

# 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>  |
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| <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 County agencies and departments.</li><li>• The primary goal and purpose of the procedures set forth in this manual is to ensure that goods and services are procured in a competitive process which is fair, impartial, administratively efficient, and accessible to all qualified vendors.</li><li>• This manual applies to the County and to the County Schools, and their boards, commissions, agencies, offices, departments, committees, and authorities when they procure goods or services from nongovernmental 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 County of Albemarle and the Albemarle County School Board (hereinafter collectively referred to as the “County”; “School Board” is, from time to time, expressly identified for additional clarity and emphasis) for the procurement of goods and services, and is to be followed by all County agencies and 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 county attorney’s office 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. Likewise, the purchasing agent, in consultation with the county attorney’s office, may make changes to the contract and solicitation documents in the Appendix without the necessity of presenting the changes to the Board of Supervisors for approval

prior to implementation. This edition of the manual is effective November 14, 2001 and it supersedes all previous editions. Comments, suggestions, and questions of interpretation should be provided to the purchasing office or the county attorney's office.

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 County 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 County for the procurement of goods and services, this manual:

- Establishes procedures that promote competition affording every qualified vendor with a fair opportunity to obtain County 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 County'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 County from nongovernmental vendors to include governmental procurement that may or may not result in monetary consideration for either party and regardless of whether the County, the contractor, or some party is providing the consideration.
- To whom the Act applies: The Act applies to, among others, the County, the County schools, and their boards, commissions, agencies, offices, departments, committees, authorities, and institutions.

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 County 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 County 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 County is paid for allowing a service are subject to manual: This manual and the Act apply to the procurement of services by which the County is paid by the vendor for allowing a service to be provided.
- Procurement that may or may not result in monetary consideration for either party.
- Other law authorizes procurement subject to manual: This manual and the Act may apply if another statute grants procurement authority to the County. 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, lease, 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 County to coordinate and administer contracts for construction services for the benefit of the County and may also include, if provided in the contract, furnishing construction services to the County.
- County attorney means the county attorney or his deputy or assistant.
- Day means a calendar day, unless otherwise indicated.
- Dependent means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if that 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 County 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:
  - (1) Ownership in a business if the ownership interest exceeds three (3) percent of the total equity of the business.
  - (2) Annual income that exceeds, or may reasonably be anticipated to exceed, ten thousand dollars (\$5,000) from ownership in real or personal property or a business.
  - (3) Salary, or other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or government entity that exceeds, or may reasonably be expected to exceed, ten thousand dollars (\$5,000) annually.
  - (4) Ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property.
  - (5) Personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business.
  - (6) An option for ownership of a business or real or personal property if the ownership interest will consist of clause (1) or (4).
- Personal interest means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. A personal 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, \$5,000 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, \$5,000 annually; (4) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (5) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (6) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (1) or (4).

- 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 County, including elected officials and appointed members of governing bodies.
- Purchasing agent means the director of finance, or his designee, or another person designated by the Board of Supervisors to serve as the purchasing agent.
- 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 ensure 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.