

Chapter 16 - PUBLIC PROCUREMENT

***Cross reference** – Administration. ch 2; checks and warrants, § 2-74 et seq.; county property, § 2-106 et seq.

***State law reference** – Public procurement procedures, Code of Virginia, § 2.2-4300 et seq.; purchases based on competition, Code of Virginia, § 15.2-1236; purchase and sale of real property, Code of Virginia, § 15.2-1800.

ARTICLE I. - IN GENERAL

Sec. 16-1. - Purpose.

The purpose of this chapter is to supplement the provisions of the Virginia Public Procurement Act (Code of Virginia, § 2.2-4300 et seq.) by enunciating the county's policies pertaining to governmental procurement from nongovernmental sources, to encourage competition among vendors and contractors, to provide for the fair and equitable treatment of all persons involved in public purchasing by the county, to maximize the purchasing value of public funds in procurement so that high quality goods and services may be obtained at the lowest possible price, and to increase public confidence in procurement practices by providing safeguards for maintaining a procurement system of quality and integrity.

(Code 1980, § 17-1; Code 1995, § 16-1)

Sec. 16-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act and *public procurement act* mean the Virginia Public Procurement Act, Code of Virginia, § 2.2-4300 et seq.

Business means any corporation, limited liability company, general or limited partnership, individual, sole proprietorship, joint stock company, joint venture or other nongovernmental legal entity.

Contract means all types of county agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.

Contractor means any business having a contract with the county or a using agency thereof.

County means the County of Henrico, the County School Board of Henrico County or the Henrico Area Mental Health & Developmental Services Board, as appropriate.

Emergency. An emergency shall exist when a breakdown in an essential service occurs or under any other circumstances when supplies are needed for immediate use in work which may vitally affect the safety, health or welfare of the public.

Employee means an individual drawing a salary, wages or other compensation from the county, whether elected or not; or any noncompensated individual performing personal services for the county or any department, division, office, section, agency, commission, council, bureau, board or other entity established by the executive or legislative branch of the county.

Insurance means a contract whereby, for a stipulated consideration, one party undertakes to

compensate the other for loss on a specified subject by specified perils.

Invitation to bid means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

Request for proposal means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Using agency means any department, division, office, section, agency, commission, council, bureau, board or other unit in the county government requiring goods, services, insurance or construction as provided for in this chapter.

(Code 1980, § 17-3; Code 1995, § 16-2)

Cross reference – Definitions and rules of construction, § 1-2.

State law reference – Similar provisions, Code of Virginia, § 2.2-4301.

Sec. 16-3. - Applicability of state law.

This chapter should be read in conjunction with the public procurement act to apply to contracts for the procurement of goods, services, insurance and construction entered into by the county involving every expenditure for public purchasing, irrespective of its source. The provisions of the act shall apply except where modified by alternative policies and procedures enumerated in this chapter.

(Code 1980, § 17-2; Code 1995, § 16-3)

Sec. 16-4. - Purchasing division established.

There is hereby created a purchasing division within the department of finance, to operate under the direction and supervision of the purchasing director.

(Code 1980, § 17-4; Code 1995, § 16-4)

Sec. 16-5. - Reserved.

Sec. 16-6. - Powers and duties of purchasing director.

(a) The purchasing director shall serve as the principal public purchasing official for the county and shall be responsible for the procurement of goods, services, insurance and construction in accordance with this chapter, as well as the management and disposal of goods.

(b) In accordance with this chapter, the purchasing director shall:

- (1) Purchase or supervise the purchasing of all goods, services, insurance and construction needed by the county;
- (2) Sell, trade or otherwise dispose of surplus goods belonging to the county;
- (3) Establish and maintain programs for specifications development, contract administration, inspection and acceptance, in cooperation with the public agencies using the goods, services and construction;
- (4) Not issue any order for delivery on a purchase, except in an emergency, until the director of finance or his designee shall have certified, after preaudit, that there is to the credit of the using agency concerned a sufficient unencumbered appropriation balance, in excess of all unpaid

obligations, to defray the amount of such order; and

(5) Perform such other functions and duties as the director of finance may assign.

(Code 1980, § 17-7(a), (b); Code 1995, § 16-6)

Sec. 16-7. - Delegation of authority by purchasing director.

The purchasing director may delegate authority to purchase certain goods, services, insurance or construction to other county officials if such delegation is deemed necessary for the effective procurement of those items.

(Code 1980, § 17-8; Code 1995, § 16-7)

Sec. 16-8. - Establishment of operational procedures.

Consistent with this chapter, the purchasing director shall adopt operational procedures relating to the execution of the director's duties.

(Code 1980, § 17-11; Code 1995, § 16-8)

State law reference – Authority to adopt rules and regulations regarding purchases, Code of Virginia, § 15.2-1235.

Sec. 16-9. - Purchases for volunteer rescue squads.

The purchasing director shall have authority to sell supplies, materials and equipment to volunteer rescue squads within the county at the same cost as the cost of such supplies, materials and equipment to the county.

(Code 1980, § 17-9; Code 1995, § 16-9)

Sec. 16-10. - Unauthorized purchases.

Except as otherwise provided in this chapter, no official, elected or appointed, or any employee shall purchase or contract for any goods, services, insurance or construction within the purview of this chapter other than by and through the purchasing director, and any purchase order or contract made contrary to the provisions of this section is not approved and the county shall not be bound thereby. Any person responsible for such purchase shall be held personally liable for such 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.

(Code 1980, § 17-10; Code 1995, § 16-10)

Sec. 16-11. - Disposal of obsolete or unusable property.

The purchasing director shall sell, transfer, trade or otherwise dispose of all materials, supplies, equipment or other personal property of the county which has become obsolete or unusable. For purposes of this chapter, personal property shall be deemed "obsolete and unusable" when the continued use of such property by the county is no longer cost effective.

(Code 1980, § 17-12; Code 1995, § 16-11; Ord. No. 939, § 1, 1-22-1997)

State law reference – Disposal of personal property, Code of Virginia, § 15.2-1236.

Sec. 16-12. - Sale of surplus property.

(a) All sales of property pursuant to this chapter shall be accomplished by means of competitive bids, public auction, firm price offered to all persons wishing to participate in the sale, or negotiated sale to other units of local government. The purchasing director shall use whichever method the director believes will raise the highest revenue for the county.

(b) In cases where surplus property is offered for sale at a firm price, the property shall be offered first to taxpayers and residents of the county before it is offered to the general public.

(Code 1980, § 17-13; Code 1995, § 16-12; Ord. No. 939, § 2, 1-22-1997; Ord. No. 1076, § 1, 9-13-2005)

Secs. 16-13—16-42. - Reserved.**ARTICLE II. - BIDDING AND AWARD OF CONTRACTS****Sec. 16-43. - Award of contracts generally.**

(a) The purchasing director shall award all contracts on behalf of the board of supervisors except for:

(1) Contracts for construction which are expected to exceed \$200,000.00;

(2) Contracts for professional services which are expected to exceed \$80,000.00; and

(3) Contracts where the purchasing director, in consultation with the county manager, has determined that an award by the board of supervisors is appropriate and the request for proposal or invitation to bid states that the award of the proposed contract will be made by the board of supervisors.

(b) The purchasing director shall award all contracts on behalf of the school board except for:

(1) Contracts for construction which are expected to exceed \$200,000.00;

(2) Contracts for professional services which are expected to exceed \$80,000.00; and

(3) Contracts where the purchasing director, in consultation with the superintendent of schools, has determined that an award by the school board is appropriate and the request for proposal or invitation to bid states that the award of the proposed contract will be made by the school board.

(c) The purchasing director shall award all contracts on behalf of the Henrico Area Mental Health & Developmental Services Board except for:

(1) Contracts for services for clients; and

(2) Contracts for goods for direct client use.

(d) The board of supervisors, school board or Henrico Area Mental Health & Developmental Services Board, as appropriate, shall award all contracts not awarded by the purchasing director.

(Code 1980, § 17-7(d); Code 1995, § 16-31)

Sec. 16-44. - Receiving and processing of bids for construction.

The purchasing director shall advertise, receive, open and tabulate any and all bids for construction in accordance with the requirements and conditions set forth in the invitation to bid. The director shall then transmit all such bids, with the tabulation of the bids, to the board of supervisors or school board, as appropriate, through the county manager or superintendent of schools, as appropriate, in all cases where the board of supervisors or school board will award the contract as provided in section 16-43.

(Code 1980, § 17-7(c); Code 1995, § 16-32)

Sec. 16-45. - Exceptions to requirement for competitive procurement.

- (a) The county may enter into contracts without competition for the purchase of goods or services which are produced by or are available through state contracts or the state warehouse, or which are produced by nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped, or Virginia Correctional Enterprises.
- (b) The county may enter into contracts for legal services, expert witnesses and other services associated with litigation or regulatory proceedings without competitive sealed bidding or competitive negotiation.
- (c) The county may enter into contracts up to the amounts set forth in Code of Virginia § 2.2-4303(G) or its successor for goods, professional services, non-professional services, transportation-related construction, and non-transportation-related construction without competitive sealed bidding or competitive negotiation under procedures established in writing by the purchasing director. However, the county must use competitive sealed bidding or competitive negotiation for construction of a new building or an addition or improvement to an existing building when the county will use more than \$50,000.00 in state funds.
- (d) If an emergency occurs during office hours, the using agency shall immediately notify the purchasing director, who shall either purchase directly or authorize the purchase of the needed goods and services. If any emergency occurs during a time when the purchasing department is closed, the using agency may purchase any goods or services needed to meet such existing emergency; provided that the head of the using agency shall send as soon as practicable to the purchasing director a requisition and a copy of the delivery receipt together with a written explanation of the circumstances of the emergency.

(Code 1980, § 17-14; Code 1995, § 16-33; Ord. No. 939, § 3, 1-22-1997)

State law reference— Exceptions to competitive sealed bidding authorized, Code of Virginia, § 2.2-4303(G).

Sec. 16-46. - Modification of contracts.

A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 15 percent of the amount of the contract or \$10,000.00, whichever is greater, without the advance written approval of the awarding authority.

(Code 1980, § 17-15; Code 1995, § 16-34)

State law reference— Modifications of contract authorized, Code of Virginia, § 2.2-4309(A).

Sec. 16-47. - Debarment.

(a) *Generally.* The purchasing director may, in the public interest, debar a prospective contractor for any of the causes listed in subsection (b) of this section, using the procedures described in subsection (d) of this section. The existence of a cause for debarment under subsection (b) of this section, however, does not necessarily require that the contractor be debarred. The seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.

(b) *Causes.* The purchasing director may debar a prospective contractor for any of the following causes:

(1) Conviction of or civil judgment for:

- a. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
- b. Violation of federal or state antitrust statutes relating to the submission of offers;
- c. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or
- d. Commission of any other offense indicating a lack of business integrity or business honesty

that seriously and directly affects the present responsibility of a government contractor or subcontractor.

(2) 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.

(3) Any other cause of so serious or compelling a nature that it affects the present responsibility of a government contractor or subcontractor.

(c) *Reports and investigations.* The purchasing director shall establish procedures for the prompt reporting, investigation and referral of matters appropriate for that official's consideration.

(d) *Debarment procedures.* The following procedures governing the debarment decision-making process are designed to be as informal as practicable, consistent with principles of fundamental fairness:

(1) *Notice to contractor.* Debarment shall be initiated by advising the prospective contractor and any specifically named affiliate, by certified mail, return receipt requested, that debarment is being considered. Such notice shall include the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction upon which it is based.

(2) *Period of debarment.* Debarment shall be for a period commensurate with the seriousness of the cause, as determined by the purchasing director in the director's sole discretion.

(3) *Submission of statement by contractor; hearing.* The prospective contractor may submit to the purchasing director, within 30 days after receipt of notice, in person, in writing or through a representative, information and argument to the proposed debarment, including any additional specific information that raises a genuine dispute over the material fact. If the proposed debarment is based upon a cause other than those specified in subsection (b)(1) of this section, an informal hearing allowing the examination and cross examination of witnesses shall be provided if so requested by the prospective contractor. In such cases, the purchasing director shall conduct the hearing and shall render a decision within 15 days thereafter, or within 15 days after receipt of written information and argument if no hearing is requested or required to be held.

(4) *Appeals.* The decision of the purchasing director shall be final unless the prospective contractor appeals by instituting legal action as provided in the public procurement act.

(Code 1980, § 17-16; Code 1995, § 16-35; Ord. No. 939, § 4, 1-22-1997)

State law reference – Authority to adopt debarment procedure, Code of Virginia, § 2.2-4321.

Sec. 16-48. - Negotiation with lowest responsible bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that, if the bid from the lowest responsible bidder exceeds available funds, the county may negotiate with the apparent low bidder to obtain a contract price within available funds. If the county wishes to negotiate with the apparent low bidder to obtain a contract price within available funds, negotiations shall be conducted in accordance with the following procedures:

(1) The using agency shall provide the purchasing director with a written determination that the apparent low bid exceeds available funds. Such determination shall be confirmed in writing by the director of finance or his designee. The using agency shall also provide the purchasing director with a suggested reduction in scope for the proposed purchase.

(2) The purchasing director shall advise the lowest responsible bidder, in writing, that the proposed purchase exceeds available funds. The director shall further suggest a reduction in scope for the proposed purchase and invite the lowest responsible bidder to amend its bid proposal based upon the proposed reduction in scope.

- (3) Repetitive informal discussions with the lowest responsible bidder for purposes of obtaining a contract within available funds shall be permissible.
- (4) The lowest responsible bidder shall submit an addendum to its bid, which addendum shall include the change in scope for the proposed purchase, the reduction in price and the new contract value.
- (5) If the proposed addendum is acceptable to the county, the county may award a contract within funds available to the lowest responsible bidder based upon the amended bid proposal.
- (6) If the county and the lowest responsible bidder cannot negotiate a contract within available funds, all bids shall be rejected.

(Code 1980, § 17-17; Code 1995, § 16-36)

State law reference – Negotiation with lowest responsible bidder, Code of Virginia, § 2.2-4318.

Sec. 16-49. - Joint and cooperative procurement.

(a) The County may participate in, sponsor, conduct, or administer a joint procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction.

(b) In addition, the County may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association 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; or

(2) Construction. This subdivision will not be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of Code of Virginia, § 2.2-4303.

Subdivision 2 does not apply to (i) the installation of artificial turf and track surfaces, (ii) stream restoration, (iii) stormwater management practices, or (iv) the installation of playground equipment, including all associated and necessary construction and maintenance.

When the County enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions A 9 and A 10 of Code of Virginia, § 2.2-4343 the County will comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

(c) The County may purchase from any authority, department, agency or institution of the Commonwealth'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. In such instances, deviation from the procurement procedures set forth in the Act and the administrative policies and procedures established to implement the Act is permitted, if approved by the Director of the Division of Purchases and Supply.

Pursuant to Code of Virginia, § 2.2-2012, such approval is not required if the procurement arrangement is for telecommunications and information technology goods and services of every description. In instances where the procurement arrangement is for telecommunications and information technology goods and services, such arrangement is permitted if approved by the Chief Information Officer of the Commonwealth. However, such acquisitions must be procured competitively.

Nothing herein prohibits the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

(d) As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases, the County may purchase goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States government.

(e) The County may participate in, sponsor, conduct, or administer a procurement for competitively solicited goods or services on behalf of or in conjunction with any entity when the procurement is being conducted for public entities.

(f) The County may purchase competitively solicited goods and services from any entity's contract when the solicitation specified that the procurement was being conducted on behalf of public entities.

Sec. 16-50. Indefinite Delivery or Quantity Contract Performance and Payment Bonds.

A. "Indefinite delivery or quantity contract" means a contract that only requires performance of contractual obligations upon the request of the county and which establishes an annual cap for the total work that may be authorized for such contract.

B. For indefinite delivery or quantity contracts, the county, through its purchasing director, may allow the contractor awarded such contract to furnish to the county a performance bond and a payment bond equal to the dollar amount of the individual tasks identified in the underlying contract. If the county authorizes such a bond, then the contractor is not required to pay the performance bond and payment bond in the sum of the contract amount.