

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.

Essential Information in this Chapter
<ul style="list-style-type: none">• 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.
Key References to the Code of Virginia Applicable to this Chapter
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 County 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 ensure 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 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 County 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 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 County 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 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.

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 may be cause to determine that a vendor is not responsible. Only the purchasing agent, in consultation with the county attorney's office, is authorized to make a determination that a vendor is nonresponsible.

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 any 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 County 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 suggests that it may not be qualified, the vendor should be invited to meet with the purchasing agent to resolve or to explain the deficiencies. If a satisfactory explanation is not secured, the purchasing agent may determine the vendor to be not qualified.

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 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 business days after receipt of the notice.

Challenge to evaluation: The vendor may submit rebuttal information challenging the evaluation within ten business days after receipt of the notice.

- 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 County, 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 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 business 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 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 county attorney.

23-3 Prequalifying a Vendor

The procedure set forth in this section is intended to qualify prospective vendors as qualified vendors prior to the date established for the submittal of bids or proposals. The purchasing agent may 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 sixty 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 forty-five 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 business days after receipt of the notice.

- Challenge to evaluation: Within ten 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: If the rebuttal information, if any, is insufficient to change the preliminary determination that a vendor is 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 County, 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 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 business 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 calendar days of receipt of the notice, as provided by law.

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 or documented practices 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, a history of failure to perform, or 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, the county attorney, and the county executive 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 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 calendar days of the receipt of the proposed vendor's response. At the hearing, witnesses may be questioned by the purchasing agent and the prospective vendor.
- Decision: If an informal hearing is not requested, the purchasing agent shall render a decision on the proposed debarment within fifteen calendar days after receipt of the proposed vendor's agent shall render a written decision within fifteen 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.

23-4.3 Procedure if Vendor is Debarred

The debarment shall be for a period of ninety days to three years, as determined by the purchasing agent in his sole discretion. Notwithstanding the prescribed duration of the debarment, at the sole discretion of the purchasing agent, a debarment may be lifted or suspended at any time if it is in the best interest of the County. 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 future 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 County.

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.