

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.

Essential Information in this Chapter

- 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 its 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.

Key References to the Code of Virginia Applicable to this Chapter

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 participate in an interview and make 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 County'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 negotiations, 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: Contract negotiations shall be had with the top-scoring vendor. If a contract satisfactory and advantageous to the County 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

Comparison of the Two Competitive Negotiation Procedures	
Professional Services	Goods and Nonprofessional Services
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 ensure 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 may allow vendors to observe the situation and ask questions before they finalize their presentation for negotiations. If practicable, 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 forty-five minutes should be allotted for each interview, and a fifteen 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 County can obtain the best and final offer.

For the procurement of goods and nonprofessional services, the County 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 that 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 County.
- 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 ensure 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 are: the vendor's proposed personnel are considered to be unqualified; the vendor's proposed costs are unrealistically low; and the vendor's estimated level of effort and proposed price are 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 is the selection committee is 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 County'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 County's budget limits.

It is improper for the selection committee or any County 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.