposal conference: Attendance of prospective vendors at pre-proposal conferences should be discretionary, not mandatory, in order to assure that qualified vendors who are unable to attend are not excluded from submitting a proposal. If attendance is mandatory, only those proposals from prospective vendors represented at the pre-proposal conference shall be accepted.
- Oral representations at the pre-proposal conference: The purchasing agent should make a written note of all inquiries and points of contention raised by the prospective vendors. Clarification may be provided at the pre-proposal conference so long as the specifications or conditions are not altered. Oral representations made at the pre-proposal conference by the purchasing agent or any member of the selection committee shall not be binding on the Authority. All material clarifications of any provision of the RFP, or the amendment of a specification or condition of the RFP, shall be made only be in writing as an addendum, as provided herein.

These are minimum requirements. The purchasing agent may add any additional requirements to a pre-proposal conference that he deems appropriate.

## **11-8 The Submittal of Proposals**

Proposals submitted shall comply with the following:

- Proposal in standard format: All proposals shall be in the format prescribed by this manual, as set forth in chapter 12.
- Changes to the proposal: All erasures, interpolations, and other changes in a proposal shall be signed or initialed by an authorized representative of the vendor.
- Delivery of proposal: The purchasing agent shall not accept oral proposals nor proposals received by telephone, fax, or other form of electronic transmission.
- Deviations: Proposals containing conditions, omissions, erasures, alterations, or items not called for in the RFP may be rejected by the Authority as being incomplete.
- Proposal must be signed: A proposal must be signed by an authorized representative of the vendor in order to be considered. If the vendor is a corporation, the proposal must be submitted in the name of the corporation, not the corporation's trade name. The vendor must indicate the corporate title of the individual signing the proposal.
- Proposal must be submitted in sealed opaque envelope: A proposal and all other documents required to be submitted as part of the proposal shall be enclosed in a sealed opaque envelope.
- Identification of proposal: The envelope containing the proposal should be sealed and marked with the RFP number, the hour and date upon which the bid must be received and the vendor's Virginia contractor registration number (if required). If an envelope does not contain the proper identification, and it is inadvertently opened in advance of the prescribed date and time for which the proposals are to be received, the purchasing agent should write an explanation of the inadvertent opening on the envelope, with the RFP number, time and date of opening. The envelope should be resealed and deposited with the other proposals.

## **11-9 The Receipt of Proposals**

The purchasing agent shall receive proposals according to the following procedure:

- Proposals must be timely received in purchasing office: All proposals shall be received in person, through the mail, or by parcel service, in the purchasing office, until, but no later than, the time and date set for the receipt of proposals in the RFP. The clock on the employee smart phone

shall be the sole clock used to determine whether a proposal is timely received.

- Timely receipt of proposals sole responsibility of vendors: It shall be the sole responsibility of the vendor under all circumstances to assure that its proposal is timely received. The Authority shall assume no responsibility in assuring that proposals sent by mail or by parcel service and delivered to the Authority Office Building will be timely received and recorded in the Administrative Office.
- Proposals must be time stamped: The time for the receipt of proposals shall be determined by the employee's smart phone. Vendors are responsible for assuring that their proposals are stamped by purchasing office personnel by the time and date for which proposals are to be received.
- Proposals kept in secure location until opened: All proposals received and time stamped will be kept in a secure location in the purchasing office until the time and date for their receipt has passed.
- Identity of vendors confidential: Prior to the time and date that proposals are to be received, the identity of the vendors and the number of proposals received is confidential, and may be disclosed only to Authority officials and only when disclosure is considered necessary for the proper conduct of the RFP process.
- Late proposals: Late proposals shall not be considered under any circumstances, and shall be returned unopened to the sender.

The purchasing agent may impose additional requirements pertaining to the receipt of proposals if such requirements are set forth in the RFP and are consistent with this manual and the Virginia Public Procurement Act.

#### **11-10 The Evaluation of Proposals: Development of a Negotiation List**

The proposals that are timely received shall be examined by the purchasing agent to identify each vendor. The selection committee is then convened to review and score each proposal based on the evaluation criteria specified in the RFP. After the committee reviews the proposals, it chooses two or more vendors who are qualified, responsible and suitable. The committee may choose a single vendor, but only if the purchasing agent documents in writing that the vendor is the only one qualified or is clearly the most qualified.

The evaluation process should consist of feature-by-feature comparisons of the proposals, the evaluation of trade-offs among competing proposals, and, if goods or nonprofessional services are being procured, cost comparisons. The selection committee should review and evaluate proposals as they affect committee members' areas of interest and expertise. All findings should be shared among

the committee members. During this step the selection committee also should check references. The committee should check references other than those listed by the vendor.

The procedure for evaluating proposals is discussed in more detail in chapter 15.

#### **11-11 Arrange a Tour of the Site or the Facility**

For design projects, a site or facility visitation prior to the negotiations or discussions will allow the vendors to observe the situation and ask questions before they finalize their presentation for the negotiations or discussions. The tour provides vendors with an important first-hand look at the Authority's needs and allows for a further exchange of information about the project. Tours are recommended for all but the simplest and most straightforward projects.

The tour should take place at least two weeks prior to the negotiations or discussions.

#### **11-12 Conduct Negotiations**

After proposals for goods or nonprofessional services are evaluated, the selection committee begins negotiations with all of those vendors deemed by the selection committee to be fully qualified and best suited among those submitting proposals.

After proposals for professional services are evaluated and before negotiations are conducted, the selection committee engages in individual discussions with all of those vendors deemed by the selection committee to be fully qualified and best suited among those submitting proposals.

After the discussion stage, the selection committee negotiates only with those vendors whose professional qualifications and proposed services are deemed most meritorious, based on not only the vendors' proposals, but also the information learned during the discussions. The vendors selected for negotiations are ranked, and the selection committee may negotiate only with the top-ranked vendor first, and if a contract satisfactory and advantageous to the selection committee cannot be negotiated at a price considered fair and reasonable, the selection committee then moves to the second-ranked vendor and attempts to negotiate a contract with that vendor, and so on. A detailed discussion of the nature, scope and conduct of the negotiations is set forth in chapter 16.

**Table 11-2**

| <b>Comparison of Procedures for Negotiations and Contract Award</b>   |   |
|---|---|
| <b>Professional Services</b>  | <b>Goods and Nonprofessional Services</b>   |
| Discussions emphasize professional competence to provide the required services  | Discussions emphasize qualifications and suitability, based on the factors in the request for proposal  |
| May discuss nonbinding estimates of total project costs   | Price may be considered, but need not be the sole determining factor  |
| Offerors ranked by qualifications and proposed services   | Offerors not ranked   |
| Negotiations begin with the offeror ranked first  | Negotiations conducted with each offeror deemed fully qualified and best suited   |
| Award to the offeror ranked first if a contract satisfactory and advantageous to the Authority can be negotiated at a fair and reasonable price; if not, begin negotiations with offeror ranked second, and so on | Award to offeror who, in Authority's opinion, has made the best proposal  |
| Authority may determine only one offeror fully qualified or clearly more highly qualified, and may negotiate and award contract to that offeror   | Authority may determine only one offeror fully qualified or clearly more highly qualified, and may negotiate and award contract to that offeror |

**11-13 Contract Award**

After the negotiations are completed with each vendor for the procurement of goods and nonprofessional services, the purchasing agent, upon the recommendation of the selection committee, selects the vendor that has made the best proposal, and awards the contract to that vendor. For the procurement of professional services, if a contract satisfactory and advantageous to the Authority can be negotiated at a price considered fair and reasonable, the contract award is made to that vendor. If a contract award cannot be made, the Authority then moves to the second-ranked vendor and attempts to negotiate a contract with that vendor, and so on.

The procedure to award a contract when the competitive negotiation procedure is used shall be as follows:

- Notice of intent to award: The purchasing agent shall post in a public place



a written announcement of the decision to award, which may be identified as a notice of intent to award. The notice of intent to award shall also include a statement that the public records pertaining to the procurement have been and are available for inspection by those vendors participating in the procurement process. The purchasing agent is not required to provide individual notice of the intent to award to any participating vendors; rather, it is each vendor's duty to ascertain when the notice of intent to award is issued and posted.

- Protest period: The receipt of the notice of intent to award by a vendor shall commence a ten-day period in which any vendor who desires to protest the decision to award a contract may do so, as provided in chapter 25.
- Contract award if no timely protest received: The purchasing agent shall not award a contract until the protest period has expired. After the protest period has expired, and if no vendor has protested the decision to award, the purchasing agent shall award the contract to the vendor identified in the notice of intent to award.
- Contract award if timely protest received: If a written protest is timely received, the purchasing agent shall take no further action to award the contract unless, upon prior consultation with the Authority attorney, the purchasing agent determines in writing that proceeding without delay is necessary to protect the public interest or unless the offer would expire. The written determination shall be placed in the contract file.
- Contract award if legal action brought: If a legal action is brought by a vendor, actual or prospective, as provided in Virginia Code § 2.2-4364, the purchasing agent shall take no further action to award the contract unless, upon prior consultation with the Authority attorney, the purchasing agent determines in writing that proceeding without delay is necessary to protect the public interest or unless the offer would expire. The written determination shall be placed in the contract file.

In his discretion, and if time is of the essence, the purchasing agent may award a contract without first posting a notice of intent to award. The purchasing agent may consult with the Authority attorney as to any matter pertaining to the decision to award a contract.

# Chapter 12. Competitive Negotiation: Elements of a Request for Proposals

## Summary

This chapter identifies the minimum elements of a request for proposals when procuring goods or services using the competitive negotiation procedure.

| <b>Essential Information in this Chapter</b>  |
|---|
| <ul style="list-style-type: none"><li>• The competitive negotiation procedure formally begins when the RFP is issued.</li><li>• The RFP must, at a minimum, describe the goods or services to be procured, and identify the applicable contractual terms and conditions, the minimum qualifications for the successful vendor, and the criteria by which each proposal will be evaluated.</li></ul> |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>  |
| Section 2.2-4301: Definitions of competitive negotiation and other key terms<br>Section 2.2-4303(A): When competitive negotiation required, generally   |

### 12-1 General

The competitive negotiation procedure formally begins when the purchasing agent issues an RFP. The RFP defines the responsibilities of the vendor as well as those of the Authority, describes the requirements for performance, and establishes criteria against which the vendor will be measured. At a minimum, the RFP must contain:

- A description, in general terms, of the goods or services to be procured.
- The contractual terms and conditions applicable to the procurement, or incorporate those terms and conditions by reference.
- A statement of any requisite qualifications of the potential vendors.
- A statement describing the criteria by which each proposal will be evaluated, including any unique capabilities or qualifications which will be required of the vendor.

The following sections discuss in detail each of the elements of an RFP. The level of detail contained in an RFP depends in part on the nature of the particular procurement.

**Table 12-1**

| <b>The Nine Elements of a Request for Proposals</b>  |
|--|
| <ol style="list-style-type: none"><li>1. The Introduction</li><li>2. General information</li><li>3. Description of the goods or services to be procured</li><li>4. The minimum qualifications of a vendor</li><li>5. Contractual terms and conditions</li><li>6. Minimum standards of a proposal</li><li>7. Required elements of a proposal</li><li>8. Submittal requirements</li><li>9. Evaluation criteria</li></ol> |

## **12-2 The Introduction**

The introduction to the RFP provides prospective vendors with general, but important, information pertaining to the procurement. The introduction should contain the following:

- Identifying information: Provide the full names of the Authority and the using department, the name of the project, and the RFP number assigned by the purchasing agent.
- Summary description of the goods or services: Briefly describe what is being procured.
- Summary explanation for the procurement: Briefly explain why the using department is procuring the goods or services. The explanation may include, as appropriate, information about the goals and objectives of the using department and how the procurement relates to the department's goals and objectives, a summary of the functions to be supported by the goods or services, or a statement that the goods will supplement or replace existing equipment.

The information provided in the introduction should be stated in clear, simple, concise language. Information that is not directly related to the procurement should not be included.

## **12-3 General Information**

The general information section of the RFP should provide information about the procurement process and instructions as to how to respond to the RFP. This section should contain the following information:

- Anticipated procurement schedule: The anticipated procurement schedule, setting forth each milestone from the date proposals must be received to the date performance of the contract will begin.

- Procurement procedure: A brief description of the competitive negotiation procedure applicable to the procurement.
- Proposal requirements: A statement that the proposal must be prepared and submitted as provided in the RFP.
- Designate proprietary information: A statement that vendors may designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential in accordance with state law.
- Identify references: Identify all documents pertinent to the procurement, such as studies, feasibility studies, surveys, drawings, plans, configurations, specifications and standards, government regulations and correspondence, and when and where the reference documents are available to prospective vendors.
- Identify the contract: Identify the proposed contract that will be used for the procurement.
- Identify contact persons: Identify each Authority contact person and his mailing address, email address, telephone number and fax number. The purchasing agent should be identified as the contact person for procedural questions pertaining to the procurement, and a representative of the using department should be identified as a contact person for questions pertaining to the goods or services to be procured.
- Solicit comments: A statement soliciting comments from all prospective vendors about the RFP.
- Information pertaining to addenda: A statement informing prospective vendors that inquiries relating to the interpretation and technical details of the RFP must be in writing and must be received by the purchasing agent, not the using department, at least seven days prior to the date proposals must be received. The statement shall include a provision advising prospective vendors to contact the purchasing agent five days before the date proposals must be received to ascertain whether addenda have been issued.
- Right to waive informalities: A statement that the purchasing agent may waive informalities in any proposal.
- Right to cancel the procurement or reject all offers: A statement that, at any time prior to award of the contract, the purchasing agent may cancel for any reason the RFP, or reject any or all of the proposals, as provided by law.

The purchasing agent should include any other general information when appropriate for a particular procurement, such as anticipated funding or budgeting requirements.

#### **12-4 Description of the Goods or Services to be Procured**

The goods or services to be procured should be described in detail. If goods are being procured, the description should be in the form of a specification developed pursuant to chapter 7.

If services are being procured, the description should state in simple non-technical terms the services to be performed by the vendor. The description should include the following information:

- Deliverables: All items to be delivered and services to be performed by the vendor, including operating manuals, training, repair parts, software and reports. The services to be performed should be identified by each required task, set forth in a logical sequence.
- Mandatory approaches: If a service must be performed in a particular manner, it must be identified.
- Quality assurance: Identify quality assurance requirements applicable to performance of all items to be delivered and services to be performed.
- Questions requiring answers: Identify all questions that the Authority has that require answers.

This list is not exhaustive. The primary purpose of the description is to inform prospective vendors what the Authority desires to procure.

#### **12-5 Cost**

An RFP for the procurement of goods and nonprofessional services may request that prospective vendors include the cost of the goods or services in their proposals. However, cost should not be the sole determining factor when selecting those vendors deemed to be suitable for negotiation.

An RFP for the procurement of professional services may not request that prospective vendors include the cost of the services or even furnish estimates of man-hours.

#### **12-6 Minimum Qualifications of Vendors**

The RFP shall specify the requisite qualifications of the successful vendor by identifying the minimum necessary experience, background, or expertise in the area of the procurement. The qualifications will vary depending on the goods or services to be procured. However, they may not be so onerous so as to restrict

competition. The qualifications of vendors are discussed in more detail in chapter 23.

#### **12-7 Contract Terms and Conditions**

The contract terms and conditions contained in or attached to an RFP shall be only those terms and conditions developed by the purchasing agent and the Authority attorney. The using department shall not substitute any term or condition.

- General contract terms and conditions: The RFP shall contain general terms and conditions for doing business with the Authority that apply to all procurements by the Authority.
- Specific terms and conditions: The RFP shall also contain terms and conditions that are specific to the procurement.

These terms and conditions are set forth in the Appendix, and are subject to change from time to time by the purchasing agent and the Authority attorney.

#### **12-8 Minimum Standards of a Proposal**

The RFP shall include a section that sets forth the required standards of a proposal to assure that the Authority receives information from each vendor in a consistent format. The minimum standards of a proposal are as follows:

- Proposal must be in writing: The proposal shall be in writing, in legible text.
- Proposal must be in a standard format: The proposal shall be in a standard format, provided by the Authority. The reasons for this requirement are: (1) to place vendors of different sizes on a more equal basis; and (2) to assist the purchasing agent, the using department and the selection committee in its evaluation of the proposals, since all vendors will provide similar information and it will be easier to make comparisons and determine which vendors are less qualified.

The purchasing agent may impose other standards including, but not limited to, page limitations.

#### **12-9 Required Elements of a Proposal**

The RFP shall include a section that sets forth the required elements of a proposal to assure that the Authority receives relevant information from each vendor. The required elements of a proposal are as follows:

- Identification of vendor: The name of the vendor, the location of the vendor's principal place of business and, if different, the place of

performance of the proposed contract.

- Identification and experience of key personnel: The names, abilities, qualifications and experience of all personnel who would be assigned to work on the project. This element is required for the procurement of services, but may be waived for the procurement of goods.
- Discussion of the project: A statement of the vendor's understanding of the problem, the work to be done, or the program, and the approach to be used to achieve the objectives of the procurement. For the procurement of services, this discussion should also include a plan giving as much detail as is practical explaining how the services will be performed. The plan should include a list of the key verifiable milestones in the project.
- Identification of prior experience: Identification of all other contracts under which goods or services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time.

Other elements may be required, in the discretion of the purchasing agent. In requiring additional elements, the purchasing agent should consider the evaluation criteria established for the procurement, in order to assure that the proposals will address all of the evaluation criteria.

#### **12-10 Submittal Requirements**

The RFP shall identify all of the bid submittal and receipt requirements identified in sections 11-8 and 11-9.

#### **12-11 Evaluation Criteria**

The RFP shall specify those criteria determined by the purchasing agent, the using department and the selection committee to be relevant and material to properly evaluate a proposal. For the procurement of goods and services other than construction and professional services, the evaluation criteria may include best value concepts, which allow consideration of the overall combination of quality, price and other elements that in total are optimal relative to the Authority's needs. The RFP should also indicate the relative importance of each criterion. Criteria that will not affect the determination of whether a vendor is qualified, that will preclude otherwise competent vendors from competing, or that the selection committee will be unable to judge, should not be included. In addition, the number of evaluation criteria should not be so numerous so as to make it impossible for the selection committee to determine whether a vendor has satisfied all of the criteria.

See chapter 13 for a detailed discussion on developing evaluation criteria and weighting those criteria.

# Chapter 13. Competitive Negotiation: Evaluation Criteria

## Summary

This chapter discusses the procedure for developing relevant and material evaluation criteria and methods to weight the criteria to score a proposal.

| <b>Essential Information in this Chapter</b>   |  |
|--|--|
| <ul style="list-style-type: none"><li>• The RFP must identify those criteria determined by the purchasing agent, the using department and the selection committee to be relevant and material to properly evaluate a proposal.</li><li>• The criteria may include the vendor's plan for providing the goods or services, qualifications, experience with similar projects, past performance, availability, reputation and familiarity with the Authority.</li><li>• If criteria are weighted, it should be done with caution to assure that they are properly weighted in accordance with the importance of each criterion.</li><li>• The RFP should indicate the relative importance of the criteria by describing the decisional logic that the selection committee intends to use to make the selection decision.</li></ul> |  |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>   |  |
| Section 2.2-4301: Definitions of competitive negotiation and other key terms<br>Section 2.2-4303(A): When competitive negotiation required, generally<br>Section 2.2-4302.2: Process for competitive negotiation   |  |

### **13-1 General**

The RFP must identify those criteria determined by the purchasing agent, the using department and the selection committee to be relevant and material to properly evaluate a proposal. The number of evaluation criteria should not be so numerous so as to make it impossible for the selection committee to determine whether a vendor has satisfied them all. As noted in chapter 12, for the procurement of goods and services other than construction and professional services, the evaluation criteria may include best value concepts, which allow consideration of the overall combination of quality, price and other elements that in total are optimal relative to the Authority's needs.

### **13-2 Types of Evaluation Criteria**

Evaluation criteria can be divided into three primary categories: (1) technical capability; (2) managerial capability; and (3) competitiveness and reasonableness of cost:

- Technical criteria: Technical criteria include the vendor's understanding of the procurement; the vendor's management plan; the quality of the



proposed design for certain goods; the experience and qualifications of key personnel; and vendor resources.

- Management criteria: Management criteria include the vendor's experience on similar projects; the vendor's performance on similar projects; the vendor's available facilities and resources for the project; and the vendor's plan for management and control of the project.
- Cost criteria: For the procurement of goods and nonprofessional services only, cost criteria include the vendor's proposed price (for fixed-price contracts); the realistic expected cost of performance, plus any proposed fixed fee (for cost-reimbursement contracts); and other costs, such as that of ownership, including transportation costs, and life-cycle costs (installation, operation, maintenance, security and disposal).

### **13-3 Evaluation Criteria to be Included in a Request for Proposals**

The evaluation criteria that should be included in an RFP are listed below. The criteria at the top of the list are relatively more important than those at the bottom of the list.

- Plan for performing services: When services are being procured, the vendor's plan for performing the required services.
- Qualifications of the vendor: The qualifications and experience of the vendor and, in particular, the project team members, including the consultants, proposed to be assigned to the project.
- Experience with similar projects: A record of recent past performance of similar projects of similar scope.
- Past performance: The past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of the work, and the ability to meet schedules.
- Availability of the vendor: The personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting. This criterion should include considering the current and projected workloads of the vendor that would affect its ability to perform the required work on schedule, and the availability of key personnel to be assigned to the project.
- Reputation: The vendor's reputation for personal and professional integrity and competency.
- Familiarity with the Authority: The familiarity of the vendor with the Authority and, if services are being procured, familiarity with the problem to be addressed by the procurement as it exists in the Authority.

This list is not exhaustive, though it does address the technical and management criteria that should be included in all procurements using the competitive negotiation procedure. Although the list of criteria may be expanded for a particular procurement, the purchasing agent, the using department, and the selection committee should avoid creating sub-criteria that will make it difficult to apply the criteria.

**Table 13-1**

| <b>Sample Evaluation Criteria for a Consultant</b>   |  |
|--|--|
| <ul style="list-style-type: none"> <li>• The methodology proposed</li> <li>• Qualifications and experience of assigned workers</li> <li>• Understanding of the project and its objectives</li> <li>• The degree of completeness of the vendor's response to the specific requirements of the RFP</li> <li>• Experience and history of the vendor in the disciplines covered by the RFP</li> <li>• Availability of personnel and whatever else is necessary for the performance of the work</li> <li>• The cost of the services to be provided</li> </ul> |  |

**13-4 The Relative Importance of the Evaluation Criteria**

The RFP should indicate the relative importance of the criteria by describing the decisional logic that the selection committee intends to use to make the selection decision. This may be accomplished in various ways, including the following:

- List by relative importance, differences small: List the criteria by relative importance, without assigning a specific weight to each; state in the RFP that the difference between the importance assigned to any one criterion and the criteria immediately preceding or following is small.
- List in descending order, predominant criteria: List the criteria in descending order of importance; identify which criteria are predominant.
- Identify most important class of criteria: State which class of criteria is most important; for example, state that the technical criteria is more important than the cost criteria.
- Identify the relative emphasis to be placed on classes of criteria: State that primary emphasis will be placed on one class of criteria, a lesser degree of importance will be placed on other classes, and include descriptions of the relative weight to be given by identifying that criterion within a class where satisfaction is mandatory, highly desirable, or desirable.

- **Numerical weighting:** Identify the weight given to each criterion by assigning a numerical value to that criterion. A Request for Proposal must indicate whether a numerical scoring system will be used in evaluation of the proposal. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria must be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.

Whether criteria should be weighted and how they should be weighted are addressed in sections 13-5 and 13-6.

### **13-5 Whether to Weight the Criteria**

The purchasing agent and the selection committee may use its discretion in determining how to score proposals, provided that it is not arbitrary. There are advantages and disadvantages to weighting the evaluation criteria listed in an RFP. If criteria are weighted, it should be done with caution to assure that they are properly weighted in accordance with the importance of each criterion.

Weighting criteria can be a problem if the selection committee later wants to elevate the importance of a particular criterion that initially was given a lower weight. The selection committee should consider to not weight the evaluation criteria until the interview.

### **13-6 Methodologies for Weighting Criteria**

Following are several methodologies that can be used to weight the criteria. In selecting any of these or any other methodologies, the key is to have a method for evaluating proposals that is reasonable, fair and objective to the extent practicable.

- **Fixed weights:** This is a simple mathematical weighting system. The selection committee assigns weight to each evaluation criterion by percentage distribution.
- **Variable weights:** This weighting system allows more flexibility in the weighting of criteria where it is determined that, as to satisfying certain criteria, proposals are of relatively equal merit. In such a case, the selection committee could give greater weight to other criteria. For example, the weight given to cost as a criterion could increase as the selection committee determines that the proposals are relatively equal based on other certain criteria evaluated.
- **Trade-off analysis:** This weighting system requires the selection committee to evaluate the value of technical differences between proposals in order to determine if these differences justify paying the cost or price differential. The technical criteria are point scored and the differences between

technical proposals are then traded off against the differences in price or cost. For example, the RFP may inform vendors that an award will be made on the basis of a cost-technical trade-off, with technical being of more relative importance than cost. The selection committee has a great deal of discretion when using this system. When this system is used, the RFP must inform vendors that the selection committee will determine the weight to be accorded cost or price criteria after determining the relative merits of the technical proposals. The cost or price criteria are not scored because the weight to be accorded them can only be judged after the relative merits of the proposals have been determined from a technical standpoint.

- Go, no-go: This weighting system is frequently used in situations in which goods are being procured and are to be subjected to testing. The technical and management criteria are scored on a go, no-go basis, which means that a technical or management element of a proposal is either adequate (go) or inadequate (no-go). If the element is inadequate, the vendor may be asked to revise its proposal; if the factor is adequate, it is no longer relevant in the evaluation process and an award is made on the basis of the other criteria. If this weighting system is used for the procurement of goods, the RFP should provide for the award to the vendor with the lowest overall price among those proposals found acceptable in the technical and management areas.

As an alternative or in addition to the weighting systems described above, the selection committee should also consider adopting decision rules. A decision rule tells the committee how to deal with a criterion under varying conditions. For example, a decision rule might be: “if management is rated anything less than satisfactory, the entire proposal is unacceptable” or, “if the proposed price is 30 percent higher than the using department’s estimate, it will be judged as being potentially unrealistic and the vendor’s proposal will be reevaluated to determine if there is a misunderstanding of the requirements.”

### **13-7 Scoring Proposals**

After the system for weighting the criteria is determined, the selection committee must also determine how the proposals will be scored. There are several methods by which proposals may be scored, including by adjective (excellent, good, fair . . .), numerical (10, 9, 8 . . .), narrative and ranking. A narrative evaluation may be the most effective scoring procedure in situations where the selection committee must present its results to the Board of Directors.

Narratives can communicate specific information that adjectives and numbers cannot.

# Chapter 14. Competitive Negotiation: Addenda, Modifications, and Withdrawals

## Summary

This chapter address situations in which the RFP is revised by an addendum or the proposal submitted by a vendor is either modified or withdrawn.

| <b>Essential Information in this Chapter</b>   |  |
|--|--|
| <ul style="list-style-type: none"><li>• The purchasing agent may modify an RFP by issuing a written addendum no later than five calendar days prior to the date proposals must be received; if the addendum modifies the date proposals must be received, it may be issued at any time prior to that date.</li><li>• A proposal may be modified by the vendor any time prior to the time and date proposals must be received.</li><li>• A proposal may be withdrawn at any time, and a withdrawn proposal may be resubmitted any time prior to the time and date proposals must be received.</li></ul> |  |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>   |  |
| Section 2.2-4301: Definitions of competitive negotiation and other key terms<br>Section 2.2-4303(A): When competitive negotiation required, generally  |  |

### **14-1 General**

Once the RFP is issued, the course of the procurement process is still subject to change. It may become apparent to the purchasing agent, the using department or the selection committee that the RFP contains an omission or an ambiguity that must be corrected or clarified prior to the date that proposals must be received. A vendor may realize after its proposal has been submitted that it contains errors or omissions that must be corrected or that compel the vendor to desire to withdraw its proposal altogether.

### **14-2 Amending a Request For Proposals by Addendum**

If, after an RFP is issued but prior to the receipt of proposals, the RFP must be amended or clarified, the purchasing agent may issue addenda that modify the RFP. The following procedures shall apply:

- Authority to issue an addendum: The purchasing agent shall have the sole authority to issue an addendum.
- Initiation of an addendum: An addendum may be initiated by the

purchasing agent in his discretion, upon his own determination of the need, upon the request of the using department, or upon the request of a prospective vendor who requests clarification of a provision of the RFP.

- Addendum must be in writing: All addenda shall be in writing. No oral modification of any provision of an RFP shall be permitted.
- Timing of issuance of addendum: If the purchasing agent determines that an addendum is necessary, it shall be issued no later than five calendar days prior to the date proposals must be received. An addendum extending the date for the receipt of proposals or withdrawing the RFP may be issued any time prior to the date proposals must be received.
- Notifying prospective vendors about addendum: An addendum shall be provided to all potential vendors who were provided an RFP. Acceptable means of providing addenda to potential vendors are hand delivery, first class mail, fax with telephone confirmation of receipt, or other means designed to assure receipt of the addenda as soon as possible.
- Changing the date proposals must be received: When issuing an addendum, the purchasing agent should consider the effect on the time for prospective vendors to prepare their proposals. If additional preparation time is likely to be required by the vendors, the addendum should also extend the date proposals must be received by a reasonable period of time.

#### **14-3 Modifying a Proposal Prior to Proposal Receipt Date and Time**

A proposal may be modified by the vendor, subject to the following requirements:

- Notification: The vendor shall notify the purchasing agent in writing of its intentions to modify its proposal.
- Time to modify: If the vendor modifies its proposal, it must submit and the purchasing office must receive the corrected proposal before the deadline for receipt of proposals.
- Cost may not be revealed: If cost is an evaluation criterion, the modification must be so worded by the vendor as to not reveal the original amount of the proposal.

#### **14-4 Withdrawing a Proposal**

A vendor may withdraw from the competitive negotiation process at any time, prior to and after the date time which proposals must be received. The vendor shall notify the purchasing agent in writing of its intention to withdraw. A withdrawn proposal may be resubmitted to the purchasing agent up to the time and date proposals must be received.

# Chapter 15. Competitive Negotiation: Evaluating Proposals

## Summary

This chapter describes the steps to be taken in order to properly evaluate each proposal received in response to an RFP.

| <b>Essential Information in this Chapter</b>  |  |
|---|--|
| <ul style="list-style-type: none"><li>• The selection committee reviews and scores each proposal based on the evaluation criteria specified in the RFP.</li><li>• The evaluation process should consist of feature-by-feature comparisons of the proposals, the evaluation of trade-offs among competing proposals, and, if goods or nonprofessional services are being procured, cost comparisons.</li><li>• The scope of the evaluation of each proposal should cover, at a minimum, the proposal's general quality and responsiveness, and the vendor and its personnel.</li><li>• The selection committee should use the information contained in each proposal to evaluate its merit. Other relevant information from previous surveys, field technical reports and advisors and consultants may be used to evaluate criteria other than technical criteria.</li><li>• An RFP for the procurement of goods or nonprofessional services that requests pricing information should be evaluated using either a cost, price or value analysis.</li><li>• The selection committee may exclude a vendor from further consideration in the procurement process if it determines that its proposal is unacceptable; whether a proposal is acceptable or unacceptable should not be determined on the basis of a predetermined cut-off score.</li><li>• Upon completion of the evaluation of the proposals, proposals are classified as being either "acceptable", "potentially acceptable" and "unacceptable."</li></ul> |  |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>  |  |
| Section 2.2-4301: Definitions of competitive negotiation and other key terms<br>Section 2.2-4303(A): When competitive negotiation required, generally   |  |

### 15-1 General

The selection committee reviews and scores each proposal based on the evaluation criteria specified in the RFP. After the committee reviews the proposals, it chooses two or more vendors who are qualified, responsible and suitable. The committee may choose a single vendor, but only if the purchasing agent documents in writing that the vendor is the only one qualified or is clearly the most qualified.

The purchasing agent then coordinates negotiations with those vendors submitting proposals that are acceptable or potentially acceptable, and issues a notice to those vendors whose proposals were determined to be unacceptable.

## 15-2 The Evaluation Process

After the proposals are opened and the vendors are identified, the selection committee is convened. Before the first committee meeting, the purchasing agent should prepare scoring forms. Evaluation must be based only on the criteria specified in the RFP. Other criteria cannot be added or substituted.

The evaluation process should consist of feature-by-feature comparisons of the proposals, the evaluation of trade-offs among competing proposals, and, if goods or nonprofessional services are being procured, cost comparisons. The selection committee should review and evaluate proposals as they affect committee members' areas of interest and expertise. All findings should be shared among the committee members. During this step the selection committee also should check references. The committee should check references other than those listed by the vendor.

**Table 15-1**

| <b>Techniques to Insure Fairness in the Evaluation Process</b>  |  |
|---|--|
| <ul style="list-style-type: none"><li>• Have technical and cost elements of a proposal evaluated by different groups of the committee, with cost information withheld from the technical personnel.</li><li>• Have the same evaluators review each proposal or portion of a proposal.</li><li>• The committee should select a member to conduct references of acceptable vendors.</li><li>• During reference checks, the committee member should obtain information as to how the vendor performed for the organization, the type and extent of claims filed, problems that occurred during the contract term and how they were resolved, and the vendor's reliability and professionalism. During interviews, any questions arising from reference checks should be asked.</li></ul> |  |

The selection committee should select the top three to five proposals to move on to the negotiation or discussion stage. The process becomes cumbersome when more than five vendors are considered.

## 15-3 The Scope of an Evaluation

The evaluation of proposals by the selection committee is limited to the criteria set forth in the RFP. At a minimum, the scope of the evaluation of each proposal should cover the following:

- General quality and responsiveness: Responsiveness to terms, conditions and time of performance; completeness and thoroughness; understanding of the problem or of the work to be performed; and the proposed approach to be used.



- Organization and personnel: Evidence of good organizational and management practices; qualifications of personnel; experience and past performance; financial condition; and, for goods and nonprofessional services, price and bid-price breakdown, or price range and cost schedule.

The selection committee must also evaluate each proposal for satisfaction of all other criteria set forth in the RFP.

#### **15-4 Information Used to Evaluate Proposals**

The selection committee should use the information contained in each proposal to evaluate its merit. However, it may also use other relevant information from previous surveys, field technical reports and advisors and consultants. If information not contained in a proposal is used, it should be considered to evaluate all proposals, and vendors should be notified that the outside information is being considered.

For the evaluation of technical criteria, only the information contained in each proposal should be considered. However, the selection committee may request that a vendor provide additional technical information. For cost analysis, field pricing reports and audit reports may be used.

#### **15-5 Evaluating Costs**

An RFP for the procurement of goods or nonprofessional services may request that a prospective vendor include pricing information in its proposal. This pricing information should be treated as nonbinding, primarily because negotiations may bring to light additional needs or requirements not identified in the RFP, or because some anticipated services may not be required.

Nevertheless, if an RFP for the procurement of goods or nonprofessional services identifies cost as an evaluation criteria, it must be evaluated. Following are three different ways in which the cost of a procurement may be evaluated:

- Cost analysis: This analysis consists of reviewing and evaluating separate cost elements and proposed profit of: (1) a vendor's costs or pricing data; and (2) the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion as to the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. This analysis requires that the committee evaluate specific elements of cost, the necessity for certain costs, the reasonableness of the amounts estimated for the necessary costs, the reasonableness of allowances for contingencies, the basis used for allocation of indirect costs, the appropriateness of allocations of particular indirect costs to the proposed contract, and the reasonableness of the total cost or price.

- Price analysis: This analysis is made by examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. In making this analysis, consideration must be given to any differing terms and conditions. Price analysis is used to determine if a price is reasonable and acceptable, and involves an evaluation of the prices for the same or similar goods or services. This analysis requires the selection committee to evaluate the price submissions of prospective vendors in the current procurement; prior price quotations and contract prices charged, prices published in catalogues or price lists; prices available on the open market; and in-house estimates of cost.
- Value analysis: This analysis evaluates the function of a product and its related costs in order to determine its inherent worth, or value, to determine if the price is consistent with what the goods or services should cost. This analysis requires that the committee evaluate what the goods or services provide to the Authority, the life-cycle costs, whether there are other ways in which the service or function could be obtained and what it would cost, and whether there are features of the goods or services that could be modified or eliminated.

The selection committee must determine how cost information will be evaluated before the evaluation process begins.

#### **15-6 Determining Whether a Proposal is Unacceptable**

The selection committee may exclude a vendor from further consideration in the procurement process if it determines that its proposal is unacceptable. The committee should not determine which proposals are unacceptable on the basis of a predetermined cut-off score. Rather, those proposals determined to be unacceptable should be those that are not close to being acceptable because of deficiencies that are not easily correctable.

A proposal must contain sufficient information so that the selection committee knows what is being proposed. An informational deficiency should be considered material, and the proposal unacceptable, only after the selection committee considers: (1) the detail called for in the RFP; (2) whether the omissions make the proposal unacceptable or merely inferior; (3) the scope and range of the omissions; (4) whether the proposal offers significant cost savings; and (5) the number of offerors in the competitive range.

A proposal should not necessarily be determined to be unacceptable solely because it fails to conform to all of the requirements of the RFP. The selection committee has broad discretion in determining whether a proposal is acceptable, potentially acceptable or unacceptable, as long as its decision is neither arbitrary or capricious. The key question is whether the proposal has a reasonable chance of being selected for award.

Following are examples of deficiencies in a proposal that the selection committee may determine to be material and to render the proposal unacceptable:

- Fails to satisfy technical objectives: The proposal is incapable of satisfying the technical objectives of the RFP.
- Material deficiencies: The proposal contains deficiencies that are so material as to preclude any possibility of upgrading the proposal except through major modifications or revisions.
- Extremely low rating: The proposal is rated so low that any attempt to upgrade the proposal to an acceptable level would require an unreasonable and unfair degree of assistance from the Authority.
- Technical issue not clarified: The proposal is technically unacceptable and the vendor fails to timely respond to a request for clarification.
- Price omissions: The proposal omits a number of required prices.
- Feasibility of approach unsupported: The proposal fails to include detailed information establishing the feasibility of the vendor's proposed approach.
- Addendum not acknowledged: The vendor fails to acknowledge receipt of an addendum to the RFP where offered prices would have been significantly increased by the addendum and vendors were advised that failure to acknowledge the amendment would result in rejection of the proposal.

A vendor should not be excluded if there is a close question as to whether its proposal is acceptable, or if information deficiencies in the proposal can be corrected by information obtained during the negotiation process, particularly if the deficiencies are the result of deficiencies in the RFP.

#### **15-7 Establishing a Short-list of Vendors**

Upon completion of the evaluation of the proposals, the selection committee should classify each proposal either "acceptable", "potentially acceptable" or "unacceptable." Thereafter, the committee shall invite two or more vendors it deems fully qualified, responsible and suitable, to interview with the committee.

The Authority is not required to interview all vendors who submit proposals. The number of vendors selected depends in part on the size, scope and complexity of the project, the number of qualified proposals, and the time available to complete the selection process.

If the purchasing agent, on the recommendation of the selection committee, determines in writing and in his sole discretion that only one vendor is fully qualified, or that one vendor is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that vendor.

Vendors whose proposals are unacceptable should be notified by the purchasing agent that their proposals were removed from further consideration. The notice should be in writing and advise the vendors of the decision and express appreciation for their participation in the process.

# Chapter 16. Competitive Negotiation: Negotiations

## Summary

This chapter establishes the procedure for conducting negotiations with vendors selected by the selection committee following evaluation of the proposals.

| <b>Essential Information in this Chapter</b>   |  |
|--|--|
| <ul style="list-style-type: none"><li>• Before negotiations begin with the selected vendors, the selection committee should request any additional information from the vendors, provide advance information to vendors, arrange a tour of the site or the facility, if appropriate, schedule the negotiations, identify who should attend, and visit each vendor's office and recent projects, if appropriate.</li><li>• Negotiations must be confined to the vendor's proposal and its identified deficiencies in relation to the requirements of the RFP, and the requirements and format of the proposed written contract.</li><li>• The vendor may elaborate on its qualifications during negotiations and may revise, modify or alter its proposal.</li><li>• The evaluation criteria established by the selection committee guide the negotiations.</li><li>• Negotiations should be conducted in a way to arrive at a complete agreement on all basic issues, and not leave any issues for later negotiation.</li><li>• If there is a concern about cost or price being too high or too low in the procurement of goods or nonprofessional services, the selection committee should advise the vendor during the negotiations so that the vendor may submit a revised cost proposal.</li></ul> |  |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>   |  |
| Section 2.2-4301: Definitions of competitive negotiation and other key terms   |  |

### **16-1 General**

Each vendor selected for negotiations (goods or nonprofessional services) or discussions (professional services), shall be invited to an interview combined with an oral presentation. For simplicity, negotiations, discussions and interviews and presentations are referred to as "negotiations."

Negotiations at this stage provide an opportunity to compare the different approaches, qualifications and experiences of the vendors. Negotiations also allow the selection committee to compare the personal styles of each vendor's managers and key personnel, since the vendor selected will be closely associated with the Authority's staff over a period of time. The selection of a vendor is addressed in chapter 17.

The negotiation procedure applicable to the procurement of goods or

nonprofessional services differs from the procedure for the procurement of professional services. These procedures are summarized in sections 16-2 and 16-3.

## **16-2 Negotiation Procedure for the Procurement of Goods or Nonprofessional Services**

If goods or nonprofessional services are being procured, negotiations are conducted with each of the vendors selected. Price is considered, but need not be the sole determining factor. After negotiations have been conducted with each vendor, the selection committee shall recommend the vendor that, in its opinion, has made the best proposal. With the agreement of the head of the using department, the purchasing agent shall award the contract to that vendor.

## **16-3 Negotiation Procedure for the Procurement of Professional Services**

If professional services are being procured, the negotiation process has three steps:

- Negotiations with all selected vendors: Negotiations are conducted with each of the vendors selected. The vendors should be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the procurement, as well as alternative concepts. The selection committee may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Repetitive informal negotiations are permissible.
- Selection and ranking: At the conclusion of the first negotiation stage, the purchasing agent, on the recommendation of the selection committee, selects in the order of preference two or more vendors whose professional qualifications and proposed services are deemed most meritorious. This selection is based on the evaluation factors stated in the RFP and all of the information learned during the discussion stage.
- Negotiation of contract: After the vendors are selected to advance to the next round and ranked, a second round of negotiations are then conducted, beginning with the vendor ranked first. If a contract satisfactory and advantageous to the Authority can be negotiated at a price considered by the purchasing agent to be fair and reasonable, the award shall be made to that vendor. Otherwise, negotiations with the vendor ranked first shall be formally terminated and negotiations shall be conducted with the vendor ranked second, until a contract can be negotiated at a fair and reasonable price. This process continues until a contract can be successfully negotiated with a vendor, if at all.

**Table 16-1**

| <b>Comparison of the Two Competitive Negotiation Procedures</b>                |  |
|--|--|
| <b>Professional Services</b>   | <b>Goods and Nonprofessional Services</b>  |
| Discussions emphasize professional competence to provide the required services | Discussions emphasize qualifications and suitability, based on the factors in the request for proposal |
| May discuss nonbinding estimates of total project costs                        | Price may be considered, but need not be the sole determining factor                                   |
| Offerors ranked by qualifications and proposed services                        | Offerors not ranked  |
| Negotiations begin with the offeror ranked first                               | Negotiations conducted with each offeror deemed fully qualified and best suited                        |

**16-4 Preparing for Negotiations**

Before negotiations begin with the selected vendors, there are several preparatory steps to be taken to assure that the interviews are useful in selecting the most qualified vendor.

- Request additional information: The selection committee may require each vendor to submit additional written materials, which should be delivered sufficiently in advance of the negotiations. The written submission may cover, as appropriate, responses to questions about points in the original proposal that may not have been clear, a non-binding estimate of the cost of services (goods or nonprofessional services only), a draft budget, staffing charts, schedules, and an estimate of the hours to be spent on the project by principals.
- Provide advance information to vendors: Vendors should be given as much advance information as possible, including the date, place and time of the negotiations; the date for a tour of the site or facilities, if appropriate; a list of project issues; any feasibility studies, project program or other background information not previously provided; the size and makeup of the selection committee; the time allocated for negotiations; a brief explanation of the selection process; and the evaluation criteria for negotiations. Each vendor should be provided identical information.
- Arrange a tour of the site or facility: For design projects other than those that are the simplest and most straightforward, a site or facility visitation prior to negotiations will allow vendors to observe the situation and ask questions before they finalize their presentation for negotiations. Tours should be made available for the entire group of vendors. If time permits, the tour should take place at least two weeks prior to negotiations.

- Schedule negotiations: The schedule for negotiations should be made alphabetically, by lot, or some other means, rather than in the order of each vendor's scoring during the proposal stage. All negotiations should be scheduled on the same day so that the members of the selection committee can compare all vendors while the information is still fresh in their minds. This will ensure consistent evaluation of the vendors. At least 45 minutes should be allotted for each interview, and a 15 minute free period should be provided between each vendor. This will allow ample time for negotiations and a question and answer period, and for the selection committee members to discuss negotiations with the vendor among themselves before beginning negotiations with the next vendor.
- Identify who should attend negotiations: The purchasing agent should request that a vendor's key personnel who would actually be assigned to the project appear at the negotiations. Representatives from the using department should also attend each negotiation.
- Visit each vendor's office and recent projects: For large projects, the selection committee should consider visiting each vendor's office and its recent projects.

This list is not exhaustive, and the purchasing agent should take all other steps in preparation of the negotiations that he deems necessary and appropriate.

#### **16-5 Scope of Negotiations**

Negotiations must be confined exclusively to the vendor's proposal and its identified deficiencies in relation to the requirements of the RFP, and the requirements and format of the proposed written contract. During negotiations, the vendor may elaborate on its qualifications and may revise, modify or alter its proposal so that the Authority can obtain the best and final offer.

For the procurement of goods and nonprofessional services, the Authority may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of the price for services.

The selection committee shall not:

- Help a vendor bring its proposal up to the level of other proposals through successive rounds of discussion.
- Disclose technical information to a vendor that results in improvement of its proposal.
- Indicate to a vendor a cost or price that it must meet to obtain further consideration.



- Disclose proprietary information, technical information or ideas, or cost information of another vendor.
- Advise a vendor of its price standing relative to another vendor.
- Disclose the relative strengths and weaknesses of competing vendors.
- Ask for nonbinding estimates of costs for professional services at this stage of the procedure.

During the negotiation process, the selection committee must be sensitive not to disclose any unauthorized information that may provide an unfair advantage to one vendor over other vendors.

#### **16-6 Negotiation Guidelines**

The evaluation criteria established by the selection committee, which guided the selection of vendors for the negotiations stage, also guide the negotiations themselves. Following is a brief summary of some recommended evaluation criteria, with an explanation of what those criteria allow the selection committee to evaluate during negotiations:

- Understanding of project requirements: To evaluate the vendor's analysis, preparation and level of interest.
- Approach or methodology: To evaluate the vendor's creativity and problem solving ability.
- Key personnel: To evaluate the personal qualifications and professional skills of key individuals.
- Relevant vendor experience: To evaluate relevant related projects presented as previous work of the vendor.
- Relevant individual experience: To evaluate related projects presented as previous work of key personnel.
- Consultant and in-house resources: To evaluate the vendor's abilities and the importance of consultant or in-house support services.
- Technical project management: To evaluate the vendor's abilities related to technical functions, such as project cost controls, construction observation, and time schedules.
- Responsiveness to the County's concerns: To evaluate the vendor's ability to form successful working relationships and communications with the Authority.

- Method of compensation: To evaluate the vendor's method of determining compensation.

The selection committee should raise other questions in order to evaluate other important or relevant issues raised by the vendor.

#### **16-7 Conducting Negotiations: Generally**

The selection committee is responsible for conducting negotiations in a manner that will ultimately lead to the award of a contract to a vendor. The objective of the negotiation process is to arrive at a complete agreement on all basic issues, and not leave any issues for later negotiation. Thus, negotiations should be conducted so that best and final offers can be accepted without the need for further negotiations.

The following are general guidelines for conducting negotiations, during which the selection committee should:

- Control: Control all discussions.
- Identify deficiencies: Advise the vendor of deficiencies in its proposal so it has the opportunity to satisfy the RFP's requirements. (See section 16-8 below)
- Resolve uncertainties: Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal. (See section 16-8 below)
- Resolve mistakes: Resolve any suspected mistakes by calling them to the vendor's attention as specifically as possible, without disclosing information concerning other vendors' proposals or the evaluation process. (See section 16-8 below)
- Opportunity to revise: Provide the vendor a reasonable opportunity to submit any cost, price, technical or other revisions to its proposal that may result from the interviews (goods or nonprofessional services only).
- Cost or price: Inform a vendor that its cost or price is considered to be too high or unrealistic (goods or nonprofessional services only). (See section 16-8 below)

The selection committee should document its proceedings and final decision in order to answer any questions that may arise about the final decision. However, individual selection committee members should be careful about retaining personal notes made during the selection process because those notes may be subject to public disclosure.

## **16-8 Conducting Negotiations: Addressing Deficiencies, Uncertainties and Mistakes in a Proposal**

Negotiations should address deficiencies, uncertainties and mistakes in a proposal, and provide the vendor the opportunity to revise its proposal. The selection committee should be specific when identifying deficiencies, uncertainties and mistakes, but must do so without advising the vendor of the corrections required. The selection committee should strive to assure that it has reasonably communicated the specific deficiency, uncertainty or mistake to the vendor.

- **Deficiencies:** A deficiency is any part of a proposal that does not satisfy a minimum requirement of the RFP, rather than a weakness of the proposal based on a comparative evaluation of the relative strengths and weaknesses of competing proposals. Disclosure of a deficiency should be made so that the vendor may correct the deficiency, thereby resulting in a better proposal and better competition. All deficiencies that may be corrected should be disclosed, not just those from selected areas of the proposals. The selection committee is not required to disclose deficiencies that cannot be corrected. Examples of deficiencies in a proposal include, but are not limited to, the vendor's proposed personnel being considered to be unqualified; the vendor's proposed costs being unrealistically low; and the vendor's estimated level of effort and proposed price being considered unreasonably high.
- **Uncertainties:** Uncertainties in a proposal may arise from a proposal not providing adequate information, and the selection committee being unable to determine the extent of the vendor's compliance with the requirements of the RFP. Discussions should be thorough to address uncertainties. An example of an uncertainty in a proposal includes, but is not limited to, the selection committee being unable to determine the extent of a proposal's indirect costs.
- **Mistakes:** A mistake is an error in a proposal. Discussions should resolve suspected mistakes by bringing them to the attention of the vendor as specifically as possible without disclosing information about other vendors' proposals.

The selection committee shall not instruct a vendor how to correct a deficiency, uncertainty or a mistake.

## **16-9 Conducting Negotiations: Cost**

If there is a concern about cost or price being too high or too low in the procurement of goods or nonprofessional services, the selection committee should advise the vendor during negotiations so that the vendor may submit a revised cost proposal.

It is proper for the selection committee to reveal the Authority's estimate or price goal, to disclose the amount of funds available for the project, or to inform a vendor that its proposed cost greatly exceeds the Authority's budget limits.

It is improper for the selection committee or any Authority officer or employee to indicate to a vendor that it must meet a certain cost or price in order to receive further consideration, to advise a vendor of its price standing relative to other vendors, to reveal the identity of the low vendor or that all vendors are in the same price range, or to otherwise furnish information about other vendors' prices.

# Chapter 17. Competitive Negotiation: Selecting a Vendor After Negotiations

## Summary

This chapter establishes the procedures for selecting a vendor after negotiations have been conducted. The procedure at this stage of the process differs depending on whether goods or nonprofessional services, or professional services, will be procured.

### Essential Information in this Chapter

- On the basis of the evaluation criteria published in the RFP and all of the information developed through the negotiation process, the selection committee selects a vendor with whom to negotiate a contract.
- If goods or nonprofessional services are being procured, the selection committee shall select the vendor that, in its opinion, has made the best proposal, and shall recommend that the contract be awarded to that vendor.
- If professional services are being procured, the selection committee shall select in the order of preference two or more vendors whose professional qualifications and proposed services are deemed most meritorious. Negotiations are then conducted with the vendor ranked first and if a contract satisfactory and advantageous to the Authority can be negotiated at a price considered fair and reasonable, the award shall be made to that vendor. If not, negotiations with the vendor ranked first shall be formally terminated and negotiations are conducted with the vendor ranked second, and so on.

### Key References to the Code of Virginia Applicable to this Chapter

Section 2.2-4301: Definitions of competitive negotiation and other key terms; award

#### 17-1 General

On the basis of the evaluation criteria published in the RFP and all of the information developed through the negotiation process, the selection committee selects a vendor with whom to negotiate a contract.

#### 17-2 Selection: Goods or Nonprofessional Services

If goods or nonprofessional services are being procured, the selection committee shall select the vendor that, in its opinion, has made the best proposal, and shall recommend that the contract be awarded to that vendor. Before the selection is made, the following steps shall be complied with:

- Solicit best and final offers: After negotiations have been conducted with all of the vendors selected, the selection committee shall solicit best and final offers from each vendor. The request should inform the vendors that

the negotiations have been concluded and should include a notice that vendors now have an opportunity to submit a best and final offer, and a common closing date for submitting the best and final offer.

- Evaluate best and final offers: The selection committee shall then evaluate the best and final offers and, if further negotiations and another round of best and final offers are not necessary, make a recommendation for award.
- Further round of best and final offers, if necessary: Best and final offers shall be submitted only once, unless the purchasing agent makes a written determination that it is in the Authority's best interest to conduct an additional round. It is in the Authority's best interest to conduct an additional round of best and final offers if: (1) deficiencies in the initial best and final offers prevent their acceptance; or (2) further negotiations are necessary, as provided below.
- Further negotiations, if necessary: Once best and final offers are received, negotiations should not be reopened unless it is clearly in the Authority's interest to do so. Further negotiations may be necessary in the following situations: (1) substantial questions requiring further negotiations are raised by one of the best and final offers; (2) previously existing ambiguities are not discovered until after the best and final offers are received; (3) additional technical information is needed to evaluate the proposals; (4) the Authority's requirements change; or (5) the information available is inadequate to reasonably justify the vendor selection and award based on the best and final offers received. If negotiations are reopened, additional negotiations must be conducted with all vendors.
- Clarification, if necessary: The selection committee may contact a vendor to clarify any uncertainty in the vendor's best and final offer without reopening negotiations with all vendors remaining in the selection process.

If further negotiations and another round of best and final offers are necessary, the subsequent round shall be evaluated, and the vendor selected, as provided above.

If the selection committee determines in writing and in its sole discretion that only one vendor is fully qualified, or that one vendor is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that vendor.

### **17-3 Selection: Professional Services**

If professional services are being procured, the selection committee shall select in the order of preference two or more vendors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the vendor ranked first. If a contract satisfactory and advantageous to the Authority can be negotiated at a price considered fair and reasonable, the award shall be made to that vendor.

Otherwise, negotiations with the vendor ranked first shall be formally terminated and negotiations conducted with the vendor ranked second, and so on until a contract can be negotiated at a fair and reasonable price. Once negotiations are terminated with a vendor, the selection committee may not return to negotiate with that vendor. The terms “negotiated” and “fair and reasonable” imply a process of give and take in which both the Authority and the vendor are fully satisfied with the agreement.

If the selection committee determines in writing and in its sole discretion that only one vendor is fully qualified, or that one vendor is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that vendor.

#### **17-4 Price and Scope of Work Documents**

All details of the procurement should be resolved by the time a vendor is selected and, consequently, there should be little need for negotiation after the vendor is selected. The selection committee may request the selected vendor to provide the following two documents, to be attached to the contract:

- Contract amount: Although the contract amount should be identified in the contract itself, a contract amount exhibit may be included when the vendor may use individual prices in invoices for goods or services. This document should be predicated on the agreed upon work statement. Unit prices may include hourly labor rates for various classes of workers, equipment rental charges, and percentage discounts that apply to materials used. Services of an indeterminate nature, such as surveys and investigations, regulatory agency permits, and other like matters should be included under a separate section for special services, and contain caps of reasonable amounts, on these tasks.
- Work statement: A work statement exhibit may be included to state in detail how a service will be performed and the duties and responsibilities of the vendor. The work statement should reflect the scope of work that was agreed upon by the Authority and the vendor at the conclusion of the interview, and should identify each task to be performed by the vendor.

Because both of these documents will be prepared by the vendor, they should be carefully reviewed by the using department, the selection committee and the purchasing agent to be certain that they reflect the agreement of the parties and, if either does not, the document must be revised or further negotiations must be conducted.





# Chapter 18. Competitive Negotiation: Canceling the Procurement or Rejecting All Bids

## Summary

This chapter identifies the circumstances and establishes the procedure to cancel the RFP or to reject all proposals.

| Essential Information in this Chapter  |  |
|--|--|
| <ul style="list-style-type: none"><li>• At any time prior to award of the contract, the purchasing agent may cancel the RFP or reject any or all of the proposals.</li><li>• The purchasing agent may cancel the RFP or reject any or all of the proposals for any reason, except to avoid awarding a contract to a particular vendor.</li></ul> |  |
| Key References to the Code of Virginia   |  |
| Section 2.2-4301: Definitions of competitive negotiation and other key terms<br>Section 2.2-4303(A): When competitive negotiation required, generally<br>Section 2.2-4319(A): Authority to cancel or reject all proposals  |  |

### 18-1 General

At any time prior to award of the contract, and for any reason except as provided in section 18-3, the purchasing agent may cancel the RFP or reject any or all of the proposals.

### 18-2 Circumstances When Cancellation or Rejection Justified

Following is a list of circumstances in which cancellation or rejection may be considered:

- RFP too narrowly written: The purchasing agent may consider canceling the RFP or rejecting all proposals if it is determined that the work statement, specifications, or other requirements of the RFP were written in such a way so as to preclude a reasonable pool of vendors submitting proposals. The purchasing agent should consider canceling the RFP or rejecting all proposals if the number of proposals received is inadequate to assure that the procurement process is competitive.
- Ambiguous instructions: The purchasing agent may consider canceling the RFP or rejecting all proposals if, upon review of the proposals, it is apparent that numerous proposals were determined to be deficient for a similar reason, and it is determined that ambiguous instructions in the RFP were likely the cause for the deficiencies. The purchasing agent

should consider rejecting all proposals if it is determined that there is an inadequate number of acceptable proposals.

- Substantial omission in the work statement specifications: The purchasing agent may consider rejecting all proposals if it is determined that an essential requirement was omitted from the work statement or the specifications. The purchasing agent should consider cancellation or rejection if: (1) the purchasing agent is unable to determine whether the goods or services will meet the Authority's needs absent compliance with the omitted requirement or; (2) in taking into account the omitted requirement during the proposal evaluation process, fairness, impartiality or competitiveness in the procurement process is compromised.
- Cost or price exceed available funds: If the cost or price of the goods or services exceeds available funds, the purchasing agent may cancel the procurement or reject all proposals if: (1) the purchasing agent requests that the using department provide him with a suggested reduction in scope of the proposed procurement; (2) the selection committee invites each vendor to amend its proposal based upon the proposed reduction in scope provided by the using department; and (3) no vendor deemed by the selection committee to be fully qualified and best suited for the procurement amends its proposal within the funds available.

This list is not exhaustive.

### **18-3 Circumstances When Cancellation or Rejection Prohibited**

The purchasing agent shall not cancel an RFP or reject all proposals solely to avoid awarding a contract to a particular vendor.

### **18-4 Procedure to Cancel the Request For Proposals or Reject All Proposals**

If the RFP is canceled, or if any or all of the proposals received are rejected, the purchasing agent shall state such reasons in writing and place it in the contract file.

# Chapter 19. Sole Source

## Summary

This chapter identifies one of three situations when compliance with the competitive sealed bidding and competitive negotiation procedures is excused. The situation considered in this chapter exists when there is only a single vendor of the goods or services sought to be procured -- a sole source.

| <b>Essential Information in this Chapter</b>  |  |
|---|--|
| <ul style="list-style-type: none"><li>• A sole source is the only vendor that is practicably available to provide the goods or services sought to be procured.</li><li>• The competitive sealed bidding and competitive negotiation procedures are excused when it is determined that the goods or services are practicably available from a sole source.</li><li>• The determination of whether the goods or services may be procured only from a sole source shall be made by the purchasing agent.</li><li>• In determining whether the goods or services may be procured only from a sole source, the purchasing agent shall determine whether there is only one source practicably available for the goods or services to be procured.</li></ul> |  |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>  |  |
| Section 2.2-4303(E): Procurement from a sole source   |  |

### **19-1 General**

The competitive sealed bidding and competitive negotiation procedures are excused when it is determined that the goods or services are practicably available from a sole source. Other situations when these procedures are excused are discussed in chapters 20 and 21.

### **19-2 Determination of a Sole Source**

If a using department desires to procure goods or services that it believes are available only from a sole source, it shall state in a writing provided to the purchasing agent: (1) a description of the goods or services, in the form of the proposed specifications or a work statement; (2) the reasons why it believes that the goods or services may be procured only from a single vendor; and (3) an explanation of the efforts made to reach its conclusion that the goods or services may be procured only from a single vendor.

The determination of whether the goods or services may be procured only from a single vendor shall be made by the purchasing agent. In making this determination, the purchasing agent shall determine whether there is only one

vendor practicably available to provide the goods and services, considering the following:

- The word “practicable” is synonymous with “feasible” or “possible”, not utter impossibility regardless of expense, time or inconvenience.
- Whether the specifications or work statement has been so narrowly written so as to preclude multiple bidders or vendors from eligibility or to thwart competition.
- Whether, under the circumstances, the procurement of the goods or services is consistent with the goals and purposes of this manual, as set forth in chapter 1.

Prior to making his determination, the purchasing agent may conduct his own investigation, request additional information from the using department, and consult with the Authority attorney.

### **19-3 Procedure if it is Determined There is a Sole Source**

If the purchasing agent determines that the goods or services may be procured only from a single vendor, the following procedure shall apply prior to the actual procurement:

- Written determination: The purchasing agent shall make a written determination that only one vendor is practicably available to provide the goods or services, and state the basis for the determination. This written determination shall be placed in the contract file.
- Public notice of determination: The purchasing agent shall post in a designated public area a written notice that: (1) states that only one vendor was determined to be practicably available; (2) identifies the goods or services that will be procured; (3) identifies the vendor selected; and (4) states the date on which the contract will be awarded.
- Notice period: Prior to award of the contract, the public notice of determination shall be posted for at least ten (10) days.

### **19-4 Contract Award**

The contract shall be awarded only after the expiration of the ten (10) day notice period required in section 19-3. The procedure to award a contract shall be as follows:

- Contract award: The purchasing agent shall award the contract to the vendor selected.

- Notice of award: The purchasing agent shall post in a public place a written announcement of the award, which may be identified as a notice of award. The notice of award shall also include a statement that the public records pertaining to the procurement have been and are available for inspection by potential vendors. The purchasing agent is not required to provide individual notice of the award to any potential vendors.

The purchasing agent may consult with the Authority attorney as to any matter pertaining to the decision to award a contract.

**19-5 Procedure if Purchasing Agent Determines Sole Source Procedure does not Apply**

If the purchasing agent determines that the sole source procedure does not apply because there are other vendors practicably available, he shall notify the using department of his determination.

# Chapter 20. Emergencies

## Summary

This chapter identifies one of three situations when compliance with the competitive sealed bidding and competitive negotiation procedures is excused. The situation considered in this chapter exists when there is an emergency requiring the prompt procurement of the goods or services.

| <b>Essential Information in this Chapter</b>   |  |
|--|--|
| <ul style="list-style-type: none"><li>• An emergency may include, but is not limited to, natural disasters and situations when the goods or services are needed immediately to protect the public health safety or welfare, to prevent further damage to public property, machinery or equipment.</li><li>• An emergency may exist even if the emergency is self-created because of poor planning, overlooked requirements, inaccurate usage history, inadequate forecasting, or other similar reason, but the use of this procedure in these cases is discouraged.</li><li>• The competitive sealed bidding and competitive negotiation procedures are excused when it is determined that an emergency exists that necessitates the need for the procurement.</li><li>• The determination of whether goods or services may be procured using the emergency procedure provided herein shall be made by the purchasing agent.</li></ul> |  |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>   |  |
| Section 2.2-43-3(F): Procurement in an emergency   |  |

### **20-1 General**

The competitive sealed bidding and competitive negotiation procedures are excused when it is determined that an emergency exists that necessitates the need for the procurement of the goods or services using the procedure provided herein. Other situations when these procedures are excused are discussed in chapters 19 and 21.

### **20-2 Determination of an Emergency**

If a using department desires to procure goods or services under circumstances it believes to be an emergency, it shall state in a writing provided to the purchasing agent: (1) a description of the goods or services, in the form of the proposed specifications or work statement; (2) the reasons why it believes that an emergency exists necessitating the goods or services; (3) an explanation of the basis of the emergency; and (4) identification of at least three vendors who may provide the goods or services; if fewer than three vendors are practicably available, it shall identify only such vendors and state why it believes other vendors are not practicably available.

The determination of whether goods or services may be procured using the emergency procedure shall be made by the purchasing agent. In making this determination, the purchasing agent shall determine whether an emergency exists, considering the following:

- Immediate need because of natural disaster: An emergency may include, but is not limited to, natural disasters and situations when goods or services are needed immediately.
- Immediate need to protect public health: An emergency exists if it is demonstrated that the procurement of the goods or services is necessary to protect the public health of citizens.
- Immediate repair necessary: An emergency exists when it is demonstrated that immediate repair is necessary to prevent further damage to public property, machinery or equipment.
- Provision of essential services: An emergency exists when it is demonstrated that a breakdown in an essential service is imminent or has occurred.
- Immediate need for supplies used in work: An emergency exists when it is demonstrated that supplies are needed for immediate use in work that may vitally affect the public health, safety or welfare.
- Self-created emergency: An emergency may exist even if the emergency is self-created because of poor planning, overlooked requirements, inaccurate usage history, inadequate forecasting, or other similar reason. A self-created emergency should be carefully evaluated to assure that the emergency circumstances are legitimate and are not an attempt to circumvent the formal competitive procedures. The use of the emergency procedure for a self-created emergency should be discouraged except when the emergency affects the public health, safety or welfare.

An emergency should not be found to exist if the need for the goods or services is not immediate. Prior to making his determination, the purchasing agent may conduct his own investigation, request additional information from the using department, and consult with the Authority attorney.

### **20-3 Procedure if it is Determined That an Emergency Exists**

If the purchasing agent determines that an emergency exists, the following procedure shall apply prior to the actual procurement:

- Selection of vendor/procurement: From the list of vendors provided by the using department or from vendors identified by the purchasing agent upon his own investigation, the purchasing agent shall select the vendor. The

selection of the vendor shall be made as competitively as practicable under the circumstances. The selection process may consist of, but is not limited to, any procedure provided in chapter 22 (small purchases), or be based on any procedure, modified for the circumstances, provided in parts 2 (competitive sealed bidding) or 3 (competitive negotiation). The procurement shall be made using a purchase order.

- Written determination: The purchasing agent shall make a written determination that an emergency exists, state the basis for the determination, and state the basis for selecting a particular vendor. This written determination shall be placed in the contract file.
- Public notice of determination: The purchasing agent shall post in a designated public area a written notice that: (1) states that a contract will be awarded on an emergency basis; (2) identifies the goods or services that will be procured; (3) identifies the vendor selected; and (4) states the date on which the contract will be awarded.
- Notice period: The public notice of determination shall be posted on the day the Authority awards the contract or announces its decision to award, whichever occurs first. If such notice is not possible because of the nature of the emergency, then the public notice shall be posted as soon thereafter as practicable. The public notice of determination shall be posted for at least ten (10) days.

#### **20-4 Procedure if an Emergency Exists Outside of Normal Business Hours**

If the using department determines that an emergency exists at any time other than the normal business hours of the Authority (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays), the following procedure shall apply if the procedure set forth in section 20-3 cannot be complied with:

- Determination of an emergency: The determination of whether the goods or services may be procured using the emergency procedure shall be made by the using department representative, who shall state in a writing provided to the head of the using department: (1) a description of the goods or services, in the form of the proposed specifications or work statement; (2) the reasons why the using department believes that an emergency exists necessitating the goods or services; (3) an explanation of the basis of the emergency; and (4) identification of at least three vendors who may provide the goods or services; if fewer than three vendors are practicably available, it shall identify only such vendors and state why it is believed other vendors are not practicably available. The determination of whether an emergency exists shall be based on the factors identified in section 20.3.
- Selection of vendor/procurement: The using department representative shall select a vendor from the list of those he identified. The selection of the vendor shall be made as competitively as practicable under the



circumstances. The selection process may consist of, but is not limited to, any procedure provided in chapter 22 (small purchases), or be based upon any procedure, modified for the circumstances, provided in parts 2 (competitive sealed bidding) or 3 (competitive negotiation).

- Notification to purchasing agent: At the earliest time possible on the first Authority business day following the emergency, the using department representative shall notify the purchasing agent of the procurement, and provide to the purchasing agent his written determination of emergency and the purchase order. The purchasing agent shall confirm the appropriateness of the determination that an emergency existed and confirm the purchase order.
- Purchase order: The purchasing agent shall issue a purchase order on the first business day following the emergency.
- Written determination: Upon receipt of the written determination that an emergency exists and the purchase order from the using department representative, the purchasing agent shall place the written determination in the contract file.
- Public notice of determination: Upon receipt of the written determination that an emergency exists and the purchase order from the using department representative, the purchasing agent shall post in a designated public area a written notice that: (1) states that a contract will be awarded on an emergency basis; (2) identifies the goods or services that will be procured; (3) identifies the vendor selected; and (4) states the date on which the contract will be awarded.
- Notice period: The public notice of determination shall be posted on the day the Authority awards the contract or announces its decision to award, whichever occurs first. If such notice is not possible because of the nature of the emergency, then the public notice shall be posted as soon thereafter as practicable. The public notice of determination shall be posted for at least ten (10) days.

## **20-5 Contract Award**

The contract shall be awarded simultaneous with or after the notice of determination that an emergency exists has been posted. The procedure to award a contract shall be as follows:

- Contract award: The purchasing agent shall award the contract to the vendor selected.
- Notice of award: The purchasing agent shall post in a public place a written announcement of the award, which may be identified as a notice of award. The notice of award shall also include a statement that the public records pertaining to the procurement have been and are available

for inspection by potential vendors. The purchasing agent is not required to provide individual notice of the award to any potential vendors.

The purchasing agent may consult with the Authority attorney as to any matter pertaining to the decision to award a contract.

**20-6 Procedure if Purchasing Agent Determines that an Emergency does not Exist**

If the purchasing agent determines that an emergency does not exist, he shall notify the using department of his determination and cancel the procurement under the emergency procedure.

# Chapter 21. Public Auction

## Summary

This chapter identifies one of three situations when compliance with the competitive sealed bidding and competitive negotiation procedures is excused. The situation considered in this chapter exists when the goods may be procured at a public auction.

| <b>Essential Information in this Chapter</b>   |  |
|--|--|
| <ul style="list-style-type: none"><li>• The competitive sealed bidding and competitive negotiation procedures are excused when it is determined in advance that it is in the best interests of the public that the goods be procured at a public auction.</li><li>• The determination of whether it is in the best interests of the public to procure goods at a public auction shall be made by the Board of Directors</li><li>• The Board of Directors or the school board shall make its determination at a regular meeting of the board.</li></ul> |  |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>   |  |
| Section 2.2-4303(l): Procurement at a public auction   |  |

### **21-1 General**

The competitive sealed bidding and competitive negotiation procedures are excused when it is determined in advance that it is in the best interests of the public that goods, products or commodities (collectively referred to as “goods”) be procured at a public auction. Other situations when these procedures are excused are discussed in chapters 19 and 20.

### **21-2 Determining Whether Best Interests of Public Served**

The determination of whether it is in the best interests of the public to procure goods at a public auction shall be made by the Board of Directors.

If a using department desires to procure goods at a public auction, it shall state in a writing provided to the Board of Directors and to the purchasing agent: (1) a description of the goods, in the form of proposed specifications; (2) the reasons why the using department believes that it is in the best interests of the public to procure the goods at a public auction; and (3) the time, place and organizer of the public auction.

The Board of Directors shall make its determination at a regular meeting.

### **21-3 Procedure if Procurement at Public Auction Determined to be in Best Interests of the Public**

If the Board of Directors determines that it is in the best interests of the public that the goods be procured at a public auction, the following procedure shall apply prior to the actual procurement:

- Written determination: The Board of Directors shall make a written determination that the purchase of goods at a public auction sale is in the best interests of the public, and state the basis for the determination. This written determination shall be presented to the purchasing agent, who shall maintain a file of the determination.
- Procurement: The purchasing agent shall attend the public auction sale and procure the goods.

The purchasing agent shall assist the Board of Directors, as necessary, to assure compliance with this procedure, and may conduct his own investigation, request additional information from the using department, and consult with the Authority attorney.

# Chapter 22. Small Purchases

## Summary

This chapter establishes the procedures to be followed when the cost of the goods, services or non-transportation related construction to be procured is not expected to exceed \$50,000. If goods, nonprofessional services or non-transportation related construction are sought to be procured, one of the three following procedures shall apply, depending on the expected cost of the procurement: (1) procurements up to and including \$5,000; and (2) procurements greater than \$5,000 up to and including \$50,000. A separate procedure applies when professional services are being procured.

### **Essential Information in this Chapter**

- The using department shall make a good faith determination as to whether the cost of the procurement is expected to exceed \$50,000.
- Neither the purchasing agent nor the using department shall procure goods or services in a piecemeal manner in order to avoid formal procurement procedures that would otherwise apply.
- The receipt of written quotations is preferred, even if verbal or telephone quotations are authorized.
- If goods, nonprofessional services or non-transportation related construction are sought to be procured, one of three informal procurement procedures applies. A separate procedure applies when professional services are sought to be procured.

### **Key References to the Code of Virginia Applicable to this Chapter**

Section 2.2-4303(G): Small purchases for goods and nonprofessional services, and non-transportation related construction

## **22-1 General**

This chapter establishes the procedures to be used for single or term contracts when the aggregate or the sum of all phases is not expected to exceed \$50,000.

The following general principles apply to all procurements made pursuant to this chapter:

- Determination of estimated cost of procurement: The using department shall make a good faith determination as to whether the cost of the procurement is expected to exceed \$50,000 as provided in section 4-5.

- Providing for competition: These small purchase procedures are intended to provide for competition whenever practicable, and shall be applied to further this intent.
- Piecemealing of procurement prohibited: Neither the purchasing agent nor the using department shall procure goods or services in a piecemeal manner, otherwise split a procurement into multiple procurements, or request or require that the selected vendor invoice the Authority at intervals, for the purpose of reducing the estimated cost of the procurement to below the \$50,000 threshold.
- Written price quotations are preferred: The receipt of written quotations is preferred, even if verbal or telephone quotations are authorized, in the event that a dispute arises after the order is placed regarding terms or pricing.
- Travel and training expenses whose costs not expected to exceed \$50,000 exempt: Travel and training expenses whose costs are not expected to exceed \$50,000 are exempt from the procedures set forth in sections 22-2, 22-3 and 22-4. These costs, which may include those for job-related training, continuing education, and associated meals, lodging and other related and authorized expenses, are subject to the approval of the using department and the purchasing agent.
- Purchase Order required over \$5,000: A Purchase Order is required on any purchase over \$5,000.
- Uniform State Building Code. Compliance with the Uniform State Building Code for Non-Transportation Related Construction shall not be waived under any circumstances.

**22-2 Goods, Nonprofessional Services or Non-Transportation Related Construction: Cost Not Expected to Exceed \$5,000**

- Where the estimated cost of goods or nonprofessional services is \$5,000 or less unless exempted (see Part 4), purchases may be made upon receipt of a minimum of one (1) written or telephone (oral) quotation. Additional sources may also be solicited. Other quotes received that were not solicited shall be considered. If more than one quote is received, the award shall be made to the lowest responsive and responsible bidder. A record of the quotation must be kept with the file. If a telephone quote is solicited, a record shall be kept of the name and address of the vendor(s) contacted, the item description or service offered, price quoted, delivery dates and terms, names of persons giving and receiving the prices and the date the information was obtained. Notation on the requisition form is considered to be an adequate record.

- Additional competition should be sought whenever there is reason to believe a quotation is not a fair and reasonable price.

**22-3 Goods, Nonprofessional Services or Non-Transportation Related Construction: Cost Expected to be Greater Than \$5,000 up to and including \$50,000**

If the cost of the goods or nonprofessional services is expected to be greater than \$5,000 up to and including \$50,000, the following procedure shall apply:

- Scheduling: The using department should allow at least five business days to complete a procurement.
- Price quotation: The using department shall obtain at least three (four, if the cost is expected to exceed \$30,000) written price quotations from vendors. When soliciting a price quotation, the using department shall describe the goods or services desired, the quantity, the date by which delivery or performance is expected to be made, that the Authority is seeking competitive quotations, and the date by which written price quotations must be received in the office of the using department.
- Posting of public notice: Purchases under this section that are expected to exceed \$30,000 shall require the posting of a public notice on the Authority's website, the Virginia Department of General Services' central electronic procurement website, and/or other appropriate website(s).
- Contents of written price quotation: A written price quotation submitted by a vendor shall contain the following information: (1) the name of the vendor quoting the price; (2) the name of the individual quoting the price; (3) the manufacturer and model of the goods or a description of the services; (4) the unit price; (5) the payment terms; (6) the promised delivery or performance date; and (7) the date the quotation was made.
- Selection of vendor: The using department shall select the vendor providing the lowest price quotation. However, if the vendor fails to provide a written price quotation which contains all of the information required by the preceding paragraph or if the purchasing agent determines that the vendor is not responsible, then the purchasing agent shall select the vendor providing the next lowest price quotation and shall state the basis for the decision in writing and place it in the procurement file.

The purchasing agent may require that any procurement of goods or services otherwise subject to this section comply with the competitive sealed bidding or competitive negotiation procurement procedures set forth in parts 2 or 3.

## **22-4 Professional Services: Cost Not Expected to Exceed \$50,000**

If the cost of professional services (as defined in section 1-5 of this Manual) is not expected to exceed \$50,000, the following procedure shall apply:

- Scheduling: The purchasing agent should allow at least five business days to complete the procurement.
- Negotiation with one or more vendors: If the cost is not expected to exceed \$15,000, the using department is authorized to negotiate with one or more vendors. If the cost is expected to be greater than \$15,000 up to and including \$50,000, the using department shall contact and interview a minimum of three vendors. The negotiations may be conducted either in person or by telephone, and shall consist of identifying the services desired, the date by which performance is expected to be made, the qualities of the vendor described in the following paragraph, and the cost for such services.
- Selection of vendor: The using department shall recommend to the purchasing agent the vendor to be selected. If the using department negotiated with more than one vendor, the using department shall recommend the vendor it determined to be the most qualified, responsible and suitable; cost shall not be the sole determining factor. The purchasing agent shall notify the selected vendor, whose selection shall be contingent upon the Authority and the vendor entering into a written agreement.
- Written agreement: The purchasing agent shall prepare a written agreement approved by the Authority attorney which shall contain, at a minimum, the following information: (1) the name of the selected vendor; (2) a detailed description of the services to be provided; (3) the cost of the services to be provided; (4) the payment terms; and (5) the promised performance date.

The purchasing agent may require that the procurement of professional services otherwise subject to this section comply with the competitive negotiation procedure set forth in part 3.



# Chapter 23. Qualification of a Vendor

## Summary

This chapter establishes the procedures to be used to determine whether a vendor is qualified to fully participate in the procurement process. The three procedures are: (1) determining whether a vendor is responsible; (2) prequalifying prospective vendors prior to commencing the competitive sealed bidding or competitive negotiation procedures; and (3) debaring a vendor.

| <b>Essential Information in this Chapter</b>   |  |
|--|--|
| <ul style="list-style-type: none"><li>• A responsible vendor is one who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance.</li><li>• The purchasing agent may, and at the request of the using department or the selection committee shall, require that vendors be prequalified.</li><li>• The purchasing agent is authorized to debar a prospective vendor from participating in a procurement under the procedures set forth in this chapter.</li><li>• Determinations as to whether a vendor is not responsible, not qualified, or should be debarred shall be in writing, based upon a consideration of all available information, and be made only after the vendor has had an opportunity to rebut or respond to the purchasing agent's preliminary determination.</li></ul> |  |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>   |  |
| Section 2.2-4301: Definition of responsible bidder or offeror  |  |
| Section 2.2-4317: Prequalification of a vendor   |  |
| Section 2.2-4321: Debarment of a vendor  |  |
| Section 2.2-4357: Notice to vendor of ineligibility; rights and remedies   |  |
| Section 2.2-4359: Notice to vendor of nonresponsibility; rights and remedies   |  |

### **23-1 General**

It is the goal of the Authority to procure goods or services only from responsible vendors. This chapter establishes the procedures to be used to determine whether a vendor is qualified to participate in the procurement process. These procedures provide mechanisms for dealing with vendors who are not responsible, and are exercised at different times in the procurement process.

In the competitive negotiation procedure, responsibility must be determined prior to the commencement of negotiations. In the competitive sealed bidding process, responsibility need not be determined at bid opening, but

must be determined after bid opening but before award. Therefore, the determination of whether a vendor is not responsible need only be made for the apparent low bidder.

## **23-2 Determining Whether a Vendor is Responsible**

A responsible vendor is one who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance. Put another way, responsibility includes the capacity to perform, the financial ability to perform, and the integrity, perseverance and tenacity of the vendor to perform.

### **23-2.1 Criteria to Consider**

In determining whether a vendor is responsible, the purchasing agent or the selection committee, as the case may be, shall consider, but not be limited to, the following criteria:

- Sufficient financial ability: Whether the vendor has sufficient financial ability to perform the contract. If a bond is required to ensure performance of the contract, evidence that the vendor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Authority shall be sufficient to establish the financial ability of the vendor to perform the contract.
- Experience: Whether the vendor has appropriate experience to perform the contract.
- Judgments against the vendor for breach of contract: Whether the vendor or any officer, director or owner thereof has had a judgment entered against him within the past ten (10) years for breach of either a governmental or nongovernmental contract.
- Noncompliance with terms and conditions of previous contracts: Whether the vendor has been in substantial noncompliance with the terms and conditions of any prior contract with the Authority or any other public body, without good cause. This criterion shall apply only if the facts underlying the prior substantial noncompliance were documented in writing in the prior contract file and the information related thereto was given to the vendor at that time, with the opportunity to respond.
- Criminal conviction arising from contracting: Whether the vendor or any officer, director, owner, project manager, procurement manager or chief financial officer has been convicted within the past ten (10) years of a crime related to governmental or nongovernmental contracting,

including but not limited to, a violation of: (1) Virginia Code § 2.2-4367 et seq. (Ethics in Public Contracting); (2) Virginia Code § 18.2-498.1 et seq. (Virginia Governmental Frauds Act); (3) Virginia Code § 59.1-68.6 (Conspiracy to Rig Bids in Government); or (4) any substantially similar law of the United States or another state.

- Debarred: Whether the vendor or any officer, director or owner thereof is currently debarred from bidding or contracting by any public body or agency of any state, or by an agency of the federal government, pursuant to an established debarment procedure.
- Failure to provide information: Whether the vendor has failed to provide the purchasing agent or the selection committee, as the case may be, any information relevant to the other criteria identified in this section that is required by the purchasing agent or the selection committee, as the case may be, or by the invitation for bids or request for proposals.

An affirmative answer to any of the criteria identified in this section, or otherwise set forth in the applicable invitation for bids or request for proposals, shall be cause to determine that a vendor is not responsible. The purchasing agent is authorized to require a vendor to provide any additional assurances of responsibility, including but not limited to, requiring the vendor to provide a guarantee by a financially stronger parent company, requiring the Authority's prior approval of all subcontractors used, requiring the Authority's prior approval or designation of a particular project manager or superintendent, and requiring a guarantee from the vendor that management will be present at the job site during specified times.

### **23-2.2 Conducting the Investigation**

The purchasing agent shall obtain all information reasonably relevant to conducting an inquiry as to whether a vendor is responsible. Of course, comprehensive information relevant to a vendor's responsibility should be solicited in the invitation for bids or request for proposals. Nevertheless, additional information may be required from a vendor in a particular case.

The investigation may include the following:

- Vendor qualifications: The purchasing agent may require a vendor to submit such evidence of its qualifications as deemed necessary.

- Consider all information available: The purchasing agent should consider any and all evidence available concerning the financial, technical, and other qualifications and abilities of a vendor. The purchasing agent should obtain all information reasonably relevant to the inquiry, and not only information that is adverse to the vendor.
- Require assurances from the vendor: The purchasing agent should ask the vendor to give the Authority additional assurances as to its responsibility. These assurances may include, but are not limited to, a guarantee by a financially stronger parent company, the approval of subcontractors used, the designation of a particular project manager or superintendent, and a guarantee that management will be present at the job site during specified times.
- Qualification questionnaire: The purchasing agent may require the vendor to complete a qualification questionnaire, which should request information such as the names of officers and partners, experience and equipment, current contracts and future work, association memberships, trade union relationships, list of subcontractors utilized, resumes of key personnel, and the latest financial statement. If the review of the questionnaire of the vendor discloses that it may not be responsible, the vendor should be invited to meet with the purchasing agent or the selection committee to resolve or to explain the deficiencies. If a satisfactory explanation is not secured, the purchasing agent may determine the vendor to be nonresponsible.

After receipt of the additional information from the vendor and other sources, the purchasing agent shall determine whether the vendor is responsible.

### **23-2.3 Procedure if Vendor Determined to be not Responsible**

If the purchasing agent or the selection committee, as the case may be, makes a preliminary determination that a vendor is not responsible, the following procedure shall apply:

- Preliminary notice: Prior to issuing a written determination of nonresponsibility, the purchasing agent shall: (1) notify the vendor in writing of the results of the investigation and evaluation; (2) disclose the factual support for the determination of nonresponsibility; and (3) allow the vendor an opportunity to inspect any documents which relate to the determination, if so requested by the vendor, within five (5) business days after receipt of the notice.
- Challenge to evaluation: Within ten (10) business days after receipt of the notice, the vendor may submit rebuttal information challenging the evaluation.
- Written determination of nonresponsibility: The purchasing agent shall issue a written determination of nonresponsibility based on all of the

information in the possession of the Authority, including any rebuttal information. The written determination shall state the basis for the determination. The written determination shall be hand-delivered or sent by certified mail, return receipt requested, to the vendor. The written determination shall not otherwise be distributed to any other persons or vendors.

- Timing of determination of responsibility: The purchasing agent shall issue the written determination of nonresponsibility within five (5) business days following the date the purchasing agent received the rebuttal information. If the purchasing agent does not receive rebuttal information, the purchasing agent shall issue the written determination of nonresponsibility at any time after the ten (10) day period following the date the vendor was notified by the purchasing agent of the results of the investigation and evaluation, but prior to the purchasing agent issuing a notice of intent to award.
- Finality of written determination: The written determination of nonresponsibility shall be final unless the vendor institutes a legal action within ten (10) calendar days of receipt of the written determination, as provided by law.

In making a determination as to whether a vendor is responsible, the purchasing agent may consult with the using department and the Authority attorney.

### **23-3 Prequalifying a Vendor**

The procedure set forth in this section is intended to qualify prospective vendors as responsible vendors prior to the date established for the submittal of bids or proposals. The purchasing agent may, and at the request of the using department or the selection committee shall, require that vendors be prequalified.

#### **23-3.1 Procedure**

The purchasing agent shall prequalify vendors as follows:

- Notice of prequalification: The purchasing agent shall include in the invitation for bids or the request for proposals a provision that prequalification shall be required, and include a prequalification application form in the invitation for bids or request for proposal documents.
- Application due date: The invitation for bids or the request for proposals shall require that each application form be received in the office of the purchasing agent forty (40) days prior to the date established for the receipt of bids or proposals.

- Receipt of applications: Each application must be received by the purchasing agent. A prospective vendor whose prequalification application is not received by the application due date shall not be eligible to participate in the procurement.
- Determination and notice thereof: At least thirty (30) days prior to the date established for the receipt of bids or proposals, the purchasing agent shall provide a written preliminary determination to each prospective vendor as to whether it is qualified.

### **23-3.2 Procedure if Vendor Determined to be not Qualified**

If the purchasing agent makes a preliminary determination that a vendor is not qualified, the following procedure shall apply:

- Preliminary notice: Prior to issuing a written determination that a vendor is not qualified, the purchasing agent shall: (1) notify the vendor in writing of the results of the evaluation; (2) disclose the factual support for the determination; and (3) allow the vendor an opportunity to inspect any documents which relate to the determination, if so requested by the vendor, within five (5) business days after receipt of the notice.
- Challenge to evaluation: Within ten (10) business days after receipt of the notice, the vendor may submit rebuttal information challenging the evaluation. If the purchasing agent determines that the rebuttal information reveals that the vendor should be allowed to participate in the procurement, he shall cancel the preliminary determination that the vendor is not qualified.
- Written determination that vendor not qualified: The purchasing agent shall issue a written determination that a vendor is not qualified based on all of the information in the possession of the Authority, including any rebuttal information. The written determination shall state the basis for the determination. The written determination shall be mailed or hand-delivered to the vendor, but shall otherwise not be distributed to any other persons or vendors.
- Timing of determination that vendor not qualified: The purchasing agent shall issue a written determination that a vendor is not qualified within five (5) business days following the date the purchasing agent received the rebuttal information. If the purchasing agent does not receive rebuttal information, he shall issue the written determination that the vendor is not qualified at any time after the ten (10) day period following the date the vendor was notified by the purchasing agent of the results of the investigation and evaluation, but prior to the purchasing agent issuing a notice of intent to award.
- Finality of written determination: The written determination shall be

final unless the vendor institutes a legal action within ten (10) calendar days of receipt of the notice, as provided by law.

In making a determination as to whether a vendor is qualified, the purchasing agent may consult with the using department or the Authority attorney.

#### **23-4 Debarring a Vendor**

The purchasing agent is authorized to debar a prospective vendor from participating in a procurement pursuant to the procedures set forth in this section.

##### **23-4.1 Criteria to Consider**

In determining whether a vendor should be debarred, the purchasing agent shall consider the following criteria:

- Fraud: Conviction of, or civil judgment arising from the commission of, fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract.
- Embezzlement, theft and other acts: Conviction of, or civil judgment arising from the commission of, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- Antitrust violations: Violation of federal or state antitrust statutes relating to the submission of offers.
- Acts indicating lack of integrity or honesty: Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the vendor.
- Violation of contract terms: Violation of the terms of a government contract or subcontract so serious as to justify debarment, such as willful failure to perform in accordance with the terms of one or more contracts or a history of failure to perform, or of unsatisfactory performance of, one or more contracts.
- Other acts: Any other act that is of so serious or compelling a nature that it affects the present responsibility of the vendor.

An affirmative answer to any of the criteria identified in this section shall be cause to determine that a vendor is not responsible. However, the existence of any of the criteria listed above shall not necessarily require that a vendor be debarred.

## **23-4.2 Debarment Procedure**

The procedures for the prompt reporting, investigating, and referral of matters appropriate for consideration of debarment by the purchasing agent are as follows:

- **Notice:** The debarment procedure is initiated when the purchasing agent notifies the prospective vendor, any specifically named affiliate, and the Executive Director, that debarment is being considered. The notice shall be in writing and state the reasons for the proposed debarment in terms sufficient to apprise the vendor of the conduct or transaction upon which it is based. The notice shall be hand-delivered or sent by certified mail, return receipt requested, to the vendor.
- **Response to proposed debarment:** The prospective vendor may submit to the purchasing agent a written response to the proposed debarment. The response may include both information and argument. If the proposed debarment is based upon a cause other than one based upon a conviction or civil judgment, the proposed vendor may request in the response that an informal hearing be conducted by the purchasing agent. The response shall be received, if at all, within thirty (30) calendar days after the date the notice of the proposed debarment was mailed.
- **Hearing, if requested:** If an informal hearing before the purchasing agent is requested by the prospective vendor, it shall be held within thirty (30) calendar days of the receipt of the proposed vendor's response. At the hearing, witnesses may be examined and cross-examined.
- **Decision:** If an informal hearing is not requested, the purchasing agent shall render a decision on the proposed debarment within fifteen (15) calendar days after receipt of the proposed vendor's response. If an informal hearing was conducted, the purchasing agent shall render a written decision within fifteen (15) calendar days after the conclusion of the hearing. The decision shall state the grounds for the decision and, if the proposed vendor is debarred, shall state the duration of the debarment. The purchasing agent may consider the seriousness of the vendor's acts or omissions and any mitigating factors in making a debarment decision.

In making a determination as to whether a vendor should be debarred, the purchasing agent may consult with the using department or the Authority attorney.

## **23-4.3 Procedure if Vendor is Debarred**

The debarment shall be for a period of ninety (90) days to three (3) years, as



determined by the purchasing agent in his sole discretion. Notwithstanding the prescribed duration of the debarment, at the discretion of the purchasing agent, a debarment may be lifted or suspended at any time if it is in the best interest of the Authority. A debarred individual or firm can apply for reinstatement at any time in writing to the purchasing agent, citing actions taken to remedy the reason for debarment or prevent recurrence of the situation that caused the debarment action to be taken and otherwise indicating that lifting or suspension of the debarment would be in the best interest of the Authority.

The decision of the purchasing agent debarring a prospective vendor shall be final unless the proposed vendor commences a legal action as provided by law.

# Chapter 24. Security

## Summary

This chapter identifies the various forms of security that may be required as part of a procurement, when they are required, what form they must be in, and when they may be released. The forms of security considered in this section are bid bonds, performance bonds, payment bonds, and alternative forms of security such as certified checks, cash escrows and letters of credit.

| <b>Essential Information in this Chapter</b>  |
|---|
| <ul style="list-style-type: none"><li>• A bid bond is required for all construction contracts whose cost is expected to exceed \$100,000, and may be required for any other procurement. A bid bond promises that the vendor and its surety are jointly and severally liable for the amount of the bond if the vendor refuses to honor the bid or proposal upon being tendered the contract.</li><li>• A performance bond is required for all construction contracts exceeding \$100,000, and may be required for any other procurement. A performance bond is a promise by the vendor and the surety to pay up to the sum of the bond unless there is satisfactory performance of the contract.</li><li>• A payment bond is required for all construction contracts exceeding \$100,000, and may be required for any other procurement. A payment bond protects subcontractors, materialmen and suppliers because it is an agreement by the vendor and the surety to pay for material and labor supplied in the performance of the work.</li><li>• In lieu of a bid, performance or payment bond, a vendor may furnish a certified check, cash escrow, or a bank or saving's institution's letter of credit, in the face amount required for the bond.</li></ul> |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>  |
| Section 2.2-4336: Bid bonds<br>Section 2.2-4337: Performance and payment bonds<br>Section 2.2-4338: Alternative forms of security<br>Section 2.2-4339: Bonds on other than construction contracts<br>Section 2.2-4340: Action on performance bonds<br>Section 2.2-4341: Action on payment bonds   |

### **24-1 General**

This chapter identifies the requirements for bid bonds, performance bonds, payment bonds, and alternative forms of security such as certified checks, cash escrows and letters of credit.

### **24-2 Bid Bonds**

A bid bond may be required to be submitted with a bid or proposal. A bid bond ensures that the vendor, if offered the contract: (1) will not withdraw its bid within the period specified for acceptance; (2) will execute a written contract; and (3)

will furnish other security such as performance and payment bonds, the certificate of insurance, or any other documents which are required by the invitation for bids or the request for proposals. A bid bond promises that the vendor and its surety are jointly and severally liable for the amount of the bond if the vendor refuses to honor the bid or proposal upon being tendered the contract. The bid bond contributes to the sanctity of the procurement process and leads to the certainty and reliability of bids and proposals.

#### **24-2.1 When Required**

Except in cases of emergency, all bids or proposals for construction contracts in excess of \$100,000 shall be accompanied by a bid bond.

The purchasing agent may require in the invitation for bids or request for proposals that any bid or proposal not expected to exceed \$100,000 be accompanied by a bid bond. In exercising such discretion, the purchasing agent shall consider the nature of the goods or services being procured and, where the competitive sealed bidding procedure is used, the likelihood of an apparent low bidder not being willing to execute a written contract.

#### **24-2.2 The Form and Amount of the Bond**

Each bid bond shall be in the form and amount as follows:

- **Issuer:** The bid bond shall be executed by a surety company selected by the vendor. The surety company shall be authorized to do business in the Commonwealth of Virginia.
- **Attorney-in-fact:** The bid bond shall identify the name and address of an attorney-in-fact who is appointed to act on behalf of the surety within the Commonwealth of Virginia. The address of the attorney-in-fact shall be within the Commonwealth of Virginia. The attorney-in-fact shall affix to the bond a certified and current copy of the power of attorney.
- **Amount:** The bid bond shall be written in an amount sufficient to cover the anticipated differential costs between the lowest and next lowest bidder, as well as the administrative costs associated with a possible re-advertisement of the invitation for bids or request for proposals. However, the amount of the bid bond shall not exceed five percent (5%) of the amount of the bid or proposal.
- **Obligee:** The obligee of a bid bond shall be the “Albemarle County Service Authority.”

In lieu of a bid bond, a vendor may submit an alternative form of security as provided in section 24-5.

### **24-2.3 Amount of Forfeiture**

The amount of a bid bond forfeiture shall not exceed the lesser of: (1) the difference between the bid or proposal for which the bond was written and the next low bid or proposal; or (2) the face amount of the bid bond.

### **24-3 Performance Bonds**

A performance bond may be required to be submitted by the vendor upon the award of the contract. A performance bond is a promise by the vendor and the surety to pay up to the sum of the bond unless there is satisfactory performance of the contract.

#### **24-3.1 When Required**

Upon the award of a construction contract exceeding \$100,000 to any prime contractor, the contractor shall furnish to the Authority a performance bond.

For any other contract, regardless of cost, the purchasing agent may require in the invitation for bids or request for proposals that the vendor to whom the contract is awarded furnish a performance bond. In exercising such discretion, the purchasing agent shall consider the nature of the goods or services being procured.

If required, the performance bond shall be filed in the office of the purchasing agent.

#### **24-3.2 The Form and Amount of the Bond**

Each performance bond shall be in the form and amount as follows:

- Form of the bond: The performance bond shall be on an approved AIA form, or be determined by the Authority attorney to be substantially equivalent thereto.
- Original bond: The vendor shall provide an original bond.
- Delivery: Upon award of the contract, the vendor shall submit to the purchasing agent a sample performance bond. The original performance bond shall be submitted by the vendor and received by the purchasing agent with ten (10) days after the contract is executed by the Authority.
- Issuer: The performance bond shall be executed by a surety company selected by the vendor. The surety company shall be authorized to do business in the Commonwealth of Virginia.

- Identify parties or contract: The performance bond shall refer to the contract to which it pertains, either by referring to the contract number or procurement number, or by identifying the parties to the contract.
- Attorney-in-fact: The performance bond shall identify the name and address of an attorney-in-fact who is appointed to act on behalf of the surety within the Commonwealth of Virginia. The address of the attorney-in-fact shall be within the Commonwealth of Virginia. The attorney-in-fact shall affix to the bond a certified and current copy of the power of attorney.
- Signature of bond company representative: The performance bond shall be signed by an authorized representative of the bond company.
- Date of bond: The performance bond shall be executed and dated the same date the vendor executes the contract.
- Term of bond: The performance bond shall have force and effect during the entire term of the contract and until it is released.
- Condition: The performance bond shall be conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.
- Amount: The performance bond shall be written in the sum of the contract.
- Obligee: The obligee of a performance bond shall be the "Albemarle County Service Authority".

In lieu of a performance bond, a vendor may submit an alternative form of security as provided in section 24-5.

#### **24-4 Payment Bonds**

A payment bond may be required to be submitted by the vendor upon the award of the contract. In the private sector, a subcontractor, materialman or supplier can recover the cost of work or goods in a project even if the prime contractor goes bankrupt or refuses to pay. This is done by placing a lien upon the owner's property which is benefited by the goods or labor. Because a lien may not be placed on public property in Virginia, the payment bond is required instead. A payment bond protects subcontractors, materialmen and suppliers because it is an agreement by the vendor and the surety to pay for material and labor supplied in the performance of the work.

#### **24-4.1 When Required**

Upon the award of a construction contract exceeding \$100,000 to any prime contractor, the contractor shall furnish to the Authority a payment bond.

For any other contract, regardless of cost, the purchasing agent may require in the invitation for bids or request for proposals that the vendor to whom the contract is awarded furnish a payment bond. In exercising such discretion, the purchasing agent shall consider the nature of the goods or services being procured.

If required, the payment bond shall be filed in the office of the purchasing agent.

#### **24-4.2 The Form and Amount of the Bond**

Each payment bond shall be in the form and amount as follows:

- Form of the bond: The payment bond shall be on an approved AIA form, or be substantially equivalent thereto.
- Original bond: The vendor shall provide an original bond.
- Delivery: Upon award of the contract, the vendor shall submit to the purchasing agent a sample performance bond. The original performance bond shall be submitted by the vendor and received by the purchasing agent within ten (10) days after the contract is executed by the Authority.
- Issuer: The payment bond shall be executed by a surety company selected by the vendor. The surety company shall be authorized to do business in the Commonwealth of Virginia.
- Identify parties or contract: The payment bond shall refer to the contract to which it pertains, either by referring to the contract number or procurement number, or by identifying the parties to the contract.
- Attorney-in-fact: The payment bond shall identify the name and address of an attorney-in-fact who is appointed to act on behalf of the surety within the Commonwealth of Virginia. The address of the attorney-in-fact shall be within the Commonwealth of Virginia.

The attorney-in-fact shall affix to the bond a certified and current copy of the power of attorney.

- Signature of bond company representative: The payment bond shall be signed by an authorized representative of the bond company.

- Date of bond: The payment bond shall be executed and dated the same date the vendor executes the contract.
- Term of bond: The payment bond shall have force and effect during the entire term of the contract and until it is released.
- Condition: The payment bond shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work.
- Amount: The payment bond shall be written in the sum of the contract.
- Obligee: The obligee of a performance bond shall be the “Albemarle County Service Authority”. In lieu of a payment bond, a vendor may submit an alternative form of security as provided in section 24-5.

#### **24-5 Alternative Forms of Security**

In lieu of a bid, performance or payment bond, a vendor may furnish a certified check or cash escrow in the face amount required for the bond, or a bank or savings institution’s letter of credit on certain funds in the face amount required for the bond. A letter of credit shall be in a form and substance that complies with provisions of the Uniform Commercial Code, as codified in the Code of Virginia, pertaining to letters of credit, and satisfy the following minimum requirements:

- Equivalent protection: The letter of credit shall afford protection to the Authority that is equivalent to or greater than a corporate surety’s bond.
- Identify parties or contract: The letter of credit shall identify the contract to which it pertains by the names of the parties to the contract or by the contract number.
- Original letter of credit: The vendor shall provide an original letter of credit.
- Amount: The letter of credit shall be in an amount equal to the sum of the contract.
- Nominated person: The letter of credit shall designate as the nominated person the “Albemarle County Service Authority”.
- Consent required to revoke, amend or cancel: The letter of credit shall not contain any provisions that make it revocable, or that allow it to be amended or canceled without the prior written consent of the Authority.

- Date of letter: The letter of credit shall be executed and date the same date the vendor executes the contract.
- Expiration and renewal: The letter of credit shall not have an expiration date of less than one year, and shall provide that it shall be automatically renewed for an additional year.
- Form of demand document: The letter of credit shall specify the document by which a demand may be presented to the issuer.

The letter of credit shall be reviewed and approved by the Authority attorney before it is accepted as an alternative form of security.



# Chapter 25. Protests

## Summary

This section establishes the procedure for addressing protests by vendors.

| <b>Essential Information in this Chapter</b>  |  |
|---|--|
| <ul style="list-style-type: none"><li>• The protest procedure provides a possible remedy in any procurement when a prospective vendor desires to challenge the award of a contract to another vendor.</li><li>• A protest must be received in the purchasing office within ten (10) calendar days of the public posting of the notice of intent to award or the notice of award.</li><li>• The purchasing agent may award a contract during the period allowed to protest under certain circumstances.</li><li>• A protest must be in writing and shall include the basis for the protest and the relief sought.</li><li>• The purchasing agent must issue a written response to the protest within ten (10) calendar days of the receipt of the protest. The response must state the reasons for either denying or upholding the protest.</li><li>• No protest lies for a claim that the selected vendor is not responsible, or that challenges the terms and conditions of the invitation for bids or request for proposals.</li><li>• If the protest is upheld, the purchasing agent shall grant appropriate relief.</li></ul> |  |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>  |  |
| Section 2.2-4360: Protest of award or decision to award<br>Section 2.2-4362: Stay of award during protest<br>Section 2.2-4364: Legal actions challenging decision to award contract   |  |

### **25-1 General**

The protest procedure set forth herein provides a possible remedy in any procurement when a prospective vendor desires to challenge the award of a contract to another vendor.

### **25-2 Competitive Sealed Bidding: Typical Grounds for Protest and Strategies to Prevent Protests**

A protest in the competitive sealed bidding procedure typically will be based on one of the following grounds: (1) the vendor claims its low bid was erroneously determined to be nonresponsive; (2) the vendor claims that it was erroneously determined to be not responsible; or (3) the vendor who submitted higher bid claims low bidder's bid was not responsive.

No protest shall lie for a claim that the selected vendor is not responsible.

Thus, vendor qualifications including, but not limited to, minimum prior experience, expertise, or minimum bonding capacity, are not the proper subject of a protest because those issues pertain to vendor responsibility. No protest shall lie to challenge the terms and conditions of the invitation for bids.

Following are some strategies to prevent protests when the competitive sealed bidding procedure is used:

- Confirm the correctness of determination that low bidder was nonresponsive.
- Confirm the correctness of determination that low bidder was not responsible.
- Confirm that the apparent low bidder is responsive.
- Confirm that any deviation from the terms of the invitation for bids were minor informalities, not material deviations.

### **25-3 Competitive Negotiation: Typical Grounds for Protest and Strategies to Prevent Protests**

A protest in the competitive negotiation procedure typically will be based on one of the following grounds: (1) arbitrariness in the process or in a substantive decision, such as the finding required in order to use the competitive negotiation process for the procurement of goods or nonprofessional services; (2) failure to follow the request for proposals or its evaluation criteria; (3) misleading discussions; (4) failure to avoid the appearance of impropriety; (5) failure to obtain high quality goods and services at reasonable costs; (6) failure to include qualified vendors; or (7) failure to conduct the process in a fair and impartial manner.

Following are some grounds for protesting a competitive negotiation award that are questionable and should be considered with skepticism: (1) the Authority's decision was erroneous; (2) the Authority arbitrarily appointed people without technical knowledge to the selection committee; (3) the Authority failed to retain certain documents; (4) the Authority failed to timely reply to a Freedom of Information Act request; (5) the selected vendor's proposal infringes on some other vendor's copyrighted work; (6) the requirements of the request for proposals were such that the vendor selected had a major advantage; and (7) the Authority did not negotiate enough with a particular vendor.

No protest shall lie for a claim that the selected vendor is not responsible. Thus, vendor qualifications including, but not limited to, minimum prior experience, expertise, or minimum bonding capacity, are not the proper subject of a protest because these issues pertain to vendor responsibility. No protest shall lie which

challenges the terms and conditions of the request for proposals.

Following are some strategies to prevent protests when a competitive negotiation procedure is used:

- Confirm that the selection was based only upon the factors in the request for proposals.
- Confirm that neither the process nor the decision was arbitrary.
- Assure that no verbal statements were made during the process that may have misled vendors.
- Confirm that the successful vendor satisfies all requirements of the request for proposals.
- Assure that the requirements do not change without fair notice to all vendors.
- Assure that complex methods for evaluating proposals are accurately and objectively performed.

#### **25-4 Effect of Protest on Contract Award**

The purchasing agent may award a contract during the period allowed to protest. However, if a timely protest is received or timely legal action is commenced, the purchasing agent shall take no further action to award the contract unless he makes a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

#### **25-5 Procedure for Making a Protest**

A protest shall be in writing and shall include the basis for the protest and the relief sought. A protest must be received in the purchasing office within the periods identified below:

- Competitive sealed bidding procurement: Within ten (10) calendar days of the posting of the notice of intent to award or the notice of award, whichever occurs first.
- Competitive negotiation procurement: Within ten (10) calendar days of the posting of the notice of intent to award or the notice of award, whichever occurs first.

- Sole source procurement: Within ten (10) calendar days of the posting of the notice of award.
- Emergency procurement: Within ten (10) calendar days of the posting of the notice of award.
- Any type of procurement, where the protest depends on public records pertaining to the procurement: Within ten (10) calendar days after the records are available for inspection.

Except as otherwise provided herein, the purchasing agent shall reject any protest that is either untimely received or fails to state the basis for the protest and the relief sought. However, the purchasing agent may, in his discretion, consider any protest that is untimely, and may grant any remedy authorized by section 25-7, if the protest is determined to be meritorious and the remedy granted is determined to be in the best interests of the Authority.

#### **25-6 Response to Protest: Denial**

The purchasing agent shall issue a response to the protest within ten (10) calendar days after receipt of the protest. The response shall be in writing and shall state the reasons for either denying or upholding the protest. In making his decision, the purchasing agent shall consider the following factors:

- Whether, based on the evidence presented in the protest or discovered by the purchasing agent as part of his investigation, it is more likely than not that the grounds stated in the protest are true.
- If the grounds stated in the protest are true, whether such grounds are a violation of a criminal law, the Virginia Public Procurement Act or this manual; or, whether such grounds render the decision to award arbitrary or capricious.

The purchasing agent may consult with the Authority attorney as to any matter pertaining to the decision to deny or uphold a protest.

The purchasing agent shall either hand deliver or mail the response to the vendor. If the response is hand delivered, the purchasing agent shall prepare a certificate stating the date of such delivery to retain in the contract file. If the response is mailed, it shall be mailed by certified mail, return receipt requested. The decision of the purchasing agent shall be final unless the protesting vendor then invokes the judicial appeals process as provided by law within ten (10) days of receipt of the response.

## 25-7 Remedies if Protest Upheld

If the protest is upheld and the decision to award the contract was, therefore, arbitrary or capricious, the purchasing agent shall grant the following relief:

- Prior to contract award: The award shall be canceled or revised to comply with the law.
- After contract award, prior to contract performance: The performance of the contract by the vendor may be enjoined.
- Contract performance begun: The contract may be declared void upon finding that the action is in the best interest of the public.

If, after a hearing held by the purchasing agent following reasonable notice to all vendors who submitted bids or proposals, there is probable cause to believe that a decision to award the contract was based on fraud, corruption or an act in violation of the ethics provisions of the Virginia Public Procurement Act, the purchasing agent shall enjoin the award of the contract to the particular vendor.

# Chapter 26. The Contract

## Summary

This chapter identifies, in general terms, the required elements of a contract entered into for the procurement of goods or services. The specific elements of a contract are set forth in model contracts in the Appendix. This chapter also identifies the procedure for resolving contractual claims. Finally, this chapter establishes the procedure for reviewing and executing contracts.

| <b>Essential Information in this Chapter</b>  |
|---|
| <ul style="list-style-type: none"><li>• After a contract is awarded, a contract shall be prepared and circulated for review and signature by the vendor and Authority officers.</li><li>• Before forwarding a contract to the Authority attorney for review, the contract preparer shall confirm that all contract documents are included and that the certificate of insurance and all bonds or other forms of surety are provided and satisfy the requirements of the invitation for bids or request for proposals.</li><li>• The contract shall be in a form approved by the Authority attorney.</li><li>• Although a vendor's standard contract may be used if provided for in the invitation for bids or request for proposals, such a contract should be avoided.</li></ul>   |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>  |
| Section 2.2-4309: Modification of the contract<br>Section 2.2-4311: Employment discrimination by contractor prohibited<br>Section 2.2-4311.1: Compliance with federal, state, and local laws and federal immigration law; required contract provisions<br>Section 2.2-4311.2. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth<br>Section 2.2-4312: Contractor required to maintain a drug-free workplace<br>Section 2.2-4331: Contract pricing arrangements<br>Section 2.2-4332: Workers' compensation for construction contractors and subcontractors<br>Section 2.2-4333: Retainage on construction contracts<br>Section 2.2-4334: Deposit of certain retained funds<br>Section 2.2-4335: Construction contract provisions barring damages for unreasonable delays void<br>Section 2.2-4350(B): Separate payment dates<br>Section 2.2-4354: Payment clauses<br>Section 2.2-4363: Contractual disputes<br>Section 18.2-498.1: Certificate of no collusion |

### **26-1 General**

After a contract is awarded, a contract shall be prepared and circulated for review and signature by the vendor and Authority officers. The contract shall be in a form approved by the Authority attorney, and shall contain the terms and conditions required by this chapter and by law.

The contract may be a short form contract. This contract specifies the procurement number, the date of execution, the parties to the contract, the contract term, the contract amount and payment terms. The contract documents, incorporated by reference, include the original invitation for bids or request for proposals, with all addenda, and the vendor's proposal.

Although a vendor's standard contract may be used if provided for in the invitation for bids or request for proposals, such a contract should be avoided. These contracts will likely contain clauses favoring the vendor. If such a contract is used, beware of clauses that govern mandatory arbitration, indemnification of the vendor by the Authority, the vendor's ownership of materials produced pursuant to the contract and delivered to the Authority, and the granting of broad powers of decision to the vendor.

## **26-2 Review of Contract and Contract Documents by Authority Attorney**

Before forwarding a contract to the Authority attorney for review, the contract preparer shall confirm that all contract documents are included and that the certificate of insurance and all bonds or other forms of surety are provided and satisfy the requirements of the invitation for bids or request for proposals.

The Authority attorney shall review a contract for the following matters, and any other matters identified during review:

### **26-2.1 The Contract**

The contract shall be reviewed by the Authority attorney for the following:

- Form and substance: The contract shall be in a form approved by the Authority attorney, except when the invitation for bids provides that the contract may be provided by the vendor, in which case the Authority attorney shall review the substance and the form of the contract.
- Identification of the parties: The Authority shall be identified as the "Albemarle County Service Authority". The vendor shall be identified by its legal name.
- Legal status of the parties: The Authority shall be identified as being "a political subdivision of the Commonwealth of Virginia." The legal status of the vendor shall be also stated (e.g., "a Virginia corporation").
- Term of the agreement: The term of the contract shall not commence prior to the date of the vendor's signature.
- Included documents: All of the documents listed in the "contract documents" section of the contract shall be included in the contract package.

## **26-2.2 Required Provisions**

State law requires the inclusion of certain provisions in public contracts. Those required provisions currently include:

- Employment discrimination by contractor prohibited (*Virginia Code* § 2.2-4311)
- Compliance with federal, state, and local laws and federal immigration law (*Virginia Code* § 2.2-4311.1)
- Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth (*Virginia Code* § 2.2-4311.2)
- Drug-free workplace to be maintained by contractor (*Virginia Code* § 2.2-4312)

All Authority contracts shall include all provisions required by and in the *Virginia Code*, and shall be subject to, and follow the required form of, subsequent amendment(s) to state law.

## **26-2.3 Certificate of Insurance**

If the invitation for bids or the request for proposals requires that the vendor have insurance during its performance of the contract, the certificate of insurance shall be reviewed for the following:

- Correct type of coverage: The certificate shall identify all of the types of insurance coverage (e.g., general liability, property damage, automobile liability, workers' compensation) required by the invitation for bids or the request for proposals.
- Correct amount of coverage: The certificate shall identify the amount of each type of insurance coverage, which must meet or exceed the amount for that type required by the invitation for bids or the request for proposals. The amount of coverage may be satisfied by combining the amount of insurance for the particular type of coverage with the amount of excess liability or umbrella insurance identified on the certificate of insurance, but only if the insurer provides a written statement that the coverage and the eligibility requirements for the excess liability or umbrella insurance is the same as the primary insurance.
- Term of coverage: The term of the insurance coverage shall begin on or prior to the date of the term of the contract, and shall continue during the full term of the contract. A certificate of insurance that indicates that an insurance policy will expire prior to the end of the contract term may be approved, but the vendor must provide a new certificate of insurance prior to the expiration of that policy.



- Authority named as an additional insured: The Authority, must be identified on the certificate of insurance as an additional insured for all types of insurance coverage except for workers' compensation and professional liability. The Authority shall be identified as "Albemarle County Service Authority".
- Form of the certificate: The certificate shall be on a form substantially similar to the sample certificate in the Appendix.
- Original certificate: The vendor shall provide an original certificate of insurance. A photocopy or facsimile of the certificate may be accepted when prompt review and approval of the contract is necessary and the vendor assures the Authority that the original certificate is forthcoming.
- Signature of insurance agent: The certificate of insurance shall be signed by an insurance agent licensed to do business in Virginia.

#### **26-2.4 Bonds and Other Forms of Security**

Security such as performance bonds, payment bonds, or other forms of security shall be reviewed to assure that they comply with the requirements for such security as set forth in sections 24-3.2, 24-4.2 and 24-5.

#### **26-2.5 Signature of Vendor**

The signature of the vendor shall be reviewed for the following:

- Signatory must be authorized to bind the vendor: The contract shall be signed on behalf of the vendor only by a person who is authorized to contractually bind the vendor. The vendor may be required to provide proof of such authority prior to approving the contract.
- Title or office of signatory must be identified: The title or office of the signatory shall be identified on a line immediately below his or her signature.
- Signature must be notarized: The signature of the signatory shall be notarized by a notary public in the state in which the contract is executed by the signatory.

**[Section 26-2.6 Intentionally Left Blank]**

### **26-3 Contractual Claims and Dispute Resolution**

A contractual claim shall be made pursuant to the following procedure:

- Time to submit notice of intention to file a claim: The vendor shall submit to the purchasing agent written notice of its intention to file a claim within fifteen (15) calendar days after the date of the occurrence of the event on which the claim is based, or within fifteen (15) calendar days after the date of the beginning of the work upon which the claim is based, as the case may be.
- Time to submit claim: A contractual claim, whether for money or other relief, shall be received in the purchasing office no later than sixty (60) calendar days after final payment.
- Form and substance of claim: A claim shall be in writing, shall identify the date of the occurrence or the date of the beginning of the work upon which the claim is based, shall state the basis for the claim, and shall identify the relief sought.
- Investigation of claim: Upon receipt of a claim, the purchasing agent shall conduct an investigation and evaluation of the claim. As part of his investigation, the purchasing agent may request that the vendor submit additional information to support his claim, and may request the vendor, or a representative thereof, to appear before the purchasing agent to provide additional information. The purchasing agent also may consult the using department and the Authority attorney.
- Resolution of claim: The purchasing agent, with the advice and consent of the Authority attorney, may settle and resolve a claim by mutual agreement of the vendor and the Authority. If resolution of the claim requires that the Authority pay additional money to the vendor, the purchasing agent's authority to settle a claim is limited to an amount not exceeding twenty-five (25) percent of the amount of the contract, or fifty thousand dollars (\$50,000), whichever is greater. If resolution of the claim requires that the Authority pay an amount exceeding twenty-five (25) percent of the amount of the contract, or fifty thousand dollars (\$50,000), whichever is greater, the purchasing agent shall present the proposed settlement to the Board of Directors for its determination.
- Written decision by purchasing agent if claim not resolved: If a claim is not resolved by mutual agreement of the vendor and the Authority within thirty (30) calendar days of receipt of the claim, the purchasing agent shall notify the vendor in writing of his decision, which shall set forth the reasons for the action taken. The decision of the purchasing agent shall

be final and conclusive unless the vendor timely appeals the decision as provided by law. Denial of a vendor's claim under a construction contract based on the vendor's alleged unreasonable delay requires the Authority to pay a penalty that is a percentage of the vendor's costs to investigate, analyze, negotiate, litigate and arbitrate the claim. A vendor may not institute legal action on the claim prior to receipt of the purchasing agent's written decision, unless the purchasing agent fails to render his decision within thirty (30) calendar days of receipt of the claim.

- Payment during pendency of claim: The pendency of a claim shall not delay payment of amounts agreed due in the final payment, provided that the goods or services contracted for have been provided and accepted. The acceptance of the final payment by the vendor shall not constitute a waiver of the vendor's right to timely submit a claim.

The purchasing agent may consult the using department and the Authority attorney during any stage of the claim process.

#### **26-4 Change Orders**

*Virginia Code* § 2.2-4309(A) provides in part: “[N]o fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the governing body, in the case of political subdivisions.” The Authority Board of Directors shall act as the designee for purposes of this review and approval. Proposed change orders shall receive this review whenever the cumulative total of proposed changes first exceeds 25% of the amount of the contract or any multiple of 25% thereafter (such as 50%, 75%, etc.). Modifications that fail to comply with this section are voidable at the discretion of the Board or its designee, and the unauthorized approval of a modification cannot be the basis of a contractual claim.

# Chapter 27. Design Build (D/B) Procedures

## Summary

This chapter outlines the procedures to be followed by the Authority for the procurement, as well as the administration, of Design-Build (“D/B”) contracts.

| <b>Essential Information in this Chapter</b>  |
|---|
| <ul style="list-style-type: none"><li>• The Authority may enter Design-Build (D/B) contracts only after it has determined in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.</li><li>• Prior to using a D/B contract, the Authority must receive approval from the Board of Directors.</li><li>• Procurement of a D/B contract is a two-step competitive negotiation process. The Authority first selects qualified offerors and then negotiates with each of them to select one contractor.</li></ul> |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>  |
| Section 2.2-4378: Purpose; applicability<br>Section 2.2-4379: Definitions<br>Section 2.2-4382: Design-build or construction management contracts for local public bodies<br>Section 2.2-4383: Reporting requirements  |

### **27-1 General**

A design-build contract is a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract. The Authority may contract to secure D/B projects on a fixed price or not-to-exceed price, basis in accordance with *Virginia Code* § 2.2-4308(A), the requirements of that section, and the procedures adopted by the Virginia Secretary of Administration for utilizing design-build or construction management contracts. The Authority is authorized to use competitive negotiations to procure D/B contracts if it determines in advance and in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public. That written determination must document the basis for this determination.

D/B contracts are intended to minimize the project risk for an owner and to reduce the delivery schedule by overlapping the design phase and construction phase of a project.

## **27-2 Definitions**

"Requests for Qualifications": As used in this chapter, Request for Qualifications ("RFQ") means the first step in the two-step competitive negotiation process used for design-build procurements.

"Request for Proposals": As used in this chapter, Request for Proposals ("RFP") means the second step in the two-step competitive negotiation process used for design-build procurements.

## **27-3 Criteria for Choosing Design-Build Procurement**

The following criteria must be met for the Authority to engage in a design-build procurement:

1. The Authority shall determine, in writing, that neither competitive sealed bidding, nor separately procured design and construction vendors, are practicable or fiscally advantageous for the project in question.
2. The written determination must include the bases for that determination, which must include one or more of the following bases:
  - a. Estimated construction cost
  - b. The project's complexity
  - c. The anticipated use of the building/structure/property
  - d. Project timeline
  - e. Need for a single point of contact.
3. A licensed architect or engineer must be employed or under contract to advise the Authority in its use of design-build contracting.

## **27-4 Procedure for Approval**

Prior to taking any action, the Authority shall submit its written determination to the Board of Directors. The Authority shall not proceed with procurement until it receives authorization from the Board of Directors.

The determination and bases for determination shall be stated in the Request for Qualifications.

## **27-5 Selection Procedures**

Procurement of the contract shall proceed as a two-step competitive negotiation process. The following procedures shall be used in selecting a vendor and awarding a contract:

1. The Authority shall appoint an Evaluation Committee ("Committee")

which shall consist of at least three members from the Authority, including a licensed design professional, if possible.

2. Step 1: Selection of Qualified Offerors: The Authority shall conduct an RFQ process to determine which offerors are qualified to receive an RFP.
  - a) The Authority shall prepare an RFQ containing the project's requirements, building and other site criteria, and any site or survey data available. The criteria to be used to evaluate responses must be set out in the RFQ, including any capabilities or qualifications, beyond licensure, that will be required of the selected contractor..
  - b) The RFQ shall be posted on the Authority's website for a minimum of 30 days.
  - c) All offerors must include, as part of their response, a completed Prequalification Form, available from the Authority. All offerors shall include, as part of their response, the identity of a Virginia-licensed Class "A" contractor and a Virginia-licensed architect or engineer employed or contracted by the offeror to work on the project.
  - d) The Committee shall evaluate each offeror's RFQ responses and any other relevant information and shall determine which offerors are qualified for the project, based on the criteria established in the RFQ. The Committee may deny an offeror prequalification only as specified under Virginia Code 2.2-4317 or those capabilities or qualifications beyond licensure set out in the RFQ, but the short list shall consist of those deemed best qualified.
  - e) The RFQ evaluation shall result in a short list of two to five offerors to receive the RFP. An offeror who was not selected to the short list, or who did not submit a response to the RFQ, may not submit an RFP. An offeror may be denied prequalification only as specified under *Virginia Code* § 2.2- 4317(C). It is possible for an offeror to be found qualified, but not be selected to the short list.
  - f) The Authority shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. The Authority shall provide in writing to each prequalified offeror that is not selected for the short list the reasons that it was not selected. The Authority shall provide in writing to each offeror denied prequalification the reasons that it was denied prequalification and the factual basis for those reasons.
3. Step 2: Selection of Contractor. The Authority shall conduct an RFP

process to determine which offeror will be awarded a contract.

- a) The Authority shall post an RFP in accordance with current standards for posting RFPs, and shall provide the RFP to each offeror on the short list.
- b) The Committee shall consider cost a critical component of the selection process.
- c) The deadline for submission of the RFP responses must be at least 30 days after the Authority notified selected offerors or posted the RFP, whichever is later.
- d) The offerors selected to the short list may submit a sealed Technical Proposal to the Committee.
- e) The Committee shall evaluate the Technical Proposals in accordance with the criteria contained in the RFP. It shall inform each offeror of any adjustments it must make to its Technical Proposal to make it fully comply with the RFPs requirements. In addition, the Authority may ask offerors to adjust their Technical Proposals to incorporate project improvements or additional information identified by the Committee during the procurement process.
- f) An offeror may provide a new Technical Proposal in response to the Authority's request for adjustment. An offeror may amend its Cost Proposal as needed to reflect changes to its Technical Proposal.
- g) The Committee shall evaluate (and rank if technical rankings are to be considered as a criteria for award) the Technical Proposals, and open the Cost Proposals.
- h) After evaluation and ranking, the Committee shall conduct negotiations with two or more offerors submitting the highest ranked proposals.
- i) The Committee shall make its recommendation for the selection of an offeror to the Authority based on its evaluations of the Technical Proposal, Cost Proposal and the outcome of negotiations. The Purchasing Agent may award a contract to the offeror so selected.
- j) Upon request, the Authority shall provide to any offeror documentation of the process used to award the contract..

## **27-6 Reporting Requirements**

The Authority shall report to the Purchasing Agent no later than October 1 of each year on every design-build project completed during the previous 12 months, whose total cost exceeded \$2 million. That report must include, at a minimum:

1. The project's budget at the point of contract award;
2. The final project cost;
3. The expected timeline and end date of the point of contract award;\
4. The actual completion date.
5. Any post-project issues.

The Purchasing Agent shall report to the Director of the Department of General Services no later than November 1 of each year all of the above information gathered throughout the Authority, and shall transmit, along with it, a statement as to the procurement method utilized.



# Chapter 28. Construction Management (CM) Procedures

## Summary

This chapter outlines the procedures to be followed by the Authority for the procurement of Construction Management (“CM”) contracts.

| <b>Essential Information in this Chapter</b>   |
|--|
| <ul style="list-style-type: none"><li>• The Authority may enter Construction Management (CM) contracts only after it has determined in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.</li><li>• Prior to using a CM contract, the Authority must receive approval from the Board of Directors.</li><li>• Procurement of a CM contract is a two-step competitive negotiation process. The Authority first selects qualified offerors and then, from among them, the construction manager.</li></ul> |
| <b>Key References to the Code of Virginia Applicable to this Chapter</b>   |
| Section 2.2-4301: Definitions of construction management contract and other key terms<br>Section 2.2-4303(D)(4): Exceptions to competitive sealed bidding<br>Section 2.2-4308: Construction management contracts for public bodies other than the Commonwealth   |

### **28-1 General**

A Construction Management contract is a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner. The Authority may enter into a contract with a Construction Manager in accordance with *Virginia Code* § 2.2-4308(A), the requirements of that section, and the procedures adopted by the Virginia Secretary of Administration for utilizing design-build or construction management contracts. The Authority is authorized to use competitive negotiations to procure CM contracts when it determines in advance, and sets forth in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

CM contracts may be approved for use on projects where 1) fast tracking of construction is needed to meet Authority program requirements, or 2) value engineering and/or constructability analyses concurrent with design are required. The use of CM shall be limited to projects with a construction value that is in

excess of \$10,000,000. With proper justification for small complex projects, the purchasing agent may grant a waiver of this requirement.

Prior to making a determination as to the use of Construction Management for a specific construction project, the Authority shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the Authority regarding the use of Construction Management for that project and who shall assist the Authority with the preparation of the Request for Proposal and the evaluation of such proposals.

## **28-2 Procedure for Approval**

Prior to taking any further action, the Authority shall request authority, in writing and receive approval from the Board of Directors, to use a CM contract. The request shall justify and substantiate that a CM contract meets the criteria found in section 28-1. The request must also include the stipulation that the CM contract will be initiated no later than the Schematic Phase of design. The request shall also include a written justification that sealed bidding is not practicable and/or fiscally advantageous. These justifications for the use of a CM contract shall also be stated in the Request for Qualifications. Approval of or exceptions to this procedure may be granted by the purchasing agent, who is the approving authority for requests to use CM procedures.

## **28-3 Selection Procedures**

On projects approved for CM, procurement of the contract shall be a two-step process unless a one step process is approved pursuant to section 28-5. The following procedures shall be used in selecting a C/M and awarding a contract:

1. The Authority shall appoint an Evaluation Committee ("Committee") which shall consist of at least three members from the Authority, including a licensed design professional, if possible.
2. The basis of the award of the contract shall be in accordance with *Virginia Code* § 2.2-4301(3)(b) and the criteria for the award shall be submitted to the purchasing agent, in advance, for approval. It is noted that cost is a critical component of the selection process.
3. Selection of Qualified Offerors (STEP I): On projects approved for CM, the Authority shall conduct a prequalification process as follows to determine which offerors are qualified to receive Request for Proposals (RFPs).
  - a) The Authority shall prepare a Request for

Qualifications (“RFQ”) containing the Authority's Facility Requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate RFQ Responses and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All offerors shall have a licensed Class “A” contractor registered in the Commonwealth of Virginia as part of the Project team.

- b) The RFQ shall be posted in accordance with the current standards for the posting of public bids in the *Virginia Code* and in accordance with the latest edition of the *Construction and Professional Services Manual*.
- c) The Committee shall evaluate each responding firm's RFQ responses and any other relevant information and shall determine those deemed qualified with respect to the criteria established for the project.
- d) The RFQ evaluation process shall result in a short list of two to five offerors to receive the RFP. An offeror may be denied prequalification only as specified under the *Virginia Code* § 2.2-4317, but the short list shall also be based upon the RFQ criteria.
- e) At least 30 days prior to the date established for the submission of proposals, the Authority shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. Prequalified offerors that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.

#### 4. Selection of a Construction Manager (STEP II):

- a) The Authority shall send a Request for Proposal (“RFP”) to the offerors on the short list and request submission of formal proposals from them. The criteria for award shall be included in the RFP.
- b) Proposals as described in the RFP shall be submitted to the Committee.
- c) The Committee will evaluate and rank the proposals. After evaluation and ranking of the proposals, the Committee shall:

1. Conduct negotiations with two or more offerors submitting the highest ranked proposals. (or)
  2. Should the Authority determine, in writing and at its sole discretion, that only one offeror is fully qualified or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.
- d) The Committee shall make its recommendation on the selection of a construction manager to the Executive Director based on its evaluations and negotiations. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the Request for Proposal.
  - e) The Authority shall notify the Board of its selection of the Construction Manager and shall request authority to award a contract by processing the notice of award and providing supporting documents to the purchasing division via e-mail to [[coforms@dgs.virginia.gov](mailto:coforms@dgs.virginia.gov)].
  - f) The Authority will notify all offerors who submitted proposals which offeror was selected for the project. In the alternative, the Authority may notify all offerors who submitted proposals of the Authority's intent to award the contract to a particular offeror at any time after the Authority Committee has selected the Construction Manager. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
  - g) Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.

#### **28-4 Required Contract Terms**

Any Guaranteed Maximum Price construction management contract entered into by the Authority will contain provisions requiring that (1) not more than 10% of the construction work (measured by cost of the work) will be performed by the CM with its own forces and (2) that the remaining 90% of the construction work will be performed by subcontractors of the CM which the CM must procure by publicly advertised, competitive sealed bidding to the maximum extent practicable. Documentation shall be placed in the file detailing the reasons any work is not procured by publicly advertised competitive sealed bidding. The purchasing agent may modify these contractual

requirements in whole or in part for projects where it would be fiscally advantageous to the public to increase the amount of construction work performed by the Construction Manager.

**28-5 Guaranteed Maximum Price**

The Guaranteed Maximum Price shall be established at the completion of working drawings unless a waiver has been granted to this requirement by the purchasing agent.

**28-6 One-Step Solicitation**

The Authority may request from the purchasing agent approval to perform a one-step solicitation for its project. If adequate justification is provided, the purchasing agent may approve the request.

# Chapter 29. Participation of Small Businesses and Minority-Owned, Women-Owned, and Service Disabled Veteran-Owned Businesses in Authority Procurement

## Summary

This chapter outlines the Authority's policy promoting procurement from small businesses, and businesses owned by minorities, women, and service disabled veterans.

| Essential Information in this Chapter  |
|--|
| <ul style="list-style-type: none"><li>This Authority policy is to assure that small businesses and businesses owned by minorities, women, and service disabled veterans have the maximum practicable opportunity to participate in Authority procurement transactions.</li></ul> |
| Key References to the Code of Virginia Applicable to this Chapter  |
| Section 2.2-4310(B): Participation of Small, Women-Owned, Minority-Owned, and Service Disabled Veteran-Owned Business in Procurement   |

### 29-1 Definitions

The terms set forth below shall have the following meanings unless the context clearly requires otherwise.

- a. "Control" means exercising the power to make policy decisions.
- b. "Operate" means being actively involved in the day-to-day management of the business.

Unless the context clearly requires otherwise, the terms "Minority individual," "Minority-owned business," "Service disabled veteran," "Service disabled veteran business," "Small business," and "Women-owned business" shall be as defined in Virginia Code § 2.2-4310(E) or its successor(s), as amended.

### 29-2 Policy

It is the policy of the Authority of Albemarle, acting through its officers, agents and employees, in a manner that is consistent with the provisions of the Virginia Public Procurement Act, to:

- a. Actively promote the procurement or lease of goods, services, insurance, or construction, from small businesses or businesses owned by minorities, women, and service disabled veterans in an equally competitive manner.
- b. Include participation from qualified small businesses and minority-owned, women-owned, and service disabled veteran-owned businesses on solicitation lists.
- c. Assure that small businesses and minority-owned, women-owned, and service disabled veteran-owned businesses are solicited whenever they are potential sources.
- d. Utilize a list of small businesses and minority-owned, women-owned, and service disabled veteran-owned businesses published by the Virginia Department of Small Business and Supplier Diversity and the Department of Veterans Services.
- e. Where procurement requirements permit, establish delivery schedules which will encourage participation by small businesses and minority-owned, women- owned, and service disabled veteran-owned businesses.
- f. Cooperate with, and use the services and assistance of, the United States Small Business Administration, the Virginia Department of Small Business and Supplier Diversity and the Department of Veterans Services, and other public or private agencies.
- g. Participate to the maximum extent possible in all local and regional purchasing fairs for small businesses and minority-owned, women-owned, and service disabled veteran-owned businesses.

## **APPENDIX A: ACSA GENERAL TERMS AND CONDITIONS**

### **A. General**

1. **CONTACT INFORMATION:** Questions concerning the project should be addressed to the following:  
A.C.S.A.  
168 Spotnap Road  
Charlottesville, Virginia 22911  
(434) 977-4511 Ext. 133
2. **COMPETITION INTENDED:** It is the ACSA's intent that this solicitation permit competition. It shall be the Bidder's/Offeror's responsibility to advise the ACSA in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The ACSA must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the bids/proposals.
3. **TAX EXEMPTION:** The ACSA is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished, if requested by the successful Bidder/Offeror.
4. **AVAILABILITY OF FUNDS:** It is understood and agreed between the contractor and the ACSA that the ACSA shall be bound hereunder only to the extent of the funds available or which hereafter become available for the purpose of the contract.
5. **NONDISCRIMINATION OF CONTRACTORS:** A Bidder, Offeror, or contractor shall not be discriminated against in the solicitations or award of this contract because of race, religion, color, sex, national origin, age or disability.
6. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court or General District Court of Albemarle County, Virginia. The contractor shall comply with applicable federal, state and local laws and regulations.

### **B. Qualifications**

1. **STATE REGISTRATION OF CONTRACTORS:** Attention is directed to Chapter 11, Title 54.1 of the Code of Virginia (Re: State registration of contractors), which requires that all Bidders/Offerors must show evidence of the proper license under the provision of this chapter before such bid/proposal is considered.
2. **DEBARMENT STATUS:** By submitting their bid/proposals, Bidders/Offerors certify that they are not currently debarred by the ACSA, the Commonwealth of Virginia, the Federal Government, any local government or government agency/entity/authority from submitting bids or proposals on contracts for the type



of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

3. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377, Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by the ACSA. By submitting their bid/proposals, all Bidders/Offerors certify that their bid/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement, transaction of any payment, loan, subscription, advance, deposit of money, services or anything of more than normal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

The Bidder/Offeror certifies that to the best of their knowledge, no employee of the ACSA, nor any member thereof, nor any public agency or official impacted by the solicitation or resulting contract has any pecuniary interest in the business of the Bidder/Offeror, and that no person associated with the Bidder/Offeror has any interest that would conflict in any manner with the performance of the contract resulting from this solicitation.

4. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their bids/proposals, the Bidders/Offerors certify that they do not and will not, during the performance of this contract, employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as amended.
5. **ANTI-TRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the ACSA all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and Albemarle County, relating to the particular goods or services purchased or acquired by the ACSA under said contract. Consistent and continued tie bidding could cause rejection of bids/proposals by the ACSA and/or investigation for Anti-Trust violations.
6. **ANTI-DISCRIMINATION:** By submitting their bid/proposal, Bidders/Offerors certify to the ACSA that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and Code of Virginia § 2.2-4311, as amended. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, they shall be subject to audit by the public body. (Code of Virginia § 2.2-4343.1.E).
7. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance

or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

8. **RESPONSIBLE LAND DISTURBER:** The contractor will be required to have on staff, and assigned to this project, a Responsible Land Disturber (RLD) in accordance with the Contract Documents, and the provisions set forth in the Virginia Erosion and Sediment Control (ESC) Program, established by revisions to the Virginia Erosion and Sediment Control Law (Title 10.1, Chapter 5, Article 4 of the Code of Virginia). Proof of certification for the RLD is not required as a part of the bid/proposal package; however, this information may be requested at a later date (if applicable) during the bid/proposal evaluation phase.

#### C. Bid/Proposal Period

1. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders/Offerors to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired. Any article which the ACSA, in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, may be accepted. The Bidder/Offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the ACSA to determine if the product offered meets the requirements of the solicitation.
2. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the Bidder/Offeror will be required to furnish articles in conformity with that specification.
3. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment or materials listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment or material and its appurtenances, shall be considered a part of such equipment or material although not directly specified or called for in the specifications. The Bidder/Offeror shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, AWWA regulations, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

4. EQUIPMENT AND MATERIAL STANDARDS: Any equipment and material delivered shall be standard new equipment and material, latest model, the best quality, and the highest grade work, except as otherwise specifically stated in the Bid/Proposal. Any part of nominal appurtenances which are usually provided in the manufacturer's stock model shall be furnished.
5. BIDDERS INTERESTED IN MORE THAN ONE BID: If more than one Bid is offered by any one party, either directly or by or in the name of their clerk, partner, or other persons, all such Bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other Bidders or firms submitting a bid directly for the work, materials or supplies.

#### D. Receipt of Proposals

1. Proposals for the Services will be accepted at the office of the ACSA, 168 Spotnap Road, Charlottesville, Virginia, until x:xx p.m., local prevailing time on "Day", "Month" "Date", "Year."

The signed Proposal and requested documents shall be submitted in a sealed envelope and identified with the following information:

- a. Offeror's name and complete mailing address
- b. RFP number if applicable and title of project
- c. Proposal due date and time
- d. The Contractor's Virginia license number will be required as a part of the Bid/Proposal package.

The Qualification Statement (Section 00431) and Contractor's Financial Statement (Section 00432) may be required by the ACSA after receipt of bid/proposals, but are not required as a part of the Bid/Proposal package.

A statement as to available machinery and equipment to undertake the work may also be requested.

2. NO CONTACT POLICY: No Bidder/Offeror shall initiate contact related to the solicitation with any ACSA employee, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeror with any ACSA representative, concerning this solicitation, is prohibited and may cause the disqualification of the Bidder/Offeror from this procurement process.
3. LATE BIDS/PROPOSALS: No bid/proposal will be received after the time specified for receipt of the bid/proposal. Bids/Proposals received after the time specified shall be returned unopened.

The ACSA is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder/Offeror to ensure their bid/proposal reaches the designated location by the date and hour specified.

4. WITHDRAWAL OF BID/PROPOSALS: A Bidder/Offeror for a contract other than for public construction may request withdrawal of their bid/proposal under the following circumstances:

- a. Bids/Proposals received at the address shown in the solicitation, prior to the time of acceptance, may be withdrawn on written request from the Bidder/Offeror.
- b. No bid/proposal may be withdrawn after the time set for opening of Bid/Proposals has passed, except as provided for by the Code of Virginia, Chapter 43, Title 2.2, Section 4330, as amended, and in manner prescribed in the aforesaid Section 11.54, as amended. The ACSA reserves the right to hold the bids/proposals for a period of 90 days after the date set for receipt of bids/proposals.
- c. Bids/Proposals shall not be withdrawn after award of a contract. No plea or claim of mistake in a solicitation or resulting contract shall be available as a defense in any legal proceeding.

No bid/proposal may be withdrawn when the result would be the awarding of the contract on another bid/proposal from the same Bidder/Offeror or of another Bidder/Offeror in which the ownership of the withdrawing Bidder/Offeror is more than five percent. If a bid/proposal is withdrawn, the lowest remaining bid/proposal shall be deemed to be the low bid/proposal. No Bidder/Offeror who is permitted to withdraw a bid/proposal shall, for compensation, supply any material or labor to, or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded; or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.

5. **ERRORS IN BID/PROPOSALS:** When an error is made in extending total prices, the unit bid/proposal price will govern. When a discrepancy exists between the written word and the numeric amount, the written word shall govern.
6. **FAMILIARITY:** Each Bidder/Offeror, by making their bid/proposal, represents that they have read and understand the Bidding/Proposing documents, and have familiarized themselves with the local conditions under which the work is to be performed and all State laws and local ordinances and regulations which may affect the conduct of the work or those engaged or employed on the work.

#### E. Acceptance of Bid/Proposals

1. **ACCEPTANCE OF BID/PROPOSALS:** Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of ninety (90) calendar days following the date established for acceptance. At the end of the ninety (90) calendar days, the bid/proposal may be withdrawn at the written request of the Bidder/Offeror. If the proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
2. **PRICING:**
  - a. Prices should be stated in units of quantity as specified on the bid/proposal form.
  - b. Life cycle cost analysis may be considered when determining the lowest responsive and responsible Bidder/Offeror. This analysis may consider, in addition to purchase price, any proposed upward or downward escalator

clauses proposed for the initial contract term and any potential renewal terms; operating and related costs over the life of the item including maintenance, down time, energy costs, salvage value, etc.

- c. Bid/Proposal prices shall be for complete installation ready for ACSA use and shall include all applicable freight and installation charges; extra charges will not be allowed.

3. FACTORS OTHER THAN PRICE IN AWARD DECISION: The following factors, in addition to price (as they apply), shall be a consideration in the award decision:

- a. The quality of performance/workmanship of previous contracts, services or products, or references which attest to other specific experiences;
- b. The timely completion of previous contracts or services or the timely delivery of past orders; or references which attest to other specific experiences;
- c. The sufficiency of financial resources and its impact on ability of the Bidder/Offeror to perform the contract or provide the services;
- d. The ACSA reserves the right to conduct on-site inspections of any Bidder's/Offeror's facilities prior to award. The results of said inspection will be considered by the ACSA in determining the Bidder's/Offeror's capabilities of successfully administering to this contract;
- e. The ability and availability of the Bidder/Offeror to provide both quality and timely maintenance, service, and/or parts;
- f. The resale value, life cycle costing, and value analysis of a product;
- g. The availability and capability of local and regional vendor support as it affects the quantity, quality, and timeliness of the work or products required;
- h. Delivery of a product and timely completion of a project as stated by a vendor in the bid/proposal;
- i. Substantial compliance or noncompliance with specifications set forth in the bid/proposal as determined by the ACSA;
- j. Product or parts inventory capability as it relates to a particular bid/proposal; and
- k. Results of product testing.

4. TIE BID/PROPOSALS: In the case of a tie bid/proposal, the ACSA may give preference to goods, services and construction produced in Albemarle County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to the Code of Virginia § 2.2-4324. If no ACSA or Commonwealth choice is available, the tie shall be decided by lot.

F. Award

1. AWARD OR REJECTION OF BIDS/PROPOSALS: Awards made in response to a

Request for Proposal will be made to the highest qualified and responsible Offeror whose proposal is determined, in writing, to be the most advantageous to the Authority taking into consideration the evaluation factors set forth in the Request for Proposal.

That a Bidder/Offeror is "responsible" may be evidenced by the following facts:

- a. they maintain a permanent place of business;
- b. they have adequate financial capability for meeting the obligations inherent in the work;
- c. they have adequate equipment to properly perform the work within the time limit specified; and
- d. they have a competent and experienced organization.
- e. they have performed and completed similar work of similar magnitude in a satisfactory manner.

The ACSA may make such investigations as it deems necessary to determine the Bidder's/Offeror's ability to perform the work and the Bidder/Offeror shall furnish to the ACSA all such information and data for this purpose as the ACSA may request. The ACSA reserves the right to reject any bid/proposal if investigation of such Bidder/Offeror fails to satisfy the ACSA that the Bidder/Offeror is properly qualified to carry out the obligations of the contract.

By the tender of a bid/proposal for performing the work, the Bidder/Offeror warrants that they are experienced in providing these services and are familiar with all phases of the work necessary for a complete job.

The Bidder/Offeror must satisfy themselves of the type of work and quantity of work in the Request for Proposal by examination of the site and a review of the specifications. After a Bid/Proposal has been awarded, the Contractor shall not assert that there was misunderstanding concerning the quantities of work or of the nature of the work to be done as called for in the contract documents.

The ACSA reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the ACSA. The ACSA reserves the right to negotiate with the lowest responsive, responsible Bidder/Offeror should bids/proposals exceed available funds. The ACSA shall reject the bid/proposal if the Bidder/Offeror is deemed to be a non-responsive, or non-responsible Bidder/Offeror.

2. **ASSIGNMENT OF CONTRACT:** The Contractor shall not assign their Contract, nor any part thereof, nor any monies due, or to become due thereunder, without prior written approval of the ACSA.
3. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/Offeror who desires to protest the award or decision to award a contract by the ACSA shall submit such protest in writing to the ACSA no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected Bidder/Offeror is not a responsible Bidder/Offeror. The written protest shall include the basis for the protest and the relief sought. The ACSA shall issue a decision in writing within five (5) days after receipt of the protest stating the reasons for the action taken. This decision shall be final

unless the Bidder/Offeror appeals within ten (10) days of the written decision by instituting legal action. Nothing in this paragraph shall be construed to permit a Bidder/Offeror to challenge the validity of the terms or conditions of the solicitation.

G. Successful Bidder's/Offeror's Requirements

1. **INSURANCE:** As stated in the Request for Proposal, one or more certificates of insurance evidencing the types and amounts of insurance coverage required to be maintained by the Contractor under the contract documents.

In addition, if the Bidder/Offeror to whom the Contract is awarded refuses or neglects to execute it or fails to furnish the required insurance as herein provided, the award of the contract may be annulled and the contract awarded to the next lowest responsive, responsible Bidder/Offeror and such Bidder/Offeror shall fulfill every stipulation of these documents as if they were the original party to whom it was made; or ACSA may reject all of the bids/proposals as its interest may require. Except as provided in the contract documents, no plea of mistake in the Bid/Proposal shall be available to the Bidder/Offeror for the recovery of their Bid/Proposal security or as a defense to any action based upon the neglect or refusal to execute a contract.

2. **SUBCONTRACTORS:** No part of the Contract shall be sublet without prior written approval of the ACSA. The Bidder/Offeror shall, prior to execution of the Contract, immediately submit to the ACSA the names of Subcontractors when they propose to employ on the project.
3. **NOTICE TO PROCEED:** The Contractor shall be notified by letter, giving Notice to Proceed, when work may begin under this Contract. Such notice will be issued as determined by the ACSA, but not before receipt and acceptance of the Contractor's Certificate of Insurance, and a fully executed Standard Form of Agreement.