

# 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 county 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 County 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 county attorney is responsible for ensuring that the procurement process complies with applicable laws and policies, and for reviewing all procurement contracts as to form.</li><li>• The County 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 Section 15.2-1237: Review of contracts by the county attorney

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

The County is organized under the county executive form of government. In this form of government, the director of finance acts as the purchasing agent for the County.

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 surplus goods; and the award of designated contracts on behalf of the County 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 Supervisors.
- 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 other sales as may be authorized by the Board of Supervisors. 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 County; 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.
- Delegation of authority: the power and duty to delegate limited purchasing authority to qualified designees by letters of appointment.

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.
- Ensuring that competition is open and fair.
- Ensuring that small businesses, businesses owned by minorities, women, and service-disabled veterans, and employment services organizations have the maximum practicable opportunity in County procurement competition.
- Ensuring that specifications reflect the needs of the County.
- Applying the County'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.
- Contract administration: Provide contract administration for all contracts for goods and services. Monitor performance and delivery and document vendor performance under the contract. Notify the purchasing office of instances of non-compliance with contract requirements and cooperate with the purchasing agent in the conduct of remedial actions. Each department shall designate an employee responsible for contract administration. Each designated employee should attend at least one applicable class or training opportunity annually on contract administration sponsored by the purchasing agent.
- Procurement training: Prior to any purchasing action or actions, any individual initiating the action or actions shall have attended mandatory purchasing procedures training. The training shall be made available by the purchasing agent on a periodic basis and as needed. To allow for compliance with mandatory training and to ensure continuity in purchasing operations, enforcement of the mandatory training requirement shall be delayed for a period not to exceed six months after adoption of this 2018 manual revision.

## **2-3 The County Attorney**

The county 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 county attorney shall:

- Ensure compliance with applicable law and policies: The county attorney shall assist the purchasing agent and the using departments to ensure that the provisions of this manual, County ordinances, 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 county attorney shall review as to form all contracts for the procurement of goods and services presented to the county attorney's office and shall approve any changes to contract templates.

### **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 county attorney in other circumstances, including but not limited to, the following matters:

- Review invitations for bids and requests for proposals: The county 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 County, 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 county attorney.
- Consider legal issues that arise during the procurement process: The county attorney should be consulted if any legal issues arise during the procurement process.
- Review contracts as to content: The county attorney should review for content and comment on any contract for the procurement of goods or services, when it deems review to be necessary or appropriate.

## **2-4 Unauthorized Procurements**

Except as otherwise provided in this manual or the Code of Virginia, no County or School Board official elected or appointed, or any County or School Board 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 County Not Bound by Unauthorized Procurement**

Any purchase order or contract made contrary to the provisions of this manual is not approved and the County or School Board, as applicable, shall not be bound thereby. However, the Board of Supervisors and the School Board each reserve the right to ratify an unauthorized procurement.

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

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