

Chapter 11. Competitive Negotiation: Procedure

Summary

This chapter provides an overview of the procedure for procuring goods and services using the competitive negotiation procedure. The competitive negotiation procedure is permitted for the procurement of goods and services other than professional services ("nonprofessional services") if the cost of the goods or services is expected to exceed \$50,000, ~~and it is determined in advance that the competitive sealed bidding procedure is either not practicable or not fiscally advantageous to the public.~~ The competitive negotiation procedure is required for the procurement of professional services if the cost of the services is expected to exceed \$50,000.

Essential Information in this Chapter

The three key procedural steps in the competitive negotiation procedure are:

- Preparation of the request for proposals: The preparation of a request for proposals ("RFP"), which states in general terms that which is sought to be procured, specifies the factors which will be used in evaluating any proposal, including any unique capabilities or qualifications which will be required of the vendor, and contains or incorporates by reference other applicable contractual terms and conditions.
- Issuance and public notice of the RFP: The public notice of the RFP is given at least ten days prior to the date set for the receipt of the proposals by posting the notice in a public area, or publishing the notice in a newspaper of general circulation, or both. The purchasing agent also may solicit proposals directly using the County's "offeror list," which includes businesses selected from a list made available by the Department of Minority Business Enterprise.
- Negotiation and award: The purchasing agent or the selection committee negotiates with vendors who are determined to be qualified, responsible and suitable. The negotiation procedure for the procurement of goods and nonprofessional services is different from that for the procurement of professional services.

Key References to the Code of Virginia Applicable to this Chapter

Section 2.2-4361: Definitions of competitive negotiation and other key terms
Section 2.2-4303(A): When competitive negotiation required, generally
Section 2.2-4303(C): Availability in lieu of competitive sealed bidding, generally
Section 2.2-4303(C)(1): Availability in lieu of competitive sealed bidding, insurance
Section 2.2-4303(C)(2): Availability in lieu of competitive sealed bidding, construction

11-1 General

The competitive negotiation procedure for goods and nonprofessional services may be used if the cost of the goods or services is expected to exceed \$50,000 ~~and competitive sealed bidding is determined by the purchasing agent to be either not practicable, such as when cost is not the most important issue, when~~

~~specifications are difficult to draft, or when the competitive sealed bidding procedure is not fiscally advantageous to the public. The procedure to determine whether the competitive sealed bidding procedure is not practicable or not fiscally advantageous is discussed in section 4-8~~

The competitive negotiation procedure is required for the procurement of professional services if the cost of the services is expected to exceed \$50,000.

Table 11-1

The Fourteen Steps in the Competitive Negotiation Procedure
<ol style="list-style-type: none">1. Identify the goods or services to be procured2. Create the selection committee and prepare the request for proposals3. Establish the procurement schedule4. Compile a list of vendors5. Issue the request for proposals and provide public notice thereof6. Conduct pre-proposal conferences or site visits, if warranted7. The submittal of proposals8. The receipt of proposals9. The evaluation of proposals10. Develop a list of vendors with whom to negotiate11. Arrange a tour of the site or the facility, if applicable12. Conduct negotiations13. Rank vendors of professional services14. Negotiate a contract

The remaining sections of this chapter are a step-by-step outline of the competitive negotiation procedure. The procedure to be used for a particular procurement may need to be modified to fit that procurement.

11-2 Identify the Goods or Services to be Procured

The using department must identify the goods or services to be procured. It is important to develop a comprehensive definition of the goods or services to be procured. Goods should be defined using the procedure identified in chapter 6. Services should be defined using the procedure identified in chapter 12.

11-3 Create the Selection Committee and Prepare the Request for Proposals

A selection committee should be established, composed of competent individuals who are able to make an intelligent selection decision based on factual information. The three key roles of the selection committee are to assist in developing the request for proposals ("RFP"), evaluate the proposals and conduct interviews and negotiations with vendors.

The RFP shall be prepared by the using department and the purchasing agent, and then be reviewed by the selection committee. Before drafting a complex RFP, it is recommended that the using department prepare a work statement. The work statement should identify the required goods or services (broken down

by tasks) to be procured in a logical sequence, assist in establishing realistic milestones or delivery schedules, and help determine supplier cost realism. Each task of the work statement should be coordinated with the RFP, and the numerical coding of tasks in the work statement and task descriptions should be identical or cross-referenced. The selection committee should critically review the description of the goods or services to be procured and the evaluation criteria and determine how, if at all, the evaluation criteria should be weighted.

The RFP should be as comprehensive as possible because the more complete it is, the better the chances are that the vendors will understand what the County desires to procure and what relevant experience and qualifications it should include in its response and highlight during discussions and negotiations.

The RFP must, at a minimum:

- State in general terms the goods or services that will be procured.
- Specify the criteria that will be used to evaluate the proposals, including any unique capabilities or qualifications that will be required of the vendor.
- Contain or incorporate by reference the contractual terms and conditions applicable to the procurement.

A comprehensive description of the elements of an RFP is set forth in chapter 12.

11-4 Establish the Procurement Schedule

The purchasing agent and the using department should establish a schedule that will assure that the procurement is completed on or before the date the goods or services are required. To do so, the purchasing agent and the using department should consult and determine the completion date and then identify the milestones and the dates by which each milestone should be achieved in order to assure that the procurement is timely completed. Seven to ten weeks should be allowed for the entire procurement process in order to allow proper planning and administration at each step of the selection process.

The key milestones and the minimum amount of time that should be allowed for each milestone are:

- Preparation of the RFP documents: Allow at least fifteen work days to prepare the RFP documents and issue a written RFP.
- Public notice period and the date for receipt of proposals: Allow at least ten calendar days to provide public notice of the RFP prior to the date set for the receipt of proposals.
- Evaluation of proposals, negotiation and issuance of notice of award: Allow at least fifteen work days to evaluate proposals, conduct interviews and negotiations, and issue a notice of the award.

- Execution of contract: Allow at least ten work days to execute the contract after the notice of award of the contract.

The purchasing agent and the using department should allow more time at each stage identified above for procurements of goods or services that are not commonly procured by the County, procurements that are complex, and procurements that require the vendors to submit substantial amounts of information for evaluation.

11-5 Compile a List of Vendors

The purchasing agent and the using department should compile a list of vendors from staff knowledge of local vendors and through directories and lists of vendors. The purchasing agent should send RFPs directly to these vendors, in addition to the public notice of the RFP that will otherwise be provided.

11-6 Issue the RFP and Provide Public Notice Thereof

Public notice of an RFP shall be given as provided below:

- Manner of giving public notice: The purchasing agent shall provide public notice of an RFP by posting in a designated public area, or publication in a newspaper of general circulation, or both. In addition, the purchasing agent may solicit proposals directly from potential vendors, and shall include businesses selected from a list made available by the Department of Minority Business Enterprise. Public notice may also be published on the Virginia Department of General Services' central electronic procurement website and other appropriate websites.
- Notice period: The public notice shall be given at least ten calendar days prior to the date set for receipt of proposals.
- Contents of the notice: The notice shall contain, at a minimum, the following information: (1) the name of the purchasing entity; (2) a brief description of the goods or services to be procured; (3) the date and time set for receipt of proposals; (4) the requisite qualifications for vendors, if applicable; (5) the date and time of the pre-proposals conference, if applicable; (6) the name of the purchasing agent; (7) the location where RFP documents can be obtained; and (8) the legal authority for the procurement.

These are minimum requirements, and the purchasing agent may provide any additional notice that he deems appropriate.

11-7 Conduct Pre-proposal Conferences or Site Visits, if Warranted

A pre-proposal conference is a meeting among the purchasing agent, the selection committee and prospective vendors during which the purchasing agent

and the selection committee review the specifications or the work statement in detail, explain the scope, objectives and techniques of the procurement, emphasize critical elements of the RFP, and encourage input from prospective vendors. A site visit allows prospective vendors to observe physical characteristics of the land or of structures that are relevant to the procurement. A pre-proposals conference and site visit are hereafter collectively referred to as a "pre-proposal conference."

A pre-proposal conference may resolve ambiguities, unforeseen and nonessential restrictiveness in the specifications or the work statement, or technical errors. The following are several principles that shall govern pre-proposal conferences and issues related thereto:

- When a pre-proposal conference should be held: Pre-proposal conferences may be particularly advisable when the County seeks to procure goods that are highly technical or complex or for consultant services contracts.
- Notice of the pre-proposal conference: If a pre-proposal conference is conducted, the public notice and the RFP must provide the time, date and location of the conference. The conference should be held as soon as possible after the RFP is issued.
- Attendance at a pre-proposal conference: Attendance of prospective vendors at pre-proposal conferences should be discretionary, not mandatory, in order to assure that qualified vendors who are unable to attend are not excluded from submitting a proposal. If attendance is mandatory, only those proposals from prospective vendors represented at the pre-proposal conference shall be accepted.
- Oral representations at the pre-proposal conference: The purchasing agent should make a written note of all inquiries and points of contention raised by the prospective vendors. Clarification may be provided at the pre-proposal conference so long as the specifications or conditions are not altered. Oral representations made at the pre-proposal conference by the purchasing agent or any member of the selection committee shall not be binding on the County. All material clarifications of any provision of the RFP, or the amendment of a specification or condition of the RFP, shall be made only be in writing as an addendum, as provided herein.

These are minimum requirements. The purchasing agent may add any additional requirements to a pre-proposal conference that he deems appropriate.

11-8 The Submittal of Proposals

Proposals submitted shall comply with the following:

- Proposal in standard format: All proposals shall be in the format prescribed by this manual, as set forth in chapter 12.

- Changes to the proposal: All erasures, interpolations, and other changes in a proposal shall be signed or initialed by an authorized representative of the vendor.
- Delivery of proposal: The purchasing agent shall not accept oral proposals nor proposals received by telephone, fax, or other form of electronic transmission.
- Deviations: Proposals containing conditions, omissions, erasures, alterations, or items not called for in the RFP may be rejected by the County as being incomplete.
- Proposal must be signed: A proposal must be signed by an authorized representative of the vendor in order to be considered. If the vendor is a corporation, the proposal must be submitted in the name of the corporation, not the corporation's trade name. The vendor must indicate the corporate title of the individual signing the proposal.
- Proposal must be submitted in sealed opaque envelope: A proposal and all other documents required to be submitted as part of the proposal shall be enclosed in a sealed opaque envelope.
- Identification of proposal: The envelope containing the proposal should be sealed and marked with the RFP number, the hour and date upon which the bid must be received and the vendor's Virginia contractor registration number (if required). If an envelope does not contain the proper identification, and it is inadvertently opened in advance of the prescribed date and time for which the proposals are to be received, the purchasing agent should write an explanation of the inadvertent opening on the envelope, with the RFP number, time and date of opening. The envelope should be resealed and deposited with the other proposals.

11-9 The Receipt of Proposals

The purchasing agent shall receive proposals according to the following procedure:

- Proposals must be timely received in purchasing office: All proposals shall be received in person, through the mail, or by parcel service, in the purchasing office, until, but no later than, the time and date set for the receipt of proposals in the RFP. The time stamp clock in the purchasing office shall be the sole clock used to determine whether a proposal is timely received.
- Timely receipt of proposals sole responsibility of vendors: It shall be the sole responsibility of the vendor under all circumstances to assure that its proposal is timely received. The County shall assume no responsibility in assuring that proposals sent by mail or by parcel service and delivered to

the County Office Building will be timely received and time-stamped in the purchasing office.

- Proposals must be time stamped: The time for the receipt of proposals shall be determined by the time clock stamp in the purchasing office. Vendors are responsible for assuring that their proposals are stamped by purchasing office personnel by the time and date for which proposals are to be received.
- Proposals kept in secure location until opened: All proposals received and time stamped will be kept in a secure location in the purchasing office until the time and date for their receipt has passed.
- Identity of vendors confidential: Prior to the time and date that proposals are to be received, the identity of the vendors and the number of proposals received is confidential, and may be disclosed only to County officials and only when disclosure is considered necessary for the proper conduct of the RFP process.
- Late proposals: Late proposals shall not be considered under any circumstances, and shall be returned unopened to the sender.

The purchasing agent may impose additional requirements pertaining to the receipt of proposals if such requirements are set forth in the RFP and are consistent with this manual and the Virginia Public Procurement Act.

11-10 The Evaluation of Proposals; Development of a Negotiation List

The proposals that are timely received shall be examined by the purchasing agent to identify each vendor. The selection committee is then convened to review and score each proposal based on the evaluation criteria specified in the RFP. After the committee reviews the proposals, it chooses two or more vendors who are qualified, responsible and suitable. The committee may choose a single vendor, but only if the purchasing agent documents in writing that the vendor is the only one qualified or is clearly the most qualified.

The evaluation process should consist of feature-by-feature comparisons of the proposals, the evaluation of trade-offs among competing proposals, and, if goods or nonprofessional services are being procured, cost comparisons. The selection committee should review and evaluate proposals as they affect committee members' areas of interest and expertise. All findings should be shared among the committee members. During this step the selection committee also should check references. The committee should check references other than those listed by the vendor.

The procedure for evaluating proposals is discussed in more detail in chapter 15.

11-11 Arrange a Tour of the Site or the Facility

For design projects, a site or facility visitation prior to the negotiations or discussions will allow the vendors to observe the situation and ask questions before they finalize their presentation for the negotiations or discussions. The tour provides vendors with an important first-hand look at the County's needs and allows for a further exchange of information about the project. Tours are recommended for all but the simplest and most straightforward projects.

The tour should take place at least two weeks prior to the negotiations or discussions.

11-12 Conduct Negotiations

After proposals for goods or nonprofessional services are evaluated, the selection committee begins negotiations with all of those vendors deemed by the selection committee to be fully qualified and best suited among those submitting proposals.

After proposals for professional services are evaluated and before negotiations are conducted, the selection committee engages in individual discussions with all of those vendors deemed by the selection committee to be fully qualified and best suited among those submitting proposals.

After the discussion stage, the selection committee negotiates only with those vendors whose professional qualifications and proposed services are deemed most meritorious, based on not only the vendors' proposals, but also the information learned during the discussions. The vendors selected for negotiations are ranked, and the selection committee may negotiate only with the top-ranked vendor first, and if a contract satisfactory and advantageous to the selection committee cannot be negotiated at a price considered fair and reasonable, the selection committee then moves to the second-ranked vendor and attempts to negotiate a contract with that vendor, and so on. A detailed discussion of the nature, scope and conduct of the negotiations is set forth in chapter 16.

Table 11-2

Comparison of Procedures for Negotiations and Contract Award	
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
Award to the offeror ranked first if a contract satisfactory and advantageous to the County can be negotiated at a fair and reasonable price; if not, begin negotiations with offeror ranked second, and so on	Award to offeror who, in County's opinion, has made the best proposal
County may determine only one offeror fully qualified or clearly more highly qualified, and may negotiate and award contract to that offeror	County may determine only one offeror fully qualified or clearly more highly qualified, and may negotiate and award contract to that offeror

11-13 Contract Award

After the negotiations are completed with each vendor for the procurement of goods and nonprofessional services, the purchasing agent, upon the recommendation of the selection committee, selects the vendor that has made the best proposal, and awards the contract to that vendor. For the procurement of professional services, if a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the contract award is made to that vendor. If a contract award cannot be made, the County then moves to the second-ranked vendor and attempts to negotiate a contract with that vendor, and so on.

The procedure to award a contract when the competitive negotiation procedure is used shall be as follows:

- **Notice of intent to award:** The purchasing agent shall post in a public place a written announcement of the decision to award, which may be identified as a notice of intent to award. The notice of intent to award shall also include a statement that the public records pertaining to the procurement have been and are available for inspection by those vendors participating in the procurement process. The purchasing agent is not required to provide individual notice of the intent to award to any participating vendors; rather, it is each vendor's duty to ascertain when the notice of intent to award is issued and posted.

- Protest period: The receipt of the notice of intent to award by a vendor shall commence a ten-day period in which any vendor who desires to protest the decision to award a contract may do so, as provided in chapter 24.
- Contract award if no timely protest received: The purchasing agent shall not award a contract until the protest period has expired. After the protest period has expired, and if no vendor has protested the decision to award, the purchasing agent shall award the contract to the vendor identified in the notice of intent to award.
- Contract award if timely protest received: If a written protest is timely received, the purchasing agent shall take no further action to award the contract unless, upon prior consultation with the county attorney, the purchasing agent determines in writing that proceeding without delay is necessary to protect the public interest or unless the offer would expire. The written determination shall be placed in the contract file.
- Contract award if legal action brought: If a legal action is brought by a vendor, actual or prospective, as provided in Virginia Code § 2.2-4364, the purchasing agent shall take no further action to award the contract unless, upon prior consultation with the county attorney, the purchasing agent determines in writing that proceeding without delay is necessary to protect the public interest or unless the offer would expire. The written determination shall be placed in the contract file.

In his discretion, and if time is of the essence, the purchasing agent may award a contract without first posting a notice of intent to award. The purchasing agent may consult with the county attorney as to any matter pertaining to the decision to award a contract.