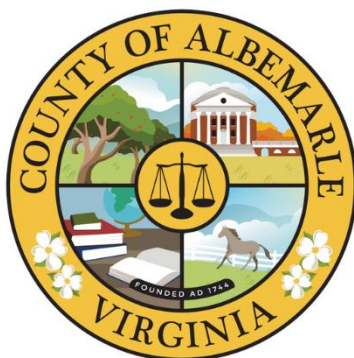




25-435 - Att.B - Purchasing Manual (with track changes)

COUNTY OF ALBEMARLE, VA

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CHAPTER 1. INTRODUCTION

Summary

This chapter states the mission of the Office of Procurement, identifies the purposes of this manual, provides an overview of the principal features and requirements of the Virginia Public Procurement Act (*Virginia Code § 2.2-4300 et seq.*), and identifies the types of procurements subject to this manual and the VPPA.

1-1 Mission of the Office of Procurement

The Office of Procurement supports the County, Schools and partner agencies to acquire best value goods, services and construction, through maximizing competition, in compliance with the law. In addition to this manual, the Office of Procurement maintains materials offering guidance and best practices in local government procurement. For access to these materials, view the [website of the Office of Procurement](https://www.albemarle.org/government/finance/procurement) (<https://www.albemarle.org/government/finance/procurement>) or contact vendorsupport@albemarle.org.

1-2 General

This manual sets forth the procurement related policies of the County of Albemarle and the Albemarle County School Board (hereinafter collectively referred to as the “County.” “School Board” is expressly identified when necessary.

This manual binds all officers and employees of the County as well as any vendor that submits a procurement offer or bid or enters into a contract with the County.

The Purchasing Agent may be consulted on any matter addressed in this manual. While deviations from the procedures presented in this manual cannot be made without Board of Supervisors approval, the Purchasing Agent may approve variations to the appendices without the necessity of Board involvement. This edition of the manual is effective April 1, 2025, and it supersedes all previous editions. Comments, suggestions, and questions of interpretation should be directed to the Office of Procurement.

1-3 The purposes of this manual

Chapters 1 through 12 and 15 through 18 of this manual are based upon, and should read in conjunction with, the VPPA which is located at *Virginia Code § 2.2-4300 et seq.* The County has not adopted alternative procedures to the competitive sealed bidding and competitive negotiation procedures authorized under the VPPA.

Chapter 13 of this manual is based upon, and should be read in conjunction with the PPEA which is located at *Virginia Code § 56-575.1 et seq.* Chapter 14 of this manual is based upon, and should be read in conjunction with the PPTA, located at *Virginia Code § 32-1800 et seq.* In addition to the policies of the County for the procurement of goods and services, this manual:

- Establishes policies that promote competition affording every qualified vendor with a fair opportunity to obtain County business.
- Provides an understanding of the responsibilities, objectives, limitations, and duties of the Purchasing Agent and the using departments.
- Conveys to employees, and through them to business partners, a clear understanding of the County's purchasing policies and objectives.
- Establishes reasonable standards against which internal and external auditors can measure the performance of the Office of Procurement.
- Includes the County's Guidelines under the Public-Private Partnership Education and Infrastructure Act of 2002 and the Public-Private Transportation Act of 1995.

1-4 Procurements subject to this manual and the VPPA

This manual and the VPPA apply to all public contracts with nongovernmental vendors for the purchase or lease of goods or the purchase of services, insurance, or construction, regardless of whether money is exchanged or from whom payment comes. (*Virginia Code* [§ 2.2-4300.B](#))

Clarification on procurements that are exempt from the VPPA are found in [Chapter 12](#).

END OF CHAPTER

CHAPTER 2. DEFINITIONS

For the purposes of this manual, the following words and phrases will have the following meanings, unless a different meaning is clear from the context:

Best and final offer: The last offer provided by an offeror in response to a request for proposals (see [Chapter 9](#)). An offeror should expect to have no further opportunity to amend its offer after submitting a BAFO.

Best value: A term defined in the [VPPA](#) to mean “the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's need” as predetermined in the solicitation.

Bid: A response to an invitation for bids (see [Chapter 8](#)). Bids must accept the terms of the IFB and consist only of a price or a price-per-unit.

Bidder: A person who submits a bid in response to an invitation for bids (see [Chapter 8](#)).

Change order: An order directing the contractor to make changes to the purchase order or contract.

Collusive bidding: A practice among multiple vendors whereby they agree on the cost of goods or services that the County desires to procure. A combination, conspiracy, or agreement among vendors to raise or otherwise fix the price of goods or services, or filing a knowingly false certificate of non-collusion, is a Class 6 felony (see [Chapter 8](#) for more information on collusive bidding).

Competitive negotiation: A method of vendor selection set forth by the VPPA ([Virginia Code § 2.2-4302.2](#)) and described in [Chapter 9](#) of this manual.

Competitive sealed bidding: A method of vendor selection set forth in the VPPA ([Virginia Code § 2.2-4302.1](#)) and described in [Chapter 8](#) of this manual.

Construction: A term defined in the [VPPA](#) to mean “building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.”

Construction management contract: A term defined in the [VPPA](#) to mean “a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner and may also include, if provided in the contract, the furnishing of construction services to the owner” (see also [Virginia Code § 2.2-4379](#)).

Consultant services: Consultants provide information, assistance, and guidance of a purely advisory nature, usually in the form of a report or other deliverable, setting forth alternative courses of action and recommendations based on the expertise of the consultant.

Contract management: The management of the County's contracts and contract-related activities to assure compliance by both the County and the contractor to contractual obligations. Such activities may

include accounting, administration, auditing, grants management, law, negotiation, logistics, price-structure compensation, delegation of purchasing authority, program management, termination, and other business activities.

Contractor: A vendor under contract with the County or School Board, as applicable.

Cooperative procurement: A competitively solicited procurement by a public body with contractual language allowing the contract to be utilized by other public entities, as authorized by [Virginia Code § 2.2-4304](#).

Cure notice: A notice that informs a contractor that it is in default and states what the contractor must do to correct the deficiency.

Default: The failure to comply with the requirements of the terms of a contract.

Employment services organization: A term defined in the [VPPA](#) to mean “an organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.”

Design-build procurement: A method of procurement in which the vendor agrees to both design and build the structure, roadway, or other item specified by the contract. This method requires Board approval after Purchasing Agent recommends (see [Chapter 10](#) for more information on design-build procurement).

Fiscal year: The 12-month period used for accounting purposes. The County’s fiscal year is from July 1 through June 30. Fiscal year 2025 began on July 1, 2024, and so on.

Freedom of Information Act (FOIA): see Virginia Freedom of Information Act (VFOIA)

Functional equivalent: Goods or services determined to be the equivalent of the specified goods or services called for in a solicitation, considering functionality, quality, workmanship, economy of operation, compatibility, and suitability for the use and purposes intended by the using department.

Goods: A term defined in the [VPPA](#) to mean “all material, equipment, supplies, printing, and automated data processing hardware and software.

Grant: Fund transfers made by one party to another (for example, federal government to local government) for the procurement of goods and/or services that may be undertaken for the purpose of a public interest, benefit, or undertaking, as specified under the terms of the party granting the use of the funds.

Immediate family: (1) A spouse; and (2) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

Informality: A term defined in the [VPPA](#) to mean “all material, equipment, supplies, printing, and automated data processing hardware and software.”

Invitation for bids (IFB): A solicitation under competitive sealed bidding procedure which solicits bids for goods or services and is awarded based on best price (see [Chapter 8](#) for more information on IFBs).

Multiphase professional services contract: A term defined in the [VPPA](#) to mean “a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.”

Nonprofessional services: A term defined in the [VPPA](#) to mean “any services not specifically identified as professional services in the definition of professional services.”

Notice of intent to award: A notice, or bid tabulation sheet publicly displayed, prior to award, that shows the selection of a vendor for the award of a specific contract or purchase order.

Nutrient credit: means a nutrient reduction that is certified pursuant to Code of Virginia [§ 62.1-44.15:35](#) and [§ 62.1-44.19:12](#).

Offeror: A person who submits a proposal in response to a request for proposals.

Official responsibility: The administrative operating authority, whether intermediate or final, to initiate, approve, disapprove, or otherwise affect a procurement transaction, or any claim resulting therefrom. In addition to the Purchasing agent, this includes individuals representing the [using department](#), serving on an evaluation panel, advising an evaluation panel, working in the office of procurement or otherwise having responsibility in the procurement process.

Pecuniary interest arising from the procurement: As defined by the State and Local Government Conflict of Interests Act (*Code of Virginia § 2.2-3100 et seq.*) personal interest in a contract, whether due to being a party to the contract or due to a personal interest in a business which is a party to the contract, where the interest exists by one or more of the following: (1) Ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (2) Annual income that exceeds, or may be reasonably anticipated to exceed \$10,000 from ownership in real or personal property or a business; (3) Salary, or other compensation, fringe benefits, or benefits from the use of a property, or any combination thereof, paid or provided by a business or government entity that exceeds, or may reasonably be anticipated to exceed \$10,000 annually; (4) Ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income or salary, other compensation, fringe benefits, or benefits from the use of property; (5) Personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; (6) An option for ownership of a business or real or personal property if the ownership interest will consist of item (1) or (4) on this list. personal interest in a contract, whether due to being a party to the contract or due to a personal interest in a business which is a party to the contract, where the interest exists by one or more of the following: (1) Ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (2) Annual income that exceeds, or may be reasonably anticipated to exceed \$10,000 from ownership in real or personal property or a business; (3) Salary, or other compensation, fringe benefits, or benefits from the use of a property, or any combination thereof, paid or provided by a business or government entity that exceeds, or may reasonably be anticipated to exceed \$10,000 annually; (4) Ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income or

salary, other compensation, fringe benefits, or benefits from the use of property; (5) Personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; (6) An option for ownership of a business or real or personal property if the ownership interest will consist of item (1) or (4) on this list.

Personal interest: A financial benefit or liability accruing to an officer or employee or to a member of their immediate family. A personal interest exists by reason of: (1) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (2) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business; (3) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be anticipated to exceed \$5,000 annually; (4) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, or other compensation, fringe benefits or benefits from the use of property; (5) personal liability incurred or assumed on behalf of a business; or (6) an option for ownership of a business or real or personal property if the ownership interest will consist of item (1) or (4) on this list.

Personal interest in a contract: A personal interest which an officer or employee has in a contract with a government agency, whether due to their being a party to the contract or due to a personal interest in a business which is a party to the contract.

Practicable: A term synonymous with “feasible” or “possible” with a reasonable level of effort. Impracticability should not be synonymous with utter impossibility regardless of expense, time, or inconvenience.

Pre-bid or pre-proposal conference: A meeting held with prospective bidders or offerors prior to submission of bids or proposals, to review, discuss, and clarify technical considerations, specifications, and standards relative to the proposed procurement (see [Chapters 8](#) and [9](#) for more information on pre-bid or pre-proposal conferences).

Prequalification: A procedure to prequalify products or vendors and limit consideration of bids or proposals to only those products or vendors which have been prequalified (see Chapter 15 for more information on prequalification).

Procurement transaction: All the functions that pertain to the obtaining of any goods, services, insurance, or construction, including the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

Professional services: A term defined in the [VPPA](#) to mean “work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering” and also includes the services of an economist procured by the State Corporation Commission.

Proposal: An offer made by one party to another as a basis for negotiations, prior to the creation of a contract.

Protest: A written complaint about an administrative action or decision brought by a bidder or offeror to the Purchasing Agent with the intention of receiving a remedial result.

Public bid opening: The process of opening and reading bids received at the time and place specified in the IFB. The opening is accessible to members of the public who wish to attend (see [Chapter 8](#) for more information on public bid opening).

Public body: A term defined in the [VPPA](#) to mean “any legislative, or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described” in the Virginia Public Procurement Act.

Public employee: Any person employed by the County, including elected officials and appointed members of governing bodies.

Public notice: The distribution and dissemination of information to interested parties using methods that are reasonably available.

Purchase order: A document used by the County to execute a purchase transaction with a vendor. It serves as a notice to the vendor that an award has been made and that performance can be initiated under the terms of the contract.

Purchasing Agent: The director of finance or another person designated by the Board of Supervisors to serve as the Purchasing Agent (see [Chapter 5](#) for more information on the Purchasing Agent).

Real property: includes real estate, land, rights-of-way, water and riparian rights; easements; privileges and all other rights or interests connected therewith.

Request for proposals (RFP): A solicitation under the competitive negotiation procedure which solicits proposals for goods and services and is awarded based on best value which is not price alone. The document indicates in general terms what is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other contractual terms applicable to the procurement, including any unique capabilities or qualifications which will be required of the contractor (see [Chapter 9](#) for more information on RFPs).

Responsible bidder or offeror: A term defined in the [VPPA](#) to mean “a person 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, and who has been prequalified, if required.”

Responsive bid: A bid which conforms in all material respects to the invitation for bids (see [Chapter 8](#) for more information on responsive bids).

Services: A term defined in the [VPPA](#) to mean “any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.”

Service-disabled veteran: A veteran who (1) served on active duty in the United States military ground, naval, or air service, (2) was discharged or released under conditions other than dishonorable, and (3) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

Small business: As defined by the Virginia Department of Small Business and Supplier Diversity, a business that is at least 51% independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of these individual owners must control both the management and daily business operations of the small business.

Sole source: A product or service which is practically available from only one source (see [Chapter 12](#) for more information on sole source procurement).

Specifications: A clear, complete, and accurate statement of the technical requirements descriptive of an item and/or services and if applicable, the procedures to be followed to determine if the requirements are met. Specification may describe the performance parameters which a supplier has to meet, or it may provide a complete design disclosure of the work or job to be done. It may include a description of any requirement for inspecting, testing, or preparing a supply or service item for delivery.

State and Local Government Conflict of Interests Act: [Virginia Code § 2.2-3100 et seq.](#), which establishes a uniform set of standards of conduct for state and local government officers and employees in Virginia.

SWaM: The acronym for Small, Women and Minority, includes small businesses, women-owned businesses, minority-owned businesses, and service-disabled veteran-owned businesses. The Department of Small Business and Supplier Diversity maintains a list of SWaM-certified businesses in Virginia, which can be accessed [here: https://directory.sbsd.virginia.gov/#/executiveExport](https://directory.sbsd.virginia.gov/#/executiveExport). (See [Chapter 4](#) for more information on SWaM business and procurement)

Technical specifications: Specifications that establish the material and performance requirements of goods and services.

Transportation related construction: See definition for “transportation improvements” found in [Virginia Code § 15.2-4701](#)

Using department: The department, agency, school or division seeking to procure goods and services through the Purchasing Agent (see [Chapter 5](#) for more information on the role of the using department).

Vendor: A participant in the procurement processes identified in this manual. A vendor includes, in the appropriate contexts: a bidder, offeror, or contractor.

Virginia Freedom of Information Act (VFOIA): [Virginia Code § 2.2-3700 et seq.](#), which enunciates the public policies and state law pertaining to the public’s access to public records and meetings of public bodies. The Act governs access to government bodies’ public records, their inspection and copying, and the conduct of public meetings.

Virginia Public Procurement Act (VPPA): [Virginia Code § 2.2-4300 et seq.](#), which states the public policies and state law pertaining to governmental procurement from nongovernmental sources. The Act requires

that governmental procurement processes are fair, impartial, accessible to all qualified vendors, and encourage competition to the maximum feasible degree.

END OF CHAPTER

CHAPTER 3. ETHICS IN PUBLIC PROCUREMENT

Summary

The purchase of goods and services involves ethical considerations that impact the long-term success and reputation of an organization. Ethical public procurement protects the interests of all parties concerned with a transaction while maintaining or improving the quality of services provided. Ethical procurement should be transparent, socially responsible, and legally sound.

This chapter sets forth requirements and policies that apply to ethics and conflicts of interest in procurement by the County.

3-1 Ethics in Public Contracting

All County officers and employees who have official responsibility for the procurement of goods, services, insurance, or construction must be familiar with the Virginia Public Procurement Act (*Virginia Code § 2.2-4300 et seq.*), including Article 6, Ethics in Public Contracting, and the State and Local Government Conflict of Interests Act (*Virginia Code § 2.2-3100 et seq.*) and comply with the requirements set out in this chapter.

3-2 Proscribed participation by County employees in procurement transaction (*Virginia Code § 2.2-4369*)

A County employee who is a procurement specialist, the Purchasing Agent, serving on an evaluation panel, advising an evaluation panel, employee of the using department or otherwise having official responsibility for a procurement transaction may not participate in a transaction on behalf of the County when the employee knows that:

1. The employee is contemporaneously employed by a vendor involved in the procurement transaction;
2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with the vendor such as an officer, director, trustee, partner, or the like, or is employed in a capacity involving personal or substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;
3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a vendor.

3-3 Disclosure of subsequent employment (*Virginia Code § 2.2-4370*)

No employee or former employee of the County may accept employment with a vendor with whom that employee had either procurement or contract administration dealings, for one year from the end of their employment with the County, unless they provide notification to the County Executive prior to the commencement of employment by that vendor.

3-4 Prohibition on solicitation or acceptance of gifts ([Virginia Code § 2.2-4371](#))

No employee having official responsibility for a procurement will solicit, demand, accept, or agree to accept anything of more than nominal or minimal value, present or promised, from a vendor unless consideration of substantially equal or greater value is exchanged. The County may recover the value of any consideration in violation of this subsection.

3-5 Submittal of bid or proposal, disclosure of non-public information to vendor prohibited ([Virginia Code § 2.2-4373](#))

No person who prepares an invitation to bid or a request for proposal for the County will:

1. Submit a bid or proposal for that procurement or any portion thereof; or
2. Disclose to any vendor information concerning the procurement that is not available to the public.

However, the County may permit such a person to submit a bid or proposal for that procurement or any portion thereof if the County determines that the exclusion of the person would limit the number of potential qualified vendors in a manner contrary to the best interests of the County.

3-6 Purchase of building materials, etc. from architect or engineer prohibited ([Virginia Code § 2.2-4374](#))

No building materials, supplies, or equipment for any building or structure constructed by or for the County will be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest.

No building materials, supplies, or equipment for any building or structure constructed by or for the County will be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies, or equipment to be used in the building or structure to the independent contractor employed by the County to furnish architectural or engineering services in which such a person has a personal interest.

3-7 Misrepresentation prohibited ([Virginia Code § 2.2-4376](#))

No employee having official responsibility for a procurement transaction will knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious, or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry. Employees must fill out and submit the Employee Purchasing and Confidentiality Agreement to assert their compliance with this section ([Virginia Code § 2.2-4375](#)).

3-8 Conflict of interest

The State and Local Government Conflict of Interests Act ([Virginia Code § 2.2-3100 et seq.](#)) generally prohibits officers or employees of the County from having a personal interest in County contracts.

3-8.1 Members of the Board of Supervisors ([Virginia Code § 2.2-3107](#))

No member of the Board of Supervisors will have a personal interest in:

1. Any contract with the County;
2. Any contract with any County agency that is subject to the control of the Board; or
3. Any contract other than a contract of employment with any other governmental agency if the Board appoints a majority of the members of the governing body of that agency.

This section does not apply to:

1. A Board member's personal interest in a contract of employment, provided the employment first began prior to the individual becoming a member of the Board;
2. Contracts for the sale by a County agency of services or goods at uniform prices available to the public; or
3. A contract awarded to the Board member as a result of competitive sealed bidding where the Board has established a need for the same or substantially similar goods through purchases prior to the individual's election or appointment to the Board. However, the board member will have no involvement in the preparation of the specifications for the contract, and the remaining members of the Board, by resolution, will state that it is in the public interest for the individual to bid on the contract.

3-8.2 Members of the School Board ([Virginia Code § 2.2-3108](#))

No School board member will have a personal interest in:

1. Any contract with the School board; or
2. Any contract with any agency that is subject to the ultimate control of the School Board.

This section does not apply to:

1. A School Board member's personal interest in a contract of employment; provided the employment began prior to the member becoming a member of the School Board.
2. Contracts for the sale by a County agency of services or goods at uniform prices available to the public.
3. A contract awarded to the School Board member as a result of competitive sealed bidding where the School Board has established a need for the same or substantially similar goods through purchases prior to the individual's election or appointment to the School Board. However, the board member must have no involvement in the preparation of the specifications for the contract, and the remaining members of the School Board, by resolution, must state that it is in the public interest for the individual to bid on the contract.

3-8.3 Other County officers and employees ([Virginia Code § 2.2-3109](#))

No other officer or employee of any County agency will have a personal interest in a contract with the agency of which they are an officer or employee other than their own contract of employment.

No officer or employee of the County will have a personal interest in a contract with any other County agency unless the contract is:

1. Awarded as a result of competitive sealed bidding or competitive negotiation; or
2. Is awarded after a finding by the County Executive or the Superintendent of Schools, as applicable, that competitive bidding or negotiation is contrary to the best interests of the public.

This section does not apply to:

1. An employee's personal interest in additional contracts for goods and services or contracts of employment with their own agency which accrue to them because a member of their immediate family, provided (i) the employee does not exercise any control over the employment or the employment activities of the member of their immediate family, and (ii) the employee is not in a position to influence those activities or the award of contracts for goods and services.
2. An officer's or employee's personal interest in a contract of employment with any other County agency.
3. Contracts for the sale by a County agency of services or goods at uniform prices available to the general public.
4. Any ownership or financial interest of members of the governing body, administrators, and other personnel serving in a public charter school in renovating, lending, granting, or leasing public charter school facilities, as the case may be, provided the interest has been disclosed in the public charter school application as required.

3-8.4 Exceptions to the State and Local Government Conflict of Interests Act

There are select exceptions to the Conflicts of Interest Act included in [Virginia Code § 2.2-3110](#).

3-9 Reporting mechanism

If any employee or officer of the County or member of the public has reason to believe that the policies in this chapter have been violated by an employee or officer of the County, they may report their concerns via the County's fraud, waste, and abuse reporting system. The anonymous reporting system can be accessed online at <https://albemarle.ethicaladvocate.com/Index.aspx>. Individuals may also report concerns via telephone by calling 434-243-7944, or via email by contacting reportfraud@albemarle.org.

END OF CHAPTER

CHAPTER 4. GENERAL REQUIREMENTS

Summary

This section sets forth certain requirements and policies that apply to all procurements: required provisions for contracts entered into by the County; the County's policy regarding small, women-owned, minority-owned, and service disabled veteran-owned (SWaM) business participation in procurement; vendor signatories; the public nature of certain procurement records; and communication requirements.

4-1 General Terms

General Terms applicable to all contracts are in Chapter 17 General terms.

4-2 Signature of the Vendor

The contract must be signed on behalf of the vendor by a person who is authorized to contractually bind the vendor. The vendor may be required to provide proof of the signatory's authority prior to approving the contract. The title or office of the signatory will be identified on a line immediately below his or her signature.

4-3 Public inspection of certain records ([Virginia Code § 2.2-4342](#))

Subject to the exceptions set out in Section 4-4.1, records relating to procurement transactions will be open to inspection by any eligible person described in the Virginia Freedom of Information Act ([Virginia Code § 2.2-3700 et seq.](#)).

4-3.1 Procurement records not available for public inspection

Two classes of procurement are exempt from public inspection:

1. Cost estimates relating to a proposed procurement transaction prepared by the County or for the County ([Virginia Code § 2.2-4342\(B\)](#)).
2. Trade secrets or proprietary information submitted by a potential vendor ([Virginia Code § 2.2-4342\(F\)](#)). The Purchasing Agent will not make available as public information any materials properly designated as a trade secret or proprietary information.

4-4 Participation of small, women-owned, minority-owned, and service disabled veteran-owned (SWaM) businesses

Albemarle County encourages the participation of SWaM businesses in County procurement and seeks to ensure that such businesses have the maximum practicable opportunity to participate. Solicitations to specific potential vendors will include businesses from a list of companies certified by the Virginia Department of Small Business and Supplier Diversity ([Virginia Code § 2.2-4310\(A\)](#)).

4-4.1 SWaM business definition

SWaM is a blanket term covering the terms "small business," "women-owned business," "minority-owned business," and "service-disabled veteran business." These terms are defined in the VPPA ([Virginia Code § 2.2-4310.F](#)). The Virginia Department of Small Business and Supplier Diversity

offers certification for SWaM businesses and maintains a directory of SWaM-certified businesses in Virginia, which can be accessed [here: https://directory.sbsd.virginia.gov/#/executiveExport](https://directory.sbsd.virginia.gov/#/executiveExport).

4-4.2 Encouraging SWaM participation

In order to maximize opportunities for SWaM businesses to participate in County procurement, it is the duty of the purchasing officer to:

1. Actively encourage procurement from SWaM businesses in an equally competitive manner.
2. Where procurement requirements permit, establish delivery schedules which will encourage participation by SWaM businesses.
3. Cooperate with and use the services and assistance of the United States Small Business Administration, the Virginia Department of Small Business and Supplier Diversity, and the Department of Veterans Services, as well as other public and private agencies.
4. Participate in local and regional purchasing fairs for SWaM businesses and employment services organizations.
5. Encourage using departments to have diverse participation in evaluation committees whenever such committees are required (see chapters [8](#), [9](#), [11](#), and [10](#)).

4-4.3 Monitoring SWaM participation

The Purchasing Agent will monitor, analyze, and report to the County Executive the participation of SWaM-certified businesses in County procurement.

4-4.4 Additional SWaM resources

The County maintains a list of resources for small businesses, which can be found on the County's [web page](#). Potential vendors are encouraged to review these materials and refer any questions to the Economic Development Office or the Office of Equity and Inclusion.

4-5 Formal Solicitations

The following provisions are recommended to be included in solicitations, at the discretion of the Purchasing Agent:

- Cooperative procurement clause, if applicable
- Insurance requirements

Offers will be date and time stamped upon receipt and retained unopened in a secure location until proposal opening. No consideration will be given to date of postmark or error in delivery to incorrect address. It is the responsibility of the offeror to ensure timely and correct delivery of Offer.

4-6 Clauses not to be included in procurement contracts

The contract preparer must not include the following provisions in any public contract:

- Dispute resolution by arbitration
- Indemnification of the vendor by the County
- Payment of vendors attorney's fees
- Vendor ownership or security interest in property of the County
- Broad powers of decision granted to the vendor.

4-7 Communication in writing

All communications, correspondence, determinations, and notices referred to in this Manual must be made in writing unless otherwise specified.

END OF CHAPTER

CHAPTER 5. PARTICIPANTS IN THE PROCUREMENT PROCESS: POWERS AND DUTIES

Summary

This section describes the powers and duties of the Purchasing Agent, the using departments, and the county attorney's office in the procurement of goods and services. This chapter also identifies unauthorized purchases and the consequences thereof.

5-1 The Purchasing Agent

The County is organized under the county executive form of government. In this form of government, the Board of Supervisors designates a Purchasing Agent for the County ([Virginia Code § 15.2-524](#)).

The Purchasing Agent is responsible for the procurement of all goods, services, insurance, and construction (with the exception of certain small purchases, outlined in [Chapter 7](#)); the management and disposal of surplus goods; and the award of contracts in accordance with the provisions of this manual, the VPPA, and other law. Procurement specialists working within the Office of Procurement may lead solicitations and facilitate other procurement-related work under the oversight of the Purchasing Agent.

5-1.1 The powers and duties of the Purchasing Agent

The Purchasing Agent has the following powers and duties ([Code of Virginia § 15.2-524](#)):

- To make all purchases of goods, services, insurance, and construction. The power of the Purchasing Agent is subject to any requirements established by the Board of Supervisors.
- To transfer supplies, materials, and equipment between departments and officers.
- 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 must invite competitive bids under rules and regulations established by ordinance or resolution.
- To establish suitable specifications or standards for all supplies, materials, and equipment to be purchased by the County; to establish, rules for contract administration and the inspection and acceptance of goods, services, and construction.
- To establish standards for the inspection and acceptance of all goods, services, and construction.
- To maintain a notified vendor list to which vendors can request to be included.
- Deciding whether vendor requests for the protection of proprietary or trade secrets information are proper.
- The Purchasing Agent also has all powers and duties necessary or incidental to those listed above.

5-1.2 Promoting vendor relations

The Purchasing Agent should also promote vendor relations by:

- Giving each requesting vendor a full, fair, prompt, and courteous consultation.
- Freely exchanging information.
- Ensuring that competition is open and fair.
- Ensuring that SWaM-certified businesses and employment services organizations have the maximum practicable opportunity to participate in County procurement.
- Ensuring that specifications reflect the needs of the County.
- Applying the County's procurement policies and principles in a consistent manner.
- Communicating with vendors concerning complaints received from using departments.

5-2 The using department

Using departments procure goods and services (with the exception of certain small purchases, see [Chapter 7](#)) through the Purchasing Agent. However, they are also important participants in the procurement process.

The department head and persons designated by the department head and approved by the Purchasing Agent to sign purchase requisitions will be responsible for the following.

- Anticipate the using department's needs and determine the quantity, general type, or character of supplies, materials, or equipment required.
- Cooperate with the Office of Procurement and assist in the development of standards and specifications.
- Prepare and submit purchase requisitions through the Office of Procurement in sufficient time to make the necessary purchases.
- Notify the Office of Procurement of any orders that have not been received.
- Inspect goods received for compliance with specifications and notify the Office of Procurement of any discrepancies.
- Provide contract administration for all contracts for goods and services. This includes monitoring performance and delivery and documenting vendor performance under the contract; verifying that the price of an invoice is equal to or less than the contract signed by the Purchasing Agent; notifying the Office of Procurement of instances of non-compliance with contract requirements; and cooperating with the Purchasing Agent in the conduct of remedial actions.
- Designate at least one employee to be responsible for contract administration. Every year, designated employees should attend at least one applicable class or training opportunity on contract administration sponsored by the Purchasing Agent.
- Ensure that individuals initiating purchasing actions have attended mandatory purchasing procedures training. The training will be made available by the Purchasing Agent on a periodic basis or as needed.
- The using department should notify the Purchasing Agent in writing of its intent to cancel a contract as soon as practicable.

5-2.1 Reporting Requirements for Construction Contracts

Under [Virginia Code § 2.2-4383\(B\)](#), every using department shall report to the purchasing agent no later than September 15 of each year on every construction project completed during the previous 12 months, where the total cost of a project exceeds \$2 million and the initial solicitation was issued after July 1st, 2017. To be considered complete, construction and payment shall be completed, including the completion of the applicable warranty period. The report shall include:

1. The procurement method utilized
2. The project's budget when the contract was awarded
3. The actual project cost
4. The expected timeline
5. The actual completion time
6. Any post-project issues
7. If such project was a construction management or design-build project, the qualifications that made the project complex. Projects are considered complex if they include one or more of the following components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes the design-bid-build project delivery method not practical.

The purchasing agent must report to the director of the Virginia Department of General Services no later than October 14 of each year the above information for every County department and shall also transmit a statement as to the procurement method used.

5-3 The county attorney's office (CAO) and school division counsel

The CAO and school division counsel are participants in the procurement process and should be consulted by the Purchasing Agent or the using department whenever a legal question arises. The CAO is consulted on procurements affecting the County, and the school division counsel is consulted on procurements concerning the school division. Questions arising from within the Office of Procurement are directed toward the CAO.

5-3.1 Duties

The CAO will:

- Assist the Purchasing Agent and using departments in complying with applicable law and policies in procurement.
- Review all procurement contracts presented to the CAO and approve any changes to contract templates.

5-3.2 Assistance to the Purchasing Agent and using department

The Purchasing Agent and the using department are encouraged to solicit the assistance of counsel in other circumstances, including:

- Development of invitations for bids and requests for proposals, particularly in the following circumstances:
 - The goods and services are not commonly procured by the County

- The expected cost of the procurement is substantial
 - The invitations or requests may deviate from the format or content previously reviewed and approved by the CAO.
- Consideration of legal issues that arise during the procurement process.
- Review of contracts for content and comment on any contract procurement, when the Purchasing Agent or using department deems review appropriate.

5-4 Unauthorized procurements

The County is not bound by unauthorized procurements. Individuals may be personally liable for unauthorized procurements.

5-4.1 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, will not be bound thereby. However, the Board of Supervisors and the School Board, as applicable, each reserve the right to ratify an unauthorized procurement.

5-4.2 Individual personally liable for unauthorized procurements

Any person making an unauthorized procurement is personally liable for the purchase. If the purchase is already paid for out of County funds, the amount may be recovered.

END OF CHAPTER

CHAPTER 6. CHOOSING THE RIGHT PROCUREMENT PROCEDURE

Summary

This chapter briefly explains how to select a procurement method.

6-1 General

Different procedures apply depending on the circumstances of a particular procurement. If uncertain, seek the Purchasing Agent's advice as to the required procedure.

The using department defines the statement of need and estimate the anticipated value of the necessary goods or services. The value should take into account the duration and volume of need as far as known, including the current and future fiscal years.

6-2 Informal Procurement with Quotes, [Chapter 7](#)

The informal procurement procedures set forth in [Chapter 7](#) apply when the aggregate or the sum of all phases is not expected to exceed:

- \$300,000 for non-transportation related construction
- \$200,000 for goods or nonprofessional services
- \$80,000 for professional services
- \$25,000 for transportation-related construction

6-3 The formal competitive procurement methods

These are the formal competitive procedures:

1. Competitive sealed bidding, see [Chapter 8](#)
2. Competitive negotiation for goods and services, see [Chapter 9](#)
3. Design-Build, see [Chapter 10](#)
4. Construction Management, see [Chapter 11](#)

6-3.1 Competitive sealed bidding for goods or nonprofessional services, [Chapter 8](#)

Competitive sealed bidding is a method of vendor selection used when the cost of the goods or nonprofessional services sought is expected to exceed \$200,000. This procedure is described more in [Chapter 8](#).

6-3.2 Competitive negotiation for goods and nonprofessional services, [Chapter 9](#)

Competitive negotiation for goods or nonprofessional services is the method of vendor selection that may be used in lieu of the competitive sealed bidding procedure for the procurement of goods or services, other than professional services as defined in [Chapter 2](#), where the cost of the goods or services is expected to exceed \$200,000. This procedure is described more in [Chapter 9](#).

6-3.3 Competitive negotiation for professional services, [Chapter 9](#)

Competitive negotiation for professional services is the method of vendor selection used only for the procurement of professional services (see Chapter 2 for a list of professional services) where the cost of the services is expected to exceed \$80,000. This procedure is described more in [Chapter 9](#).

6-3.4 Design-Build, [Chapter 10](#)

A design-build procurement is a procurement in which the vendor agrees to both design and build the structure, roadway, or other item specified by the contract. Subject to the approval of the Board of Supervisors, the using department may contract for design-build projects on a fixed-price, or a not-to-exceed price, basis in accordance with the procedures in this chapter. The using department may use competitive negotiation to procure design-build contracts if it determines in advance that documents the basis for the determination, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.

6-3.5 Construction Management, [Chapter 11](#)

Subject to the approval of the Board of Supervisors, the County may enter into contracts with construction managers in accordance with [Virginia Code § 2.2-4382](#) and the procedures adopted by the [Virginia Secretary of Administration](#). The County uses competitive negotiations to procure construction management services when the Purchasing Agent determines that the competitive sealed bidding procedure described in [Chapter 8](#) of this manual is not practicable or not fiscally advantageous to the public.

6-4 Determining which procedure applies

The Purchasing Agent should use the following criteria to assess whether the competitive sealed bidding process is practicable or fiscally advantageous to the public:

- Whether the project needs to be other than a fixed-price type
- Whether oral or written discussions may need to be conducted with vendors concerning technical and price aspects to their proposals
- Whether vendors may need to be afforded the opportunity to revise their proposals, including price
- Whether the market will respond better to a solicitation permitting not only a range of alternative proposals, but evaluation and discussion of them before making the award
- Whether the award may need to be based upon a comparative evaluation of differing price, quality, and contractual factors in order to determine the most advantageous offering to the County
- Whether the primary consideration in determining the award may not be price

6-5 Exceptions and exemptions

In some situations, the VPPA allows the County to procure goods and services without using competitive procedures otherwise mandated by the Act. The specific instances in which compliance with competitive procurement procedures is excused are outlined in [Chapter 12](#).

6-6 Cooperative procurements

The County may procure goods or services in cooperation with other public bodies, including partner agencies and those agencies for which the County serves as fiscal agent. Participating in cooperative procurements is at the discretion of the Purchasing Agent. Cooperative procurements are subject to the VPPA and this manual.

6-7 Procurements funded by state or federal grants

The Purchasing Agent may procure goods or services that involve the expenditure of federal assistance or contract funds, even if the assistance or funds are conditioned upon compliance with federal laws or regulations that are inconsistent with the VPPA, provided the Purchasing Agent adheres to the following procedure:

Prior to issuing a notice of the invitation for bids or request for proposals, the Purchasing Agent must obtain from the Board of Supervisors or the School Board (as applicable) a written determination that:

1. States that acceptance of the grant or contract funds under the applicable conditions is in the public interest
2. Identifies the specific provisions of the VPPA that are in conflict with the conditions of the grant or contract

6-7.1 State-aid projects

The Purchasing Agent may procure construction services for which state funds of \$50,000 or less are used for all or part of the cost of construction, using either the competitive sealed bidding procedure or the competitive negotiation procedure.

6-8 Reverse auctioning

Reverse auctioning is a procurement method where bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder.

During the bidding process, bidders' prices are revealed and bidders have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchase of commodities used in road and highway construction and maintenance and aggregates will not be made by reverse auctioning ([Virginia Code § 2.2-4303.1](#)).

CHAPTER 7. INFORMAL PROCUREMENT (REQUEST FOR QUOTES)

Summary

An informal procurement is not subject to the rules governing competitive sealed bidding or competitive negotiation. This chapter establishes the procedures to be followed when the expected costs of the goods or services sought do not exceed the small purchase limits established by the VPPA ([Virginia Code § 2.2-4303\(G\)](#)).

The using department defines the statement of need and estimates the anticipated value of the necessary goods or services. The value should take into account the duration and volume of need as far as known, including the current and future fiscal years.

7-1 General

This chapter establishes the procedures to be used for single or term contracts when the aggregate or the sum of all phases is not expected to exceed:

- \$300,000 for non-transportation related construction
- \$200,000 for goods or nonprofessional services
- \$80,000 for professional services
- \$25,000 for transportation-related construction

The following general principles apply to all procurements made pursuant to this chapter:

- The using department must make a good faith effort to determine the estimated cost of all phases of the procurement.
- These informal procedures are intended to provide for competition whenever practicable and must be applied to further this intent.
- Neither the Purchasing Agent nor the using department will procure goods or services in a piecemeal manner, otherwise split a procurement into multiple procurements, or request or require that the selected vendor invoice the County at intervals, for the purpose of reducing the estimated cost of the procurement to below the applicable purchasing thresholds.
- The using department should allow sufficient time for:
 - Vendors to provide accurate quotations
 - The County's evaluation of quotations
 - Completion of requisition and purchase order process
 - Review of any terms and conditions required by the vendor
- The request for quotations should be made in writing. Emails are an acceptable form for a written request for a quotation. The request will include reference to the Albemarle County General Terms or the applicable contract template (see Chapter 17).
- Written quotations are required. Emails are an acceptable form for a quotation.
- A purchase order is required on any purchase or purchase card transaction over \$10,000 unless the Purchasing Agent determines that this is not practicable, such as professional conference attendance for a group

7-2 Goods or nonprofessional services with expected costs under \$10,000

Where the estimated cost of goods or nonprofessional services is \$10,000 or less (unless exempted, see Section 7-5), purchases may be made upon receipt of a minimum of one written quotation. Additional sources may also be solicited. Other quotes received that were not solicited must be considered.

Additional competition should be sought whenever there is reason to believe a quotation is not fair and a reasonable price.

7-3 Informal Quote Process and request for quotes

- The using department must seek at least three (four, if the expected cost exceeds \$50,000) quotations from vendors. When soliciting a quotation, the using department must describe the goods or services desired, the quantity, the date by which delivery or performance is expected to be made, a statement that the County is seeking competitive quotations, any technical factors that may be evaluated, the County terms, and the date and time by which quotations must be received.
- A record of the quotation must be kept with the file.
- Purchases under this section with an expected cost exceeding \$50,000 must require a request for quotations, the posting of a public notice on the County's website and may include a posting on the Virginia Department of General Services' central electronic procurement website and/or other appropriate websites.
- A quotation submitted by a vendor should contain the following information:
 1. The name of the vendor
 2. The name of the individual quoting the offer
 3. The manufacturer and model of the goods or a description of the services
 4. The pricing and unit price
 5. The payment terms
 6. The promised delivery or performance date
 7. The technical qualification (if requested)
 8. The date the quotation was made
- The using department must select the vendor providing the best value or the lowest price quotation, depending on the structure of the request for quotations. However, if the vendor fails to provide a price quotation which contains all the information required by the preceding paragraph or if the Purchasing Agent determines that the vendor is not responsible, the Purchasing Agent must select the vendor providing the next best value or lowest price quotation. The Purchasing Agent must state the basis for the decision and place the statement in the procurement file.

The Purchasing Agent may require that any procurement of goods and services otherwise subject to this section comply with the competitive sealed bidding or competitive negotiation procurement procedures set forth in [Chapters 8](#) or [9](#) of this manual.

7-4 Professional services with expected costs up to and including \$80,000

If the expected cost of professional services (as defined in [Chapter 2](#)) do not exceed \$80,000, the following procedure must apply:

- The Purchasing Agent should allow sufficient time for:
 - Vendor(s) to provide accurate quotations
 - The County's evaluation of quotations
 - Completion of the contract negotiation and execution process
 - Review of any terms and conditions required by the vendor
 - Completion of requisition and purchase order process
- If the expected cost does not exceed \$25,000, the using department is authorized to negotiate with one or more vendors. If the expected cost is greater than \$25,000 up to and including \$80,000, the using department must contact and interview a minimum of three vendors. The interview and negotiations may be conducted either in person or in writing, and must consist of identifying the services desired, the date by which performance is expected, the required qualifications of the vendor, the County terms, and the cost for the services.
- The using department must recommend in writing to the Purchasing Agent, the vendor to be selected. If the using department negotiated with more than one vendor, the using department must recommend the vendor it determined to be the most qualified, responsible, and suitable; cost must not be the sole determining factor. The Purchasing Agent must notify the selected vendor, whose selection must be contingent upon the County and the vendor entering into a written agreement.
- The Purchasing Agent must provide the appropriate template or prepare an agreement approved by the county attorney's office (CAO).

The Purchasing Agent may require that the procurement of professional services otherwise subject to this section comply with the competitive negotiation procedure set forth in [Chapter 9](#) of this manual.

7-5 Items excepted from competitive requirements

Competition for certain goods and services is impracticable because of the nature and value of the goods and services or because these items have historically proven to be available from only a single source. As such, these specific goods and services, as listed in Appendix B, are excepted from competitive requirements, so long as the value does not exceed the relevant purchase thresholds. The Purchasing Agent, in consultation with the CAO, is empowered to amend the list without prior approval of the Board of Supervisors.

7-5.1 Procedure for items excepted from competitive requirements

Where a using department's expected cost of goods or nonprofessional services does not exceed \$200,000 for the goods and services detailed in Appendix B, purchases may be made upon receipt of one quotation. A record of the quotation must be kept with the file and must be consistent with documentation as described in Section 7-2. The documentation must be provided to the Purchasing Agent upon request. The Purchasing Agent, in consultation with the county attorney's office, is empowered to amend the list without prior approval of the Board of Supervisors.

Unless otherwise noted, purchases of items listed in Appendix B must be accomplished through either a purchase order or a purchase card transaction. The sale and lease of real property is not governed by the VPPA. The County is authorized to acquire real property as permitted by applicable law.

7-5.2 Agreements for items excepted from competitive requirements

Contract templates maintained by the Office of Procurement should be used to form all contracts between the County or the School Board and vendors. Using departments or entities do not have the authority to sign agreements provided by a vendor (see [Chapter 5](#) of this manual). No contract that is authorized under the exemption list in Appendix B may have a term exceeding five years, including renewals, without the permission of the Purchasing Agent.

END OF CHAPTER

CHAPTER 8. COMPETITIVE SEALED BIDDING (INVITATION FOR BIDS)

Summary

This chapter sets out the procedures for procuring goods and nonprofessional services using the competitive sealed bidding procedure. The County's procedure for competitive sealed bidding is determined by provisions of the VPPA ([Virginia Code § 2.2-4302.1](#)) and this manual. Where the cost of the goods or services to be procured is expected to exceed \$200,000, the County uses the competitive sealed bidding procedure unless another procedure is expressly authorized in this manual. The competitive sealed bidding procedure contains 10 key steps:

1. Identification of the goods or services to be procured
2. Submission of Purchase Initiation Form
3. Preparation of the invitation for bids (IFB)
4. Establishment of the procurement schedule
5. Issuance and public notice of the IFB
6. Pre-bid conferences or site visits, if warranted
7. Vendor submission of bids
8. Public opening and announcement of all bids received
9. Evaluation of bids
10. Award to the lowest responsive and responsible bidder.

See [Chapter 5](#) for a discussion of when goods, nonprofessional services, construction, and insurance may be procured with competitive sealed bidding.

8-1 Identification of the goods or services to be procured

The using department must identify the goods or services to be procured. A comprehensive definition of the goods and services must be developed before the using department pursues a procurement. The definition will be the basis of specifications in the IFB, as described in Sections 8-2.5 and 8-2.6.

8-2 Submission of Purchase Initiation Form

Upon identifying the goods or services to be procured, the using department must ascertain that funds are available for the procurement and submit a completed Purchase Initiation Form to the Purchasing Agent.

8-3 Preparation of the IFB

The invitation for bids must be prepared by the using department and the Purchasing Agent.

8-3.1 Preparing a statement of needs

Before drafting a complex IFB, particularly one for the procurement of services, the using department should prepare a statement of needs, which 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 realistically estimate what supplier costs will be. When the IFB is drafted, it should reflect the statement of needs, including identical numerical coding of

tasks and identical task descriptions. The using department and Purchasing Agent should coordinate to develop work requirements, in order to ensure that the terms defining work requirements are clear and complete.

8-3.2 Ensuring a comprehensive IFB

The IFB should be as comprehensive as possible because the more complete it is, the better the chances are that vendors will understand what the County seeks to procure and what relevant experience and qualifications should be included in bids. An IFB should contain the following elements:

1. Introduction
2. General information
3. Description of the goods or services sought
4. The minimum qualifications for a vendor
5. Contractual terms
6. Minimum standards of a bid
7. Required elements of a bid
8. Submittal requirements
9. Evaluation criteria

8-3.3 Introduction

The introduction must include the full names of the County and the using department, the name of the project, the IFB number assigned by the Purchasing Agent, a brief description of what is being procured, and a summary explanation of why the using department is procuring the goods or services. The explanation may include a summary of the functions that the goods or services are intended to support, as well as a statement relating the procurement to the strategic goals of the using department and the County. Information in the introduction should be stated in clear, simple, and concise language.

8-3.4 General information

This section should give the vendor information on how to respond to the IFB including:

- The anticipated procurement schedule
- A description of the competitive sealed bidding procedure
- A statement that each bid must be prepared and submitted as instructed in the IFB
- A statement that vendors may designate relevant portions of the bids as confidential in accordance with [*Virginia Code § 2.2-4342\(F\)*](#)
- Identify all documents pertinent to the procurement and state where they are available to vendors
- The proposed County contract that will be used for the procurement or the County's general terms, as well as specific terms. The proposed contract should include the anticipated term and optional renewal period(s)
- Identify the contact person for procedural questions (the Purchasing Agent or representative in the Office of Procurement) and contact information for that person

- A statement soliciting comments and questions from prospective vendors about the IFB
- A statement requesting notification of IFB requirements that restrict competition to a single source
- A statement informing prospective vendors that inquiries relating to the interpretation and technical details of the IFB must be made in writing and given to the Purchasing Agent at least seven days prior to the deadline for bid receipt
- A statement advising prospective vendors to contact the Office of Procurement five days before the deadline for bid receipt to ascertain whether addenda have been issued
- A statement that “The bidder must acknowledge all addenda by signing and returning a copy of all addenda with the bid submission or by separate acknowledgement of each addendum by number and date, in writing.”
- A statement that the Purchasing Agent may waive informalities in any bid
- A statement outlining the Purchasing Agent’s right to cancel the procurement or reject all offers

8-3.5 Description of the goods to be procured

If goods are being procured, they should be described in the form of a specification. The using department has the primary responsibility for writing specifications, subject to review by the Purchasing Agent.

Specifications must identify essential characteristics of the goods sought in clear, simple language, with as much detail as practicable. However, they must not be so narrowly drafted that they thwart competition. Specifications should establish a minimum level of experience required of a vendor, require that the bidder submit three or more references, and require that the vendor summarizes all performance experience with the County.

Brand name specifications may be used, but may not restrict bidders to a sole brand ([Virginia Code § 2.2-4315](#)).

8-3.6 Description of the services to be procured

If services are being procured, the description should state the services to be performed by the vendor in detail, including the following:

- All items to be delivered and services to be performed by the vendor. Each required task should be identified and set in a logical sequence. The description should state whether alternate items may be bid.
- Mandatory approaches to performing the services
- Quality requirements
- Any questions requiring answers

8-3.7 Minimum qualifications of vendors

The IFB must identify the minimum necessary experience, background, certifications, licenses, or expertise in the area of procurement for a vendor to be successful. See Chapter 15 for a discussion of vendor qualification.

8-3.8 Contractual terms

The county attorney and the Purchasing Agent must develop terms contained in the IFB. Terms listed in the IFB must include general contract terms for doing business with the County and any terms that are specific to the procurement. For more information on contracts with the County, see Chapter 17.

8-3.9 Minimum standards of a bid

The IFB must contain minimum standards for bids as follows:

- The bid must be in writing and legible
- The bid must be in a standard format provided by the County

8-3.10 Required elements of a bid

The IFB must include a section that sets forth the required elements of a bid, which are as follows:

- The name of the vendor, the location of the vendor's principal place of business and, if different, the place of performance of the proposed contract
- The price of the goods or services, including for any optional items identified in the IFB
- Identification of prior experience, identifying all other contracts similar to the procurement the vendor performed within a previous period of time determined by the IFB

8-3.11 Submittal requirements

The IFB must identify all the bid submittal and receipt requirements identified in Sections 8-6 and 8-7 of this manual.

8-3.12 Evaluation criteria

For the procurement of goods and services other than construction and professional services, the evaluation criteria detailed in the IFB may include best value concepts (see [Chapter 2](#)) as well as other elements determined by the Purchasing Agent.

8-4 Establishment of the procurement schedule

The Purchasing Agent and the using department should establish a schedule that will ensure the procurement is completed on or before the date the goods or services are required. They should consult and determine the completion date and then identify milestones and the date by which each milestone should be achieved in order to ensure the procurement is completed in a timely manner.

Every procurement schedule should include the following milestones:

- **Preparation of the bid documents**: This should include a deliberative process during which desired requirements, evaluation criteria, and stakeholder review can all be thoughtfully

considered. There should be sufficient time allowed for this consideration, as well as the timely publication of the IFB.

- **Public notice period and the deadline for bid receipt:** Allow at least 10 days for the public notice of the IFB prior to the deadline set for bid receipt ([Virginia Code § 2.2-4302.2](#)).
- **Evaluation of bids and issuance of notice of intent to award:** Allow sufficient time for bid evaluation, determination of vendor responsibility, and, if necessary, in the event all bids received are above the project budget, negotiation with the lowest bidder prior to publication of the notice of intent to award. A notice of intent to award must be posted for at least 10 days to allow for protest ([Virginia Code § 2.2-4360](#)). For policy regarding protests see Chapter 16.
- **Execution of contract:** Allow sufficient time for any issues that may require resolution prior to signing a contract. Factors that may affect the timing include verification or resolution of the vendor's status with the Virginia State Corporation Commission, amendment to a certificate of insurance, or other similar considerations.

When the goods or services sought are not commonly procured by the County, the procurement is particularly complex, or the procurement requires the bidders to submit substantial amounts of information, the using department and the Purchasing Agent should allow more time for completion of each of the above milestones.

8-5 Issuance and public notice of the IFB

The Purchasing Agent must provide public notice of the invitation for bids by posting on the [Office of Procurement's current solicitation website](#) (<https://www.albemarle.org/government/finance/procurement/solicitations>) and on the (<https://mvendor.cgieva.com/Vendor/public/AllOpportunities.jsp>). The notice of the IFB must contain, at minimum:

1. The name of the purchasing entity
2. A brief description of the goods or services to be procured
3. The date and time of the bid opening
4. The requisite qualifications for bidders, if applicable
5. The date and time of the pre-bid conference, if applicable
6. Sample contract or general contract terms that will be applicable to the eventual contract
7. Where bid documents can be obtained.

The Purchasing Agent may provide any additional notice that they deem appropriate.

8-5.1 Amending an IFB by addendum

If the Purchasing Agent or using department notices that the IFB contains ambiguity, an omission, or incorrect information, the Purchasing Agent may issue addenda that modify the IFB. The Purchasing Agent must have the sole authority to issue an addendum.

An addendum may be initiated at the discretion of the Purchasing Agent, upon the Purchasing Agent's determination of need, upon request of the using department, or upon the request of a prospective bidder requesting clarification.

If the Purchasing Agent determines an addendum is necessary, the addendum must be issued no later than five days before the deadline for bid receipt. An addendum extending the deadline for bid receipt may be issued any time before the prior deadline.

The Purchasing Agent must upload any addenda to the Office of Procurement's current solicitation website. If additional preparation time is likely to be required by potential bidders, the Purchasing Agent should ensure that the addendum extends the deadline for bid receipt by a reasonable period of time.

8-6 Pre-bid conferences

Pre-bid conferences may be helpful when the County seeks to procure goods or services that are highly technical or complex. A pre-bid conference is a meeting among the Purchasing Agent, the using department, and prospective vendors during which the procurement is discussed. A pre-bid conference may include a site visit allowing the vendors to observe the physical characteristics of the land or structures that are relevant to the procurement.

If a pre-bid conference is conducted, the IFB must include the time, date, and location for the conference. IFBs for construction must contain a copy of the pre-bid question form maintained by the Office of Procurement. The pre-bid conference should be held as soon as practicable after the IFB is issued.

The Purchasing Agent must keep a record of all inquiries and objections raised by prospective bidders and must ensure that an accurate response is provided in an addendum to the solicitation. All clarifications or amendments to the procurement must be made in an addendum to the solicitation. Oral representations made by County representatives at a pre-bid conference are not binding on the County.

8-7 Submission of bids

Bids submitted by vendors must comply with the following to be considered:

- All bidders must use the bid form included in the IFB.
- All erasures, interpolations, and other changes in the bid form must be signed or initialed by the bidder.
- Bids received orally, by telephone, by email or by fax must not be accepted.
- Bids containing conditions, omissions, erasures, alterations, or items not called for in the IFB may be rejected as incomplete.
- The bid form must be signed by an authorized representative of the bidder. If the bidder is a corporation, the bid must be submitted in the name of the corporation, not the corporation's trade name. The bidder must indicate the corporate title of the individual signing the bid.

- If a paper bid is submitted, all the documents must be enclosed in a sealed opaque envelope. The envelope should be marked with the IFB number and the time and date the bid is due.

8-7.1 Modifying or withdrawing a bid prior to deadline for bid receipt

A vendor may modify or withdraw a bid, subject to the following requirements ([Virginia Code § 2.2-4330\(C\)](#)):

- The vendor must notify the Purchasing Agent in writing of its intent to modify or withdraw
- The vendor must successfully submit a modified bid before the deadline for bid receipt.
- The vendor must notify the Office of Procurement in writing of a bid withdrawal before the deadline for bid receipt.
- If the vendor reveals the amount of the bid, the bid must be invalid.
- An attempt to modify the bid by writing on the exterior of the bid envelope must render the bid invalid.
- A vendor who withdraws a bid may resubmit the bid up to the deadline for bid receipt.

A bid may only be withdrawn after the deadline for bid receipt if the vendor can show that the bid submitted was mistaken, as provided in Section 8-9.1.

8-8 Bid receipt

The Purchasing Agent must comply with the following in receiving bids:

- All bids submitted before the deadline established by the IFB must be received. Vendors are responsible for ensuring that bid submittals are timely. The date and time automatically recorded by the Office of Procurement's bid submission system, or the time stamp affixed by the Office to paper bids, will determine whether a bid is timely received. Late bids must not be considered and must be retained unopened in the Office of Procurement.
- All bids received and time stamped must be kept in a secure location until the time and date set for the bid opening.
- Prior to the bid opening, the identity of vendors submitting bids and the number of bids received is confidential.
- If a bid envelope is inadvertently opened in advance of the prescribed bid opening, the Purchasing Agent should write an explanation of the opening on the envelope, with the IFB number, time and date of opening. The envelope should be resealed and placed with the other bids.

8-9 Public opening and announcement of bids

Except for construction bids, all bids timely received must be opened and publicly read aloud at the relevant time and date established in the IFB. Bids for construction contracts may be opened one day following the deadline for receipt of bids.

The Purchasing Agent should record the following information for each bid:

1. Name of vendor
2. Bid prices, delivery, and payment terms
3. Acknowledgement of addenda (if any)

4. Bid security received or not (if required)
5. Contractor registration number (if required)
6. Exceptions taken by vendor (if allowed)
7. Any other information deemed pertinent by the Purchasing Agent

The Purchasing Agent should promptly transmit the recorded information to the using department and a copy of each bid. The Purchasing Agent should allow sufficient for the evaluation of bids based on the number of bids received, the complexity or number of items being evaluated, and any time constraints.

8-9.1 Withdrawing a bid after bid opening

When a mistake in a bid is discovered by a vendor, the Purchasing Agent, or the using department after the bid opening, then the Purchasing Agent must notify the vendor and request that the bid be verified. If the vendor acknowledges the mistake and requests relief, the following procedure must apply ([*Virginia Code § 2.2-4330*](#)):

- The vendor gives notice that it intends to withdraw its bid, along with relevant documentation, to the Purchasing Agent within two business days of the conclusion of the bid opening procedure.
- The vendor must identify all other vendors that submitted bids and with which it has any relationship.
- The Purchasing Agent inspects the submitted materials to verify that an error occurred and determine the nature of the error.
- The Purchasing Agent may allow a vendor to withdraw its bid if the price bid was substantially lower than the next low responsive bid solely due to a mistake in the bid, provided:
 - a. The bid was submitted in good faith;
 - b. The mistake was a clerical mistake rather than a mistake of judgement; and
 - c. The mistake was due to an unintentional arithmetical error or an unintentional omission of a quantity of work or material. This must be shown by the original work papers, documents, and materials that the vendor used in the preparation of its bid.
- If the County agent allows withdrawal, it may award the contract to the next lowest responsive and responsible bidder, or reject all bids.
- No bid may be withdrawn when the result would be to award the contract to the same vendor who submitted the mistaken bid.
- A vendor who is permitted to withdraw may not benefit directly or indirectly from the performance of the project.
- If the County denies the withdrawal of a bid, it will notify the vendor within five business days, state the reasons for denial, and award the contract to that vendor at bid price, if the vendor is a responsive and responsible bidder. At the same time, the purchasing must return all work papers and copies that have been submitted by the vendor with its request.

8-9.2 Modifying a bid after bid opening

Vendors must not be permitted to correct bids after bid opening unless evidence of a mistake and of the bid actually intended is clear and convincing on the face of the bid. Corrections may only be made to a bid if it is the lowest bid received both before and after correction of the mistake.

8-10 Evaluation of bids

8-10.1 Evaluating bid responsiveness

The Purchasing Agent must examine the bids for compliance with the requirements of the IFB. The Purchasing Agent must first examine each bid to determine responsiveness. Vendors do not have an opportunity to provide additional information to the Purchasing Agent to make their bid responsive.

To evaluate bid responsiveness, the Purchasing Agent must:

- Determine whether the bid contains all the information required by the IFB
- Determine whether all the documents are properly signed by the vendor or an authorized agent thereof
- Determine whether the goods and services in the bid comply with the specifications in the IFB
- Identify all exceptions and qualifications to the County's procurement requirements, as well as errors or omissions in the bid

If the Purchasing Agent determines that a bid does not satisfy the requirements of the IFB, the bid must be regarded as nonresponsive unless the defect may be waived as an informality as provided in Section 8-9.2

8-10.2 Informalities

The Purchasing Agent may waive informalities in bids ([Virginia Code § 2.2-4319\(B\)](#)). For a definition of informalities, see [Chapter 2](#). The Purchasing Agent will consider three factors in determining whether a defect is an informality:

1. Whether the defect affects the price, quantity, quality, delivery schedule, or important policy such as provision of a valid bid bond. If the defect is only a matter of form or is an immaterial variation from the exact requirements of the IFB, the informality is minor.
2. If the defect does affect the factors identified above, the Purchasing Agent must determine how significant the defect is. To be waived as an informality, it must have trivial or no effect on those factors.
3. If the defect potentially gives the apparent low bidder an unfair competitive advantage, then the defect is not an informality and may not be waived.

8-10.3 Determining vendor responsibility

The Purchasing Agent must assess the responsibility of each vendor with a responsive bid. Responsibility includes the capacity to perform, the financial ability to perform, and the integrity, perseverance, and tenacity of the vendor. See Chapter 15 for a discussion of vendor responsibility.

8-10.4 Determining the low bidder

In determining the low bidder, the Purchasing Agent must determine which bid will require the least expenditure of County funds, considering the initial costs and also the following:

- Operational costs of goods being purchased
- Taxes on materials that are installed and become part of real property.
- Prompt payment discounts offered by the vendor, but only if the vendor allows at least twenty days for prompt payment after the goods or services are received or after the invoice is received (whichever is later)
- Shipping costs and shipping terms, unless the vendor's terms are F.O.B. delivered.
- The expenses associated with the administration of more than one contract, if the IFB provides that awards can be made to more than one vendor

8-10.5 Determining the low bidder in special situations

The Purchasing Agent must consider other factors in order to determine the low bidder in special situations described below:

- If only a single bid is received, the Purchasing Agent should question those potential vendors who failed to respond to the IFB to ascertain their reasons for not submitting a bid. If the specifications of the IFB were too restrictive, the Purchasing Agent should consider rejecting the sole bid received (see Section 8-10.1) and renewing the procurement with revised specifications.
- If a vendor offers an alternative item that functionally meets or exceeds the specifications in the IFB, and the IFB authorizes alternative bids, the Purchasing Agent may consider the alternate item. If the alternate bid is selected, the Purchasing Agent must make a statement justifying the acceptance of the alternate item.
- If the vendor submits an all or none bid (one in which the vendor stipulates that it will only accept a contract for all items on the bid) and the IFB expressly allows for all or none bids, the Purchasing Agent must consider:
 - Whether the total for all of the individual vendor's low-bid items amount to less than the total for the all or none bidder
 - Whether it is in the County's advantage to avoid excessive administrative costs associated with making multiple awards
 - Whether all other vendors would be treated fairly if the award was made to the lower all or none bidder

8-10.6 Tied bids

In the event of tied bids, the purchasing officer must break the tie using the following procedure:

1. Preference must be given to the vendor based in Albemarle County, or bidding goods, construction, or services produced within Albemarle County.
2. If Step 1 does not break the tie, then preference must be given to the vendor based in Virginia, or bidding goods, construction, or services produced within Virginia.
3. If Step 2 does not break the tie, the tie must be broken by drawing lots.

8-10.7 Procedure if all bids exceed available funds

If the bid from the lowest responsive and responsible bidder exceeds available funds, the Purchasing Agent and using department may negotiate with the bidder to obtain a contract price within available funds, using the following procedure:

1. The using department must provide the Purchasing Agent with a determination that the apparent low bid exceeds available funds, which must be confirmed in writing by the Purchasing Agent.
2. The Purchasing Agent or the using department must advise the apparent low bidder in writing that its bid exceeds available funds. The Purchasing Agent must suggest a reduction in scope for the procurement and invite the bidder to amend its bid based upon the proposed scope reduction. The Purchasing Agent and using department may negotiate informally with the bidder to obtain a contract within available funds.
3. The bidder may submit proposed changes to its bid using the Post Bid Modification Form included in the original IFB .
4. If the proposed modification is acceptable to the Purchasing Agent, the contract may be awarded to the bidder. If the County and the apparent low bidder cannot negotiate a contract within available funds, the Purchasing Agent must reject all bids as provided in Section 8-10.1

8-11 Award

After the bids have been evaluated, the contract is awarded to the lowest responsive and responsible bidder according to the following procedure:

1. The Purchasing Agent must post an announcement of the decision to award (a notice of intent to award) on the [Office of Procurement website](https://www.albemarle.org/government/finance/procurement) (<https://www.albemarle.org/government/finance/procurement>). The notice of intent to award should include a statement that the public records pertaining to the procurement have been and are available for inspection by vendors participating in the procurement process. It is the duty of the vendors to ascertain when the notice of intent to award is issued and posted.
2. The posting of a notice of intent to award starts a ten-day period in which a vendor may protest the decision to award a contract ([Virginia Code § 2.2-4360](#)). For a discussion of the policies concerning protest, consult Chapter 16 of this manual.
3. The Purchasing Agent must not award a contract until the protest period has expired, after which, if no vendor has protested, the Purchasing Agent must award the contract.

- a. If a bid protest is timely received in accordance with [Virginia Code § 2.2-4360](#) or a legal action is taken by a vendor in accordance with [Virginia Code § 2.2-4364](#), the Purchasing Agent must take no further action to award unless, upon prior consultation with the county attorney, they determine in writing that proceeding without delay is necessary in accordance with [Virginia Code § 2.2-4362](#). The determination must be placed in the contract file.

The Purchasing Agent may consult with the county attorney as to any matter pertaining to the decision to award a contract.

8-11.1 Canceling the procurement or rejecting all bids

The Purchasing Agent may cancel the procurement or reject all bids in the following circumstances:

- If the specifications or other requirements of the IFB precluded a reasonable pool of vendors from submitting bids, especially if the number of bids ultimately received is inadequate to ensure competition.
- If numerous vendors submitted nonresponsive bids for a similar reason, and it is determined that the cause for the nonresponsiveness may be the result of ambiguous instructions in the IFB, especially if there is an inadequate number of responsive bidders.
- If an essential requirement was omitted from the specifications in the IFB, especially if the Purchasing Agent is unable to determine if the goods or services bid will meet the County's needs or if, taking into account the omitted requirement during the bid evaluation process, fairness, impartiality, or competitiveness is compromised.
- If all bids exceed available funds and the Purchasing Agent cannot negotiate a contract within available funds as provided in Section 8-9.6.
- If there is a reasonable suspicion of collusive bidding, based on the guidelines in 8-11

This list is not exhaustive.

The Purchasing Agent must not cancel the procurement or reject all bids solely to avoid awarding a contract to a particular responsive and responsible bidder ([Virginia Code § 2.2-4319\(A\)](#)).

If the procurement is canceled or if bids are rejected, the Purchasing Agent must state their reasons in writing and place it in the contract file.

8-12 Collusive bidding

Collusive bidding is contrary to the competitive procurement process and may violate state and federal law (see [Chapter 2](#)).

One of the most common forms of collusive bidding is an agreement between the vendors to adhere to published price lists or other predetermined prices. Another common form is one in which competing firms collaborate to pre-select the low bidder each time the bidding occurs.

Collusive bidding can be detected by analyzing the patterns of awards over a long period of time. In addition, a pattern of identical bidding among the same group of vendors is sufficient cause for suspicion to be raised.

END OF CHAPTER

CHAPTER 9. COMPETITIVE NEGOTIATION (REQUEST FOR PROPOSALS)

Summary

This chapter provides the procedure for procuring goods and services using the competitive negotiation procedure. The County's procedure for competitive negotiation is determined by provisions of the VPPA ([Virginia Code § 2.2-4302.2](#)) and this manual. Where the cost of the goods and nonprofessional services to be procured is expected to exceed \$200,000, the County may use competitive negotiation. Where the cost of the professional services to be procured is expected to exceed \$80,000, the County must use competitive negotiation. The competitive negotiation procedure contains 13 key steps:

1. Identification of the goods or services to be procured
2. Submission of Purchase Initiation Form
3. Creation of the selection committee
4. Preparation of the request for proposals (RFP)
5. Establishment of the procurement schedule
6. Issuance and public notice of the RFP
7. Pre-proposal conferences or site visits, if warranted
8. Offeror submission of proposals
9. Receipt of proposals
10. Evaluation of proposals and development of a list of offerors with whom to negotiate
11. Negotiations
12. Selecting an offeror after negotiations
13. Negotiation and award of a contract

See [Chapter 6](#) for a discussion of when goods, nonprofessional services, and professional services may be procured with competitive negotiation.

9-1 Identification of the goods or services to be procured

The using department must identify the goods and services to be procured before proceeding with a procurement. The identification should include broad specifications and provide an understanding of the need that the procurement is intended to fulfill. The definition will be on the basis of specifications in the RFP, as described in Sections 9-4.5 and 9-4.6.

9-2 Submission of the Purchase Initiation Form

Upon identifying the goods or services to be procured, the using department must ascertain that funds are available for the procurement and submit a completed Purchase Initiation Form to the Purchasing Agent.

9-3 Creation of the selection committee and preparation of the RFP

The Purchasing Agent and the using department procurement specialist should establish a selection committee composed of individuals who are competent to make decisions related to the procurement. The three key roles of the selection committee are:

1. To assist in developing the RFP
2. To evaluate the proposals and conduct interviews
3. To interview offerors.

All members of the selection committee must be present during all evaluation meetings and presentations. If, for any reason, a committee member is unable to attend all evaluation meetings and presentations, they will no longer remain a scoring member of the committee but will remain on the committee in a non-scoring advisory capacity.

9-4 Preparation of the RFP

The RFP must be prepared by the using department and the Purchasing Agent, and then reviewed by the selection committee.

9-4.1 Preparing a statement of need

Before drafting an RFP, the using department should prepare a statement of need, which should identify the goods or services (broken down by tasks) to be procured in a logical sequence, assist in establishing realistic milestones or delivery schedules, and help realistically estimate what supplier costs will be. The using department and the Purchasing Agent should coordinate to develop work requirements, in order to ensure that the terms defining work requirements are clear and complete.

9-4.2 Ensuring a comprehensive RFP

The RFP should be as comprehensive as possible because the more complete it is, the better able offerors will be to understand what the County seeks to procure and what relevant experience and qualifications should be included in proposals. The RFP should contain the following elements:

1. The introduction
2. General information
3. Description of the goods and services sought
4. Request for inclusion of cost in proposals
5. Minimum qualifications for vendors
6. Contractual terms
7. Minimum standards for a proposal
8. Required elements of a proposal
9. Submittal requirements
10. Evaluation criteria

9-4.3 Introduction

The introduction should identify the County and the using department, the name of the project, the RFP number assigned by the Purchasing Agent, a brief description of what is being procured, and a summary explanation of why the using department is procuring the goods or services. Information in the introduction is to be stated in clear, concise language.

9-4.4 General information

This section should give the offeror information on how to respond to the RFP including:

- The anticipated procurement schedule
- A description of the competitive negotiation procedure
- The statement: "Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content."
- The statement: "Offerors may designate relevant portions of the proposals as confidential in accordance with [*Virginia Code § 2.2-4342\(F\)*](#)."
- Identify all documents pertinent to the procurement and state where they are available to offerors
- Identify the contact person for procedural questions (the Purchasing Agent or representative in the Office of Procurement) and contact information for that person
- A statement soliciting comments and questions from prospective offerors about the RFP.
- The statement: "Please notify the Purchasing Agent in writing if the requirements in this Request for Proposals inadvertently restrict competition to a single source of procurement."
- A statement informing prospective offerors that inquiries relating to the interpretation and technical details of the RFP must be made to the Purchasing Agent or procurement specialist at least seven days prior to the deadline for proposal receipt
- The statement: "Offerors are advised to contact the Office of Procurement five days before the proposal due date to determine if addenda have been issued."
- The statement: "The Purchasing Agent reserves the right to accept or reject any or all offers in whole or in part and to waive any informality in the offer."
- The statement: "At any time prior to the award of the contract, the Purchasing Agent has the right to cancel the procurement or reject all proposals, for any reason, except solely to avoid awarding the contract to a particular offeror."
- The statement: "It must be the responsibility of the Offeror to acknowledge all addenda by signing and returning a copy of all addenda with the offer submission or by separate acknowledgement of each addendum by number and date, in writing."

9-4.5 Description of the goods to be procured

If goods are being procured, they should be described in the form of a specification, as described in Section 8-2.5 of this manual.

9-4.6 Description of the services to be procured

If services are being procured, the description should state the services to be performed by the contractor in detail, as described in Section 8-2.6 of this manual.

9-4.7 Request for inclusion of cost in proposals

An RFP for the procurement of goods and nonprofessional services may request that prospective offerors include the cost of the goods or services in their proposals. However, cost should not be the sole determining factor when selecting those offerors deemed to be suitable for negotiation.

An RFP for the procurement of professional services may not request that prospective offerors include the cost of the services or furnish estimates of man-hours ([Virginia Code § 2.2-4302.2\(A\)\(4\)](#)).

9-4.8 Minimum qualifications of vendors

The RFP must identify the minimum necessary experience, background, certifications, licenses, or expertise in the area of procurement for an offeror to be successful. See Chapter 15 for a discussion of vendor qualification.

9-4.9 Contractual terms

Terms in the RFP must include general terms, as well as terms that are specific to that procurement, also known as “specific terms”. For more information on contracts with the County, see Chapter 17.

9-4.10 Minimum standards of a proposal

The RFP must contain minimum standards for proposals as follows:

- The proposal must be legible
- The proposal must be in a standard format provided by the Office of Procurement

9-4.11 Required elements of a proposal

The RFP must include a section that sets forth the required elements of a bid, which are as follows:

- The name of the vendor, the location of the vendor’s principal place of business and, if different, the place of performance of the proposed contract
- The names, qualifications, and experience of all personnel who would be assigned to work on the project. The Purchasing Agent may waive this element for the procurement of goods.
- A statement of the offeror’s understanding of the problem, the work to be done, or the program, and the approach to be used to achieve the objectives of the procurement. For the procurement of services, this statement should also include a plan giving as much detail as is practical explaining how the services will be performed. The statement should include a list of the key milestones in the project.
- Identification of all other contracts under which goods or services of similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time defined in the RFP.

9-4.12 Submittal requirements

The RFP must identify the proposal submittal and receipt requirements identified in Sections 9-8 and 9-9.

9-4.13 Evaluation criteria

The RFP must specify those criteria determined by the Purchasing Agent, the using department, and the selection committee to be relevant and material to properly evaluate a proposal. For the procurement of goods and services other than construction or professional services, the evaluation criteria may include best value concepts (see [Chapter 2](#)) and other elements that support the County's needs. The RFP should indicate the relative importance of each criterion through the scoring weight applied to each. There should only be as many scoring criteria as necessary for the selection committee to determine whether an offer is suitable.

Criteria that do not affect scoring, that will preclude otherwise competent offerors from competition, or that the selection committee will be unable to judge, must not be included.

9-4.13.1 Types of evaluation criteria

There are three primary categories of evaluation criteria:

1. **Technical criteria** such as the offeror's understanding of the procurement, the offeror's management plan, the quality of the proposed design for certain goods, the experience and qualifications of key personnel, and offeror resources.
2. **Management criteria** such as the offeror's experience on similar projects, the offeror's performance conducting similar projects, the offeror's available facilities and resources for the project, and the offeror's plan for management and control of the project.
3. **Cost criteria** such as the offeror's proposed price, the realistic expected cost of performance plus any proposed fixed fee, and other costs such as ownership, transportation and life-cycle costs. Cost criteria may only be applied to RFPs for the procurement of goods and nonprofessional services.

9-4.13.2 Criteria to include in RFPs

The using department and the Purchasing Agent should include criteria that allow the selection committee to consider the following:

- Plan for performing services
- Qualifications of the offeror, including project team members and consultants working on the project
- Provision of at least three references for work done within a specified number of years on projects of similar size and scope
- Experience with similar projects, with emphasis, when appropriate, on local government and Virginia experience. The criterion should elicit information on factors such as control of costs, quality of work, and record of schedule adherence.

- Past performance on similar projects with respect to factors such as control of costs, quality of work, and the record of schedule adherence
- Availability of the offeror, including availability of personnel, equipment, and facilities relevant to the project, considering other projects the offeror is currently undertaking or expected to undertake
- The offeror's reputation for personal and professional integrity and competency
- The offeror's familiarity with the County

The Purchasing Agent, the using department, and the selection committee may expand on the above list of criteria but must avoid including sub-criteria that will make it difficult to apply.

9-4.13.3 Relative importance of evaluation criteria

The RFP must indicate the relative importance of the criteria by describing the decisional logic that the selection committee will use.

9-5 Establishment of the procurement schedule

The Purchasing Agent and the using department should consult and determine the completion date of the procurement and then identify milestones and the date by which each milestone should be achieved to ensure the procurement is completed in a timely manner. Competitive negotiation procurements typically take five to eight months from the beginning of planning to award, and should include the following milestones:

- **Preparation of the RFP documents**: This should include a deliberative process during which desired requirements, evaluation criteria, and stakeholder review can all be thoughtfully considered. There should be sufficient time allowed for this consideration as well as the timely publication of the RFP
- **Public notice period and the date for proposal receipt**: Allow at least 10 calendar days to provide public notice of the RFP prior to the deadline set for proposal receipt ([Virginia Code § 2.2-4302.2.2](#)).
- **Evaluation of proposals, negotiation, and issuance of notice of intent to award**: Allow sufficient time to evaluate proposals, conduct interviews, engage in negotiations, and issue a notice of intent to award.
- **Execution of contract**: Allow sufficient time for any issues that may require resolution prior to signing a contract. A notice of intent to award must be posted for at least 10 calendar days to allow for protest ([Virginia Code § 2.2-4360](#)). For policy regarding protests see Chapter 16. Other factors that may affect timing include verification or resolution of the vendor's status with the Virginia State Corporate Commission, amendment to a certificate of insurance, or similar considerations.

When the goods or services sought are not commonly procured by the County, the procurement is particularly complex, or the procurement requires vendors to submit substantial amounts of

information, the using department and the Purchasing Agent should allow more time for completion of each of the above milestones.

9-6 Issuance and public notice of the RFP

The Purchasing Agent must provide public notice of the RFP by posting on the [Office of Procurement's current solicitation website](https://www.albemarle.org/government/finance/procurement/solicitations) (<https://www.albemarle.org/government/finance/procurement/solicitations>) and on the Virginia Department of General Services' central electronic procurement website (<https://mvendor.cgieva.com/Vendor/public/AllOpportunities.jsp>). The notice of the RFP must contain, at minimum:

1. The name of the purchasing entity
 2. A brief description of the goods and services to be procured
 3. The date and time set for proposal receipt ("proposal deadline")
 4. A brief statement of the qualifications for vendors
 5. The criteria that will be used to evaluate proposals
 6. The website where the RFP documents may be obtained
 7. The sample contract or general contract terms that will be applicable to the eventual contract.
- The Purchasing Agent may provide any additional notice that they deem appropriate.

9-6.1 Amending an RFP by addendum

If the Purchasing Agent is made aware that the RFP contains an omission, ambiguity, or incorrect information that must be corrected or clarified, they may issue addenda to the RFP. Only the Purchasing Agent may issue an addendum.

Addendum must be issued no later than five calendar days before the proposal deadline. An addendum extending the proposal deadline may be issued any time before the deadline.

9-6.2 Modifying a proposal prior to the proposal deadline

If a vendor wishes to amend its proposal, it must give notification to the purchasing officer of its intention to modify its proposal and must submit the modified proposal before the proposal deadline.

9-6.3 Withdrawing a proposal

A vendor may withdraw from the competitive negotiation process at any time, including after the proposal deadline. A vendor's withdrawal is not effective until the Purchasing Agent receives notice from the vendor.

9-7 Pre-proposal conferences or site visits

Pre-proposal conferences may be helpful when the County seeks to procure goods or services that are highly technical or complex. A pre-proposal conference is a meeting among the Purchasing Agent, the using department, and prospective vendors during which the procurement is discussed.

A pre-proposal conference may include a site visit allowing the vendors to observe the physical characteristics of the land or structures that are relevant to the procurement.

If a pre-proposal conference is conducted, the RFP must include the time, date, and location for the conference. The conference should be held as soon as practicable after the RFP is issued.

The Purchasing Agent must keep a record of all inquiries and objections raised by prospective offerors and must ensure that an accurate response is provided in an addendum to the solicitation. All clarifications or amendments to the procurement must be made in an addendum to the solicitation. Oral representations made by the County representatives at a pre-proposal conference are not binding on the County.

The Purchasing Agent may add any additional requirements to a pre-proposal conference that they deem appropriate.

9-8 Vendor submission of proposals

Proposals must comply with the following to be considered:

- All proposals must be in the format prescribed in Section 9-4.11.
- All erasures, interpolations, and other changes in a proposal must be signed or initialed by an authorized representative of the vendor.
- Proposals are not accepted orally, by telephone, or by fax.
- Proposals containing deviations, omissions, erasures, alterations, or items not called for in the RFP may be rejected as incomplete. However, the vendor may be given an opportunity to clarify its proposal if the Purchasing Agent determines that doing so will be in the best interests of the County.
- A proposal must be signed by an authorized representative of the vendor. If the vendor is a business entity, the proposal must be submitted in the name of the entity, not that of a D/B/A. The vendor must indicate the title of the individual signing the proposal.
- If paper copies of the proposal are provided, the proposal and all associated documents must be enclosed in a sealed opaque envelope. The envelope should be marked with the RFP number, the deadline for bid receipt, and the vendor's Virginia contractor registration number (if required).

9-9 Proposal receipt

The Purchasing Agent must comply with the following in receiving proposals:

- All proposals must be submitted before the proposal deadline. Vendors are responsible timely receipt. The date and time automatically recorded by the Office of Procurement's bid submission system, or the time stamp affixed by the Office to paper proposals, will determine

whether a proposal is timely. Late proposals must not be considered and must be returned unopened to the sender or retained unopened in the Office of Procurement.

- All proposals must be kept in a secure location until the time and date set for proposal opening.
- Prior to the deadline for proposal receipt, the identity of vendors submitting proposals and the number of proposals received is confidential.
- If a proposal is inadvertently opened in advance of the proposal deadline, the Purchasing Agent must write an explanation of the opening on the envelope, with the RFP number, time and date of opening. The envelope should be resealed and placed with the other proposals.

The RFP may impose additional requirements for receiving proposals.

9-10 Evaluation of proposals and development of a list of vendors with whom to negotiate

9-10.1 The evaluation process

Proposals should be evaluated according as follows:

1. The Purchasing Agent must open all proposals and identify each vendor. The Purchasing Agent must review each proposal for completeness and coordinate requests to vendors for incomplete or redacted documentation.
2. The selection committee must convene.
3. Before the first meeting, the Purchasing Agent and the using department lead must prepare scoring cards.
4. Selection committee members must independently review and score all proposals.
5. The selection committee must collectively evaluate all proposals based on the criteria specified in the RFP.
6. The committee members must document and justify their scores, providing detailed comments and specific references to the proposal. Committee members must review and evaluate proposals as they affect the members' areas of interest and expertise, sharing their findings with the whole committee. During this stage, the committee may receive the results of reference checks from the using department lead, including references other than those listed by the vendor, if noted in the solicitation.
7. The selection committee must select the top two or more proposals to move onto the negotiation stage.

9-10.2 Scope of an evaluation

Evaluation is limited to the criteria specified in the RFP (see Section 9-3.12). The selection committee must use the information contained in each proposal to evaluate its merit and may request that a vendor provide additional information.

9-10.3 Evaluating costs

An RFP for the procurement of goods or nonprofessional services may request that a prospective vendor include pricing information in its proposal. This information must be treated as nonbinding, because negotiations may lead to changes in the scope or cost of the procurement.

9-10.4 Determining whether a proposal is suitable for further consideration

The selection committee has broad discretion in determining whether a proposal is competitive or inferior, but its decision must be based upon the RFP criteria. The committee must make determinations based on whether a proposal has a reasonable chance of being selected for award.

Proposals determined to be inferior should be so determined because of deficiencies that are not easily correctable. A proposal should not necessarily be determined to be unsuitable for further consideration solely because it fails to conform to all the requirements of the RFP. A vendor should not be excluded if there is a question as to whether its proposal is competitive or if informational deficiencies in the proposal can be corrected by information obtained during the negotiation process.

9-10.5 Establishing a short list of vendors

Upon completion of the evaluation of the proposals, the selection committee must assign a score based on the evaluation criteria and classify each proposal as either “suitable” or “unsuitable” for further consideration. The committee must then invite two or more vendors it deems fully qualified, responsible, and whose proposals are suitable to interview with the committee.

The number of vendors selected depends on the size, scope, and complexity of the project, the number of proposals, and the time available to complete the selection process. In most circumstances, no more than five offerors should be invited to negotiate.

If the selection committee recommends only one proposal as suitable for further consideration or recommends that one vendor is clearly more qualified, the Purchasing Agent may invite a single vendor to interview.

The Purchasing Agent must notify vendors whose proposals are eliminated from further consideration. The notification should advise vendors of the decision and express appreciation for their participation in the process.

9-11 Negotiations

9-11.1 Preparing for negotiations

Before entering negotiations, the selection committee should:

- Request additional materials from selected vendors, such as responses to questions about points in the original proposal that may not have been clear, a draft budget, staffing charts, schedules, or an estimate of the hours to be spent on the project.
- Give vendors as much advance information as possible, such as the date, place, and time of negotiations, a list of project issues, any feasibility studies or other background information not previously provided, the size and makeup of the selection committee, or the evaluation criteria for negotiations. Each selected vendor should be provided identical information and the same amount of time to make a presentation during negotiations.

- Arrange for a tour of a site or facility, if the procurement is for a design project, which will allow vendors to observe the situation and ask questions before they finalize their presentation for negotiations
- Schedule negotiations to be ordered by some means other than the vendors' scoring during evaluation. For example, vendors may be scheduled alphabetically or by lot.
- Identify representatives from the using department to attend negotiations and request that a vendor's key personnel who would actually be assigned to the project attend.
- Visit each vendor's office and recent projects, especially in the case of large projects.

9-11.2 Negotiation procedure for goods and nonprofessional services

After evaluation of proposals for goods or nonprofessional services, the selection committee must begin negotiations with all vendors deemed by the committee to be fully qualified and best suited among those submitting proposals. After negotiations with each vendor, the selection committee must recommend the vendor that has made the best proposal. The Purchasing Agent, with the agreement of the head of the using department, must award the contract to the recommended vendor.

9-11.3 Negotiation procedure for professional services

After evaluation of proposals for professional services and before negotiations are conducted, the selection committee must engage in individual discussions with all vendors deemed by the committee to be fully qualified and best suited among those submitting proposals. After the discussion stage, the selection committee negotiates only with vendors whose professional qualifications and proposed services are deemed most meritorious, based not only on the vendors' proposals but also on the information gathered during these discussions. Vendors selected for negotiations are ranked, and the selection committee may negotiate only with the top-ranked vendor first, and, if a satisfactory contract 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.

9-11.4 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 contract. 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 goods and nonprofessional services, the County may discuss nonbinding estimates of total project costs (see Section 9-3.6) including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of the price for services.

The selection committee must 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 the improvement of its proposal.
- Indicate to a vendor a cost or price it must meet to obtain further consideration.

- Disclose proprietary information, technical information or ideas, or cost information about 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

The selection committee must not disclose any unauthorized information that may provide an unfair advantage to one vendor over other vendors.

9-11.5 Negotiation guidelines

The evaluation criteria established by the selection committee (see Section 9-3.12) should guide the negotiations.

The objective of the negotiation process is to arrive at a complete agreement on all the material issues and not leave such issues for later, so that best and final offers can be accepted without the need for further negotiations. The selection committee must:

- Control all discussions
- Advise the vendor of deficiencies in its proposals
- Attempt to resolve uncertainties concerning the proposal
- Resolve mistakes in the proposal by calling them to the vendor's attention, without disclosing information concerning other vendors' proposals
- Provide the vendor a reasonable opportunity to revise its proposal
- Inform a vendor that its cost or price is considered too high or unrealistic (goods and nonprofessional services only, per [Virginia Code § 2.2-4302.2\(A\)\(3\)](#))

The selection committee must document the negotiation proceedings and final decision. Individual committee members' personal notes made during the selection process may be subject to public disclosure ([Virginia Code § 2.2-3700 et seq.](#)).

9-11.6 Conducting negotiations: addressing deficiencies, uncertainties, and mistakes in the proposal

Negotiations should provide the vendor the opportunity to revise its proposal to address deficiencies, uncertainties, and mistakes. The selection committee should be specific when identifying deficiencies, uncertainties, and mistakes, but must not advise the vendor of the corrections required.

A deficiency is any part of a proposal that does not satisfy a minimum requirement of the RFP.

An uncertainty in a proposal may arise from inadequate information causing the selection committee to be unable to determine the extent of a vendor's compliance with the requirements of the RFP. Discussions should be thorough to address uncertainties.

A mistake is an error in a proposal. Discussions should resolve mistakes by bringing them to the attention of the vendor as specifically as possible without disclosing information about other vendors' proposals.

9-11.7 Conducting negotiations: cost

If the selection committee is concerned about the cost or price being too high or too low in the procurement of goods or nonprofessional services, the committee should advise the vendor during negotiations so that the vendor may submit a revised cost proposal. The committee may, but is not required to, reveal:

- The County's estimate or price goal
- The amount of funds available for the project
- The fact that a vendor's proposed cost exceeds the County's budget limits

The selection committee must not:

- Indicate to a vendor that it must meet a certain cost or price in order to receive further consideration
- Advise a vendor of its price standing relative to other vendors
- Reveal the identity of the low vendor
- Reveal whether all vendors are in the same price range
- Otherwise inform the vendor about other vendors' prices

9-12 Selecting a vendor after negotiations

The selection committee will recommend to the Purchasing Agent a vendor or vendors with whom to negotiate a contract. The selection must be based on the committee's evaluation of proposals and the information obtained during negotiations.

9-12.1 Selection: goods or nonprofessional services

For procurement of goods and nonprofessional services, the selection committee must select the vendor that has made the best proposal and must recommend that the contract be awarded to that vendor. To reach a conclusion on which is the best proposal, the committee must follow this process:

1. After negotiations have been conducted with all the selected vendors, the committee must solicit best and final offers from each vendor. The request must inform vendors that negotiations have been concluded and must include a deadline for submission of best and final offers.
2. After receipt of best and final offers, the committee must evaluate the offers and may make a recommendation for award if no further negotiations are necessary.
3. It may be in the best interests of the County to pursue a further round of negotiations and another round of best and final offers:
 - a. If deficiencies in the initial best and final offers prevent their acceptance, the Purchasing Agent must make a determination that it is in the best interests of the County to conduct an additional round of best and final offers

- b. If the County's requirements change or the committee requires more information, the committee may reopen negotiations. If negotiations are reopened, additional negotiations must be conducted with all the vendors selected in Section 9-9.5.
- c. The selection committee may contact a vendor to clarify any uncertainty in the vendor's best and final offer without reopening negotiations with all vendors.

9-12.2 Selection: professional services

If professional services are being procured, the selection committee must follow the ranked negotiation procedure described in Section 9-10.3. When a contract satisfactory to the County is negotiated, the Purchasing Agent must award that vendor. When the County terminates negotiations with a vendor and moves to negotiate with the next ranked vendor, the County must not reopen negotiations with the higher-ranked vendor ([Virginia Code § 2.2-4302.2.A.4](#)).

9-12.3 Price and scope of work documents

Prior to the contract award and after the selection committee has determined which vendor to award a contract to, the committee may request two documents from the vendor:

1. A work statement reflecting the scope of work that was agreed upon by the County and the vendor, identifying each task performed by the vendor
2. A contract amount exhibit, predicated upon the work statement, that allows the vendor to use individual prices in invoices for goods and services (the contract amount will be identified in the contract itself).

These documents, if requested, should be carefully reviewed by the selection committee, the using department, and the Purchasing Agent to ensure that they accurately reflect the agreement of the parties. If the documents do not accurately reflect the agreement, the committee must negotiate revisions with the vendor. The finalized documents must be attached to the contract as exhibits.

9-13 Contract award

After 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 professional services, the procedure of ranking vendors and negotiating in order of rank, described in Section 9-10.3 must be followed. When the decision to award a contract has been reached, the following procedure must be followed:

1. The Purchasing Agent must post a announcement of the decision to award (a notice of intent to award) on the [Office of Procurement website](https://www.albemarle.org/government/finance/procurement/solicitations) (<https://www.albemarle.org/government/finance/procurement/solicitations>). The notice of intent to award should include a statement that the public records pertaining to the procurement have been and are available for inspection by vendors participating in the procurement process. It is the duty of the vendors to ascertain when the notice of intent to award is issued and posted.
2. The posting of the notice of intent to award starts a 10-day period in which a vendor may protest the decision to award a contract ([Virginia Code § 2.2-4360](#)). For a discussion of the policies concerning protest, consult Chapter 16 of this manual.

3. The Purchasing Agent must not award a contract until the protest period has expired, after which, if no vendor has protested, the Purchasing Agent must award the contract.
 - a. If a protest is timely received in accordance with [Virginia Code § 2.2-4360](#) or a legal action is taken by a vendor in accordance with [Virginia Code § 2.2-4364](#), the Purchasing Agent must take no further action to award unless, upon prior consultation with the CAO, they determine that proceeding without delay is necessary in accordance with [Virginia Code § 2.2-4362](#). The determination must be placed in the contract file.

The Purchasing Agent may consult with the CAO as to any matter pertaining to the decision to award a contract.

9-13.1 Canceling the procurement or rejecting all proposals

At any time prior to the award of the contract the Purchasing Agent may cancel the RFP or reject any or all of the proposals. Cancellation or rejection may be considered for any reason except solely to avoid awarding the contract to a particular vendor ([Virginia Code § 2.2-4319](#)).

If the RFP is canceled, or if any of the proposals received are rejected, the Purchasing Agent must state the reasons for rejecting the proposals and place the statement in the contract file and post notice on the [Office of Procurement website](#).

END OF CHAPTER

CHAPTER 10. DESIGN-BUILD PROCUREMENT

Summary

This chapter outlines the procedures to be followed by a using department for the procurement and administration of design-build procurement. A design-build procurement is a procurement in which the vendor agrees to both design and build the structure, roadway, or other item specified by the contract. Subject to the approval of the Board of Supervisors, the using department may contract for design-build projects on a fixed-price, or a not-to-exceed price, basis in accordance with the procedures in this chapter. The using department may use competitive negotiation to procure design-build contracts if it determines in advance that documents the basis for the determination, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.

10-1 Criteria for choosing design-build procurement

The following criteria must be met to engage in a design-build procurement ([Virginia Code § 2.2-4382](#)):

1. The using department must provide justification to the Purchasing Agent, who may decide that neither competitive sealed bidding nor separately-procured design and construction contracts are practicable or fiscally advantageous for the project in question.
2. The bases for that determination must include one or more of the following:
 - a. Estimated construction cost
 - b. Project complexity
 - c. Anticipated use of the building, structure, or property to be constructed
 - d. Project timeline
 - e. Need for a single point of contact in the project
3. A licensed architect or engineer must be employed or under contract to advise the County in its use of design-build procurement.

10-2 Procedure for approval

Before procuring a design-build contract, the Purchasing Agent must submit its determination (see Section 10-1) to the Board of Supervisors. The procurement may only proceed after the Board of Supervisors authorizes this procurement method.

10-3 Selection procedures

If the Board of Supervisors authorizes a design-build procurement, the using department must appoint an evaluation committee consisting of at least three members of the using department, including a licensed design professional, if possible. The using department must procure the design-build contract through a two-step competitive negotiation process ([Virginia Code § 2.2-4382\(F\)](#)).

10-3.1 Selection of qualified vendors

The using department must conduct a request for qualifications process to determine which vendors are qualified to receive an RFP, using the following procedure:

1. The using department must prepare a request for qualifications containing the project's requirements, building and other site criteria, and any site and survey data available. The criteria to be used to evaluate responses must be set out in the request for qualifications.
2. The request for qualifications must be posted on the website of the Office of Procurement for at least 30 days prior to the deadline for responses.
3. All offerors must include, as part of their response, a completed prequalification form. All offerors must include, as part of their response, the identity of a Virginia-licensed Class A contractor and a Virginia-licensed architect or engineer employed or contracted by the offeror to work on the project.
4. The evaluation committee must evaluate each offeror's response, along with any other relevant information, and must determine which offerors are qualified for the project, based on the criteria established in the request for qualifications. The committee may deny an offeror prequalification as specified in [Virginia Code § 2.2-4317](#) and Section 15-1.1 of this manual.
5. The committee must establish a shortlist of two to five offerors deemed to be most qualified. An offeror may be found to be qualified, but not included by the committee in the shortlist.
6. The Office of Procurement must provide notification to each offeror which sought prequalification whether the offeror has been prequalified. For those offerors not selected for the shortlist, the notification must describe the reasons the offeror was not selected.

10-3.2 Selection of a contractor

The Office of Procurement must work with the using department to conduct an RFP process to determine which offeror is awarded the contract.

1. Office of Procurement must post an RFP in accordance with [Chapter 9](#) of this manual and provide the RFP to every offeror on the shortlist. The committee must consider cost a critical component of the selection process.
2. The deadline for receipt of proposals must be at least 30 calendar days after the RFP is posted or the RFP is sent to prospective offerors, whichever is later ([Virginia Code § 2.2-4382\(E\)\(2\)](#)).
3. Offerors selected for the shortlist may submit a sealed technical proposal to the committee. Any offeror that submits a technical proposal must also submit a separate, sealed cost proposal to the Office of Procurement. The procurement specialist must keep all cost proposals sealed until the committee completes its evaluation of the technical proposals and adopts any design adjustments (see next).
4. The committee must evaluate each technical proposal according to the criteria laid out in the RFP. If a proposal does not comply with the requirements of the RFP, the committee must inform the offeror and ask it to make adjustments to the proposal. The committee may also ask vendors to adjust proposals to incorporate technical improvements or information identified by the committee during the procurement process.
5. An offeror may provide a new technical proposal in response to the committee's request for adjustment. If necessary, the offeror may adjust its cost proposal to reflect changes to the technical proposal.
6. The committee must evaluate (and rank if the criteria for award includes technical rankings) the technical proposals and then open the cost proposals.

7. The committee must conduct negotiations with at least two offerors submitting the highest ranked proposals.
8. The committee must make its recommendation to the using department based on its evaluation of the technical proposal, cost proposal, and the outcome of negotiations. The Purchasing Agent may award the contract to the offeror selected.

10-4 Reporting requirements

See 5-2.1 Reporting Requirements for Construction Contracts.

END OF CHAPTER

CHAPTER 11. CONSTRUCTION MANAGEMENT

Summary

This chapter sets out the procedure for procuring construction management services. Subject to the approval of the Board of Supervisors, the County may enter into contracts with construction managers in accordance with [Virginia Code § 2.2-4382](#) and the procedures adopted by the [Virginia Secretary of Administration](#) (<https://dgs.virginia.gov/engineering-and-buildings/special-reports-and-procedures/AlternativeConstructionProcurementProcedures/>). The County uses competitive negotiations to procure construction management services when the Purchasing Agent determines that the competitive sealed bidding procedure described in [Chapter 8](#) of this manual is not practicable or not fiscally advantageous to the public. The determination must state the basis for the finding.

All projects with a value above \$10,000,000 must use construction management. Construction management may be used for projects with a lesser value, subject to approval by the Board.

11-1 Procedure for approval

If a using department seeks to use construction management in a project, it must submit a written request to the Board of Supervisors. The request must contain a statement of the basis for the use of construction management, a determination that the project meets the criteria set out in this chapter and [Virginia Code 2.2-4382](#), and a stipulation that the construction management contract for pre-construction services will be initiated no later than the completion of the schematic phase of design.

11-2 Procedure for vendor selection

11-2.1 Appointment of evaluation committee

If the Board of Supervisors authorizes construction management for a project, the using department must appoint an evaluation committee consisting of at least three members of the department, including a licensed design professional, if possible. In addition to representatives of the using department, the committee must include a licensed professional engineer or architect provided by the Department of Facilities and Environmental Services Facilities Planning and Construction division, or on contract with the County. The Purchasing Agent must consult with the County Attorney's Office (CAO) to determine whether a representative from the CAO should be on the committee.

The basis of the award of the contract must be in accordance with [Virginia Code § 2.2-4382](#). The evaluation committee must submit the criteria for the award to the Purchasing Agent in advance for approval.

11-2.2 Selection of qualified offerors

The evaluation committee must conduct a request for qualifications process to determine which vendors are qualified to receive an RFP:

1. The committee must prepare a request for qualifications containing the project's facility requirements, building and site criteria, any available site and survey data, the criteria to be used to evaluate responses, and other relevant information. Prior construction management experience must not be required; however, the committee may consider the experience of an offeror on comparable projects during the evaluation process.
2. The request for qualifications must be posted on the website of the Office of Procurement for at least 30 days prior to the deadline for responses.
3. All offerors must include, as part of their response, a Virginia-licensed Class A contractor.
4. The committee must evaluate each responding firm's responses and any other relevant information and must determine those deemed qualified with respect to the criteria established for the project in the request for qualifications.
5. The evaluation process must result in a shortlist of two to five offerors deemed to be most qualified. An offeror may be found to be qualified, but not included by the committee in the shortlist. The committee may deny an offeror prequalification as specified in [Virginia Code § 2.2-4317](#) and Section 16-1.1 of this manual.
6. The committee must advise each offeror which sought prequalification whether the offeror has been prequalified. For those offerors not selected for the shortlist, the notification must describe the reasons the offeror was not selected.

11-2.3 Selection of a construction manager

The using department must conduct an RFP process to determine which offeror is awarded the contract.

1. The using department must post an RFP in accordance with [Chapter 9](#) of this manual and provide an RFP to every offeror on the shortlist. The RFP must include a description of a two-phase contracting process, in which a selected offeror would first contract for pre-construction services and, second, a contract for construction services.
2. The deadline for proposal receipt must be at least 30 days after the RFP is posted or the RFP is sent to the prospective offerors, whichever is later ([Virginia Code § 2.2-4382\(E\)\(2\)](#)).
3. Offerors must submit proposals to the Purchasing Agent. The Purchasing Agent must forward the proposals that conform to the requirements of the RFP to the evaluation committee.
4. The committee must evaluate and rank the proposals according to the established criteria. After ranking the proposals, the committee must conduct negotiations with at least two offerors submitting the highest ranked proposals. If the Purchasing Agent determines that only one offeror is fully qualified or that one offeror is clearly more highly qualified than the others under consideration, the committee may negotiate a contract award with that offeror.
5. The committee must make its recommendation on the selection of a construction manager to the county executive, who must approve or disapprove the selection. When the terms of multiple awards are provided for in the RFP, awards may be recommended for more than one offeror. The county executive must notify the Purchasing Agent of the selection of the construction manager. The Purchasing Agent may award the contract to the offeror selected.
6. The using department must notify all offerors who submitted proposals which offeror was selected for the project.

7. Upon request, the using department must provide to any offeror documentation of the process used to award the contract.

11-3 Required contract terms

Any guaranteed maximum price construction management contract must contain provisions requiring that:

1. Not more than 10 percent of the construction work (measured by cost of work) will be performed by the construction manager with its own forces
2. The remaining 90 percent of the construction work will be performed by subcontractors of the construction manager which the construction manager must procure by publicly advertised, competitive sealed bidding to the maximum extent practicable ([Virginia Code § 2.2-4382\(E\)\(5\)](#)).

If any work is not procured by publicly advertised competitive sealed bidding, the construction manager must notify and provide documentation explaining the reasons thereof to the Purchasing Agent, who must place the documentation in the contract file. This subsection must not apply to contracts involving infrastructure projects.

11-4 Guaranteed maximum price

The construction manager and the using department must establish the guaranteed maximum price at the completion of the working drawings unless a waiver has been granted to this requirement by the Purchasing Agent. If the using department and the construction manager cannot agree on a guaranteed maximum price, the using department may competitively bid the project with other prequalified construction management offerors in accordance with the requirements of the *Virginia Code* and this manual.

11-5 Reporting requirements

See 5-2.1 Reporting Requirements for Construction Contracts.

END OF CHAPTER

CHAPTER 12. PROCUREMENTS EXEMPTED FROM COMPETITIVE PROCEDURES

Summary

This chapter outlines the circumstances in which exemptions apply to procedures otherwise mandated by the VPPA including: sole source procurements, emergency procurements, public auctions, and the procurement of some types of goods or services.

12-1 Sole source

When the Purchasing Agent determines that the goods or services sought are only practically available from one vendor, a procurement can proceed as follows ([Virginia Code § 2.2-4303\(E\)](#)).

12-1.1 Determination of a sole source

If a using department seeks goods or services that it believes are available only from one vendor, it must provide the following to the Purchasing Agent:

1. A description of the goods and services, in the form of the proposed specifications or a work statement;
2. The reasons why it believes that the goods or services can only be procured from one vendor; and
3. An explanation of the efforts made before concluding that only one vendor is available.

The Purchasing Agent must determine whether there is only one vendor. In making the determination, the Purchasing Agent must consider the following:

1. The word “practicable” here means “feasible,” and does not require that procurement from another vendor is utterly impossible regardless of expense, time, or effort.
2. Whether the specifications or work statement has been so narrowly written as to unnecessarily exclude other vendors.
3. Whether a sole source determination is consistent with the spirit of [Chapter 1](#) as well as the VPPA that competition should always be sought where practicable.

12-1.2 Procedure after a determination

If the Purchasing Agent determines that only one vendor is practicably available, then the Purchasing Agent must ([Virginia Code § 2.2-4303\(E\)](#)):

1. State the basis for the determination. This determination must be placed in the contract file.
2. Post on the Office of Procurement’s web page a notice stating that only one vendor was determined to be practicably available, identifies the goods or services that will be procured, identifies the vendor, and states the date on which the contract will be awarded.
3. The notice must be posted at least 10 days before performance begins.

12-1.3 Contract Award

The contract award date must be at least ten days after the notice of intent to award is published. See Section 12-1.2. The Purchasing Agent must post the notice of award on the Office of Procurement's web page. The notice of award must include a statement that public records pertaining to the procurement are available for inspection.

12-2 Emergencies

When the County's director of emergency management or the Governor declares an emergency under the Emergency Services and Disaster Law ([Virginia Code § 44-146.21](#)), and the Purchasing Agent determines that the emergency necessitates the procurement of goods or services without following normal procurement procedures, the County may use emergency procurement procedures, but only those goods and services necessary to respond to the declared emergency. Subsequent needs must be met using normal procurement procedures.

12-2.1 Determination of an Emergency

Absent a formal declaration of emergency, and if a using department seeks to procure goods or services under circumstances it believes to be an emergency, it must provide the Purchasing Agent:

1. A description of the goods and services in the form of the proposed specifications or work statement;
2. The reasons why the department believes that an emergency exists necessitating the goods and services;
3. An explanation of the basis of the emergency; and
4. Identification of at least three vendors who may provide the goods and services. If fewer than three vendors are practicably available, the using department must identify only those vendors and state why it believes other vendors are not practicably available.

The Purchasing Agent must determine whether an emergency exists, and whether the goods or services should be procured using the emergency procurement procedure. An emergency exists when goods or services are needed immediately in order to avoid a specific harm that is foreseeable and not theoretical, such as:

1. To avoid harm to the health, safety, or welfare of residents.
2. Immediate repair is necessary to prevent further damage to public property, machinery, or equipment.
3. A breakdown in the provision of an essential service is imminent.
4. An emergency may exist even where the emergency is caused poor planning, overlooked requirements, inaccurate usage history, inadequate forecasting, or other similar reasons. However, the creation of emergency circumstances as an attempt to circumvent competitive procedures is a violation of the County's Standards of Conduct.
5. The loss of funds or a funding source due to the end of a fiscal year or other similar reason is not an emergency.

12-2.2 Procedure if an emergency exists

If an emergency exists, the following procedure applies ([Virginia Code § 2.2-4303\(F\)](#)):

1. The Purchasing Agent must select a vendor. The selection must be made as competitively as practicable under the circumstances. The selection process may consist of, but is not limited to, any procedure described in [Chapter 7](#), or be based on any procedure, modified for the circumstances, provided in [Chapter 8](#) or [Chapter 9](#). The procurement must be made using a purchase order.
2. Within 24 hours of the Purchasing Agent's vendor selection, the using department or Purchasing Agent must request and receive from the vendor proof of authorization to transact business in the Commonwealth ([Virginia Code § 2.2-4311.2](#)), a certificate of insurance, and a certificate of nondebarment.
3. The Purchasing Agent must make a determination that an emergency exists, state the basis for the determination, and state the basis for selecting a particular vendor. The Purchasing Agent must place this statement in the contract file.
4. The Purchasing Agent must post in a designated public area or on the Office of Procurement's web page a notice that: states that a contract has been or will be awarded on an emergency basis; identifies the goods or services that have been or will be procured; identifies the vendor selected; and states the date on which the contract has been or will be awarded.
5. The public notice of determination must be posted on the day the County awards the contract or announces its decision to award, whichever occurs first. If the notice is not possible because of the nature of the emergency, then the public notice must be posted as soon thereafter as practicable. The public notice of determination must be posted for at least 10 days.

12-2.3 Procedure if an emergency exists outside of normal business hours

If the using department determines that an emergency exists at any time other than the normal business hours of the County (8:00 AM to 5:00 PM, Monday through Friday, excluding holidays), the following procedure must apply if the using department cannot comply with the procedure set forth in 12-2.2:

1. The determination of whether the goods or services may be procured using the emergency procedure must be made by the using department representative, who must state the following to the head of the using department: a description of the goods or services, in the form of the proposed specifications or work statement; the reasons why the using department believes that an emergency exists necessitating the goods or services; an explanation of the basis of the emergency; and identification of at least three vendors who may provide the goods or services. If fewer than three vendors are practicably available, it must identify only those vendors and state why it believes that other vendors are not practicably available. The determination of whether an emergency exists must be based on the factors identified in Section 12-2.1.
2. The using department representative must select a vendor from the list of those he identified. The selection of the vendor must be made as competitively as practicable under the circumstances. The selection process may consist of, but is not limited to any procedure

provided in [Chapter 7](#), or be based upon any procedure, modified for the circumstances, provided in [Chapter 8](#) or [Chapter 9](#).

3. At the earliest time possible on the first County business day following the emergency, the using department representative must notify the Purchasing Agent of the procurement and provide the Purchasing Agent the determination of an emergency and the purchase order. The Purchasing Agent must confirm the appropriateness of the determination that an emergency existed and confirm the purchase order.
4. The Purchasing Agent must issue a purchasing order, subject to Section 12-2.5 below.
5. Upon receipt of the determination that an emergency exists and the purchasing order from the using department representative, the Purchasing Agent must place the determination in the contract file.
6. The Purchasing Agent must post in a designated public area or on the Office of Procurement web page a notice that: states that a contract has been or will be awarded on an emergency basis; identifies the goods or services that have been or will be procured; identifies the vendor selected; and states the date on which the contract has been or will be awarded.
7. The public notice of determination must be posted on the day the County awards the contract or announces its decision to award, whichever occurs first. If the notice is not possible because of the nature of emergency, then the notice must be posted as soon thereafter as practicable. The public notice of determination must be posted for at least 10 days.

12-2.4 Contract Award

The contract must be awarded simultaneously with or after the notice of determination that an emergency exists has been posted, as circumstances permit. The procedure to award a contract must be as follows:

1. The Purchasing Agent must award the contract to the vendor selected.
2. The Purchasing Agent must post in a public place or on the Office of Procurement's web page a notice of award. The notice of award must also include a statement that the public records pertaining to the procurement have been and are available for inspection by potential vendors. The Purchasing Agent is not required to provide individual notice of the award to any potential vendors.

12-2.5 Procedure if Purchasing Agent determines that an emergency does not exist

If the Purchasing Agent determines that an emergency does not exist, they must notify the using department of the determination. If the using department determines the need for the goods and services are still necessary, it will coordinate with the Purchasing Agent to proceed with the proper method of procurement as outlined in this manual.

12-3 Public Auction

When the Board of Supervisors or the School Board determines in advance that it is in the best interests of the public that goods be procured at a public auction, competitive sealed bidding and competitive negotiation procedures are excused ([Virginia Code § 2.2-4303\(H\)](#)).

12-3.1 Determining whether the best interests of the public are served

The Board of Supervisors or School Board, as is appropriate, must make the determination of whether it is in the best interests of the public to procure goods at a public auction.

If a using department seeks to procure goods at a public auction, it must state to the Board of Supervisors or the School Board and to the Purchasing Agent: a description of the goods, in the form of proposed specifications; the reasons why the using department believes that it is in the best interests of the public to procure the goods at a public auction; the time, place, and organizer of the public auction; and the maximum amount that may be obligated for a bid or bids. The Board of Supervisors or the School Board must make its determination at a regular meeting.

12-4 Specific exemptions and exceptions under Virginia Law

12-4.1 Goods and services exempt from formal competitive procedures established by the VPPA

The VPPA exempts several goods and services from the competitive sealed bidding and competitive negotiation procedures, even where the expected cost of the goods or services exceeds \$200,000 ([Virginia Code § 2.2-4343 et seq.](#)). These are:

- Legal services.
- Expert witnesses and other services associated with litigation or regulatory proceedings.
- Real Property ([Virginia Code § 2.2-3110](#))
- If insurance is purchased through an association of which the County is a member, if the association was formed and is maintained for the purpose of promoting the interest and welfare of, and developing close relationships with, similar public bodies ([Virginia Code § 2.2-4345 et seq.](#)). The association must obtain the insurance using competitive principles. The Purchasing Agent must make a determination in advance after reasonable notice to the public and state that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The statement must document the basis for this determination.
- Goods produced or services performed by the disabled, if produced or performed by persons, or in schools or workshops under the supervision of the Virginia Department for the Blind or Vision Impaired or by employment services organizations.
- Goods or services for the following may be procured without using competitive procedures:
 - An individual recipient of a public assistance program as defined in Title 63.2 of the Code of Virginia ([Virginia Code § 63.2-100](#))
 - A person receiving services from a community services board as defined in Title 37.2 of the Code of Virginia ([Virginia Code § 37.2-100](#))
 - Services under the Children's Services Act ([Virginia Code § 2.2-5200 et seq.](#))

- Services under the Virginia Juvenile Community Crime Control Act ([Virginia Code § 16.1-309.2 et seq.](#))
 - Textbooks as described within [Virginia Code § § 22.1-238 through -243.](#)
- Specific statutes in the Code of Virginia except certain goods and services from certain provisions of the VPPA. These include:
 - Purchases made by through an educational technology foundation by the School Board ([Virginia Code § 2.2-4343\(A\)\(12\)](#))
 - Contracts for certain election materials and services ([Virginia Code § 2.2-4346\(A\)](#))
 - Acquisition of motor vehicles on behalf of TANF recipients ([Virginia Code § 2.2-4343\(A\)\(4\)](#))
- The Purchasing Agent may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

12-4.2 Exemptions concerning public-private partnerships

The VPPA does not apply to agreements entered into in accordance with the provisions of the Public-Private Transportation Act (PPTA) of 1995 ([Virginia Code § 33.2-1800 et seq.](#)) and the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002 ([Virginia Code § 56-575.1 et seq.](#)). However, the Acts state that, before entering any such agreements, the County must adopt guidelines that align with the competitive procurement requirements outlined in the VPPA ([Virginia Code § § 33.2-1819, 56-575.16](#)).

On July 3, 2019, the Board of Supervisors adopted a resolution to approve PPEA guidelines. The guidelines can be found in Chapter 13 of this Manual.

On March 20, 2024, the Board of Supervisors adopted a resolution to approve PPTA Guidelines. The guidelines can be found in Chapter 14 of this Manual.

12-4.3 Real Property Purchases and Leases not controlled by VPPA

Acquisition and lease of real property is not governed by the VPPA. Virginia Code § 15.2-1800 allows localities to acquire real property.

12-5 Consequences of violation

A contract made in violation of the foregoing sections may be declared void and may be rescinded by the Board of Supervisors or School Board within five years of the date of the contract. In cases in which the contract is invalidated, the vendor must retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of rescission of a contract of sale, any refund or restitution must be made to the County or School Board, whether it is contracting or selling.

Any purchase by an officer or employee made in violation of the foregoing sections may be rescinded by the Board of Supervisors or the School Board within five years of the date of purchase, and is also a violation of the Standards of Conduct.

END OF CHAPTER

CHAPTER 13. PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002 (PPEA)

Summary

The Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code §§ 56-575.1 to -575.16 (the “PPEA”) as amended, grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use (“qualifying projects”) if the public entity determines that there is a need for a project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The PPEA defines “responsible public entity” (“RPE”) to include any public entity that “has the power to develop or operate the applicable qualifying project.” Albemarle County (the “County”) is an RPE as defined by the PPEA. Individually negotiated interim or comprehensive agreements between a private entity and an RFP will define the respective rights and obligations of the RPE and the private entity.

13-1 Introduction

These guidelines are intended to supplement the Virginia Code and enable the County to comply with the PPEA’s requirements. They shall govern all County PPEA projects including those for education facilities, and shall apply to all County agencies, boards, commissions, and committees. If these guidelines and the PPEA conflict, the terms of the PPEA control.

13-2 Qualifying Project

For a project to come under the PPEA, it must meet the definition of a “qualifying project.” The PPEA contains a broad definition of qualifying project that includes public buildings and facilities of all types and certain infrastructure and services such as:

1. An education facility, including a school building, any functionally-related and subordinate facility to a school building (including any stadium or other facility primarily used for school events), and any depreciable property for use in a public school facility;
2. A building or facility that meets a public purpose and is developed or operated by or for a public entity;
3. Improvements and equipment to enhance public safety and security of building principally used by a public entity;
4. Utility, telecommunications, and other communications infrastructure;
5. A recreational facility;
6. Technology infrastructure, services, and applications, including automated data processing, word processing and management information systems, and related equipment, goods, and services;

7. Services to increase the productivity or efficiency of the responsible public entity through technology or other means;
8. Technology, equipment, or infrastructure to deploy wireless broadband services to schools, businesses, or residential areas;
9. Necessary or desirable improvements to unimproved publicly-owned real estate; or
10. A solid waste management facility that produces electric energy derived from solid waste.

13-3 General Provisions

1. These general provisions apply to all PPEA projects and proposals. Whether Solicited, Competing, or Unsolicited, each proposal shall be clearly identified as a “PPEA PROPOSAL.” Proposals should be prepared simply and economically and provide a concise description of the proposer’s capabilities to complete the proposed project and the benefits to the County.
2. The County will consider project benefits occurring during the construction, renovation, expansion, or improvement phases as well as the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project with enough detail for the County to properly analyze the financial feasibility of the proposed project. The proposal shall identify each facility, building, infrastructure, or improvement included in the proposal. The Purchasing Agent may request any information that clarifies or supplements a proposal.
3. Private entities may include innovative financing methods, including the imposition of user fees or service payments in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations, including, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 for the development of education facilities using public-private partnerships, and to provide for carryovers of any unused limitation amount. The PPEA is a flexible development tool that allows the use of innovative financing techniques.

13-3.1 Types of Proposals: Solicited, Unsolicited, Competing

1. A private entity must obtain the County’s approval for PPEA projects or services. *See Virginia Code §§ 56-575.3(A) and 56-575.4.* Pursuant to the PPEA, a proposal to provide a qualifying project to an RPE may either be solicited from private entities by the public entity (a “Solicited Proposal”) or delivered to the public entity by a private entity on an unsolicited basis (an “Unsolicited Proposal”):
 - a. Solicited Proposal: The County may seek proposals by issuing a PPEA Invitation to Bid. *See Virginia Code § 56-575.4(B).* The County may accept a responsive bid and enter into a Comprehensive Agreement using the competitive sealed bidding procedures of the Virginia Public Procurement Act. *See Virginia Code § 56-575.16(1).*

- b. The County may seek proposals by issuing a PPEA Request for Proposals (“RFP”). See Virginia Code § 56-575.4(B).
2. For PPEA projects, the County shall determine whether to use procedures consistent with competitive sealed bidding or with competitive negotiation of “other than professional services.” See Virginia Code § 56-575.16(2). If the County elects not to use the competitive sealed bidding for a PPEA projects, the Purchasing Agent shall state in writing the reasons for using competitive negotiation before (1) the County issues a RFP in accordance with Subsection 13-4.1 the Board accepts an unsolicited proposal for consideration in accordance with Subsection 13-5.2.
3. Unsolicited Proposals: If the County has not issued a RFP, the private entity may submit an Unsolicited Proposal for approval. See Virginia Code § 56-575.4(A).
 - a. If the County receives an Unsolicited Proposal, it shall review the proposal and decide whether to accept the Unsolicited Proposal for further consideration. See Virginia Code § 56-575.3(C).
4. Competing Proposals: If the County decides to accept the Unsolicited Proposal for further consideration, the County shall publish notice of the Unsolicited Proposal and seek Competing Proposals from other private entities. See Virginia Code § 56-575.3:1(B)(11).

13-3.2 Reservation of Rights

The County shall administer these guidelines in accordance with the PPEA and shall have the right to:

1. Terminate evaluation of a proposal or to reject a proposal at any time for any reason. Proposers shall have no recourse against the County for such termination or rejection. Proposers will be notified in writing of the County’s rejection of their proposal.
2. Suspend or terminate negotiations with a proposer before execution of an Interim Agreement or Comprehensive Agreement.
3. Request revisions of, and negotiate with proposers about, provisions in a proposal.
4. Request or obtain additional information about any proposal.
5. Issue addenda to or cancel any request for proposals or invitations to bid.
6. Revise, supplement, or withdraw any part of these guidelines.
7. Modify the Fee Schedule in these guidelines for a specific project or for all future projects.
8. Keep review fees required by these guidelines unless an unsolicited proposal is not accepted by the County.
9. Submit one or more proposals for review by outside consultants or advisors selected by the County without notice to the proposer. Such consultants or advisors shall be required to maintain the confidentiality of information that has been designated as confidential and to refer all requests for confidential information to the County.

The County shall not be liable for, or reimburse, the costs incurred by proposers in developing proposals or in negotiating agreements. Any information the County makes available to proposers shall be provided solely as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding application of

these guidelines, the proposer must submit the question in writing to the Purchasing agent and the County will respond in writing as it determines appropriate.

13-3.3 Use of Public Funds

Interim Agreements and Comprehensive Agreements are subject to all Virginia constitutional and statutory requirements and County of Albemarle County Code provisions governing the expenditure of public funds.

13-3.4 Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the County to comply with all other applicable laws not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (Va. Code § 2.2-4300 *et seq.*) is as set forth in the PPEA.

13-4 Proposal Content

This section outlines the requirements associated with submitting a PPEA proposal. Each proposer shall submit a detailed proposal along with the detailed review fee to the Purchasing Agent.

The County may require that any proposal be clarified. Any clarification may include, but is not limited to, submission of additional documentation, responses to specific questions, and interviews with potential project participants.

13-4.1 Solicited Proposals

The RFP shall specify the information that must accompany each solicited proposal and the factors to be used in evaluating proposals. The Purchasing Agent shall post the RFP in public areas normally used for posting of the County's notices, including the County's procurement website. The Purchasing Agent may also publish notice of the RFP in newspapers or other publications of general circulation. Pre-proposal conferences may be held as the Purchasing Agent deems appropriate.

Solicited proposals shall address and meet all requirements of the RFP. The RFP must specify any information and documents required by the County and the factors that will be used in evaluating proposals. Pre-proposal conferences may be held as deemed appropriate by the County. Any proposal submitted pursuant to the PPEA that is not received in response to an RFP shall be an Unsolicited Proposal under these guidelines, including but not limited to (a) proposals received in response to a notice of the prior receipt of another Unsolicited Proposal as required by the PPEA and provided for below in § IV(A)(2) and (b) proposals received in response to publicity by the County concerning particular needs when the County has not issued a corresponding IFB or RFP, even if the County otherwise has encouraged the submission of proposals pursuant to the PPEA that address those needs.

Solicited Proposal Fees. When the County issues a RFP soliciting PPEA proposal, proposers are not required to submit an initial consideration fee. If a solicited proposal is advanced for detailed review, the proposer shall pay the detailed review fee as published, not to exceed \$50,000.

13-4.2 Unsolicited and Competing Proposals

In accordance with Virginia Code § 56-575.4(A), unsolicited proposals and competing proposals shall contain the following information:

1. Qualifications and Experience

- a. Identify the legal structure, *i.e.*, type of business entity, of the firm or consortium of firms making the proposal. Identify the organizational structure for the projects, the management approach, and how each partner and major subcontractor (\$1 million or more) in the structure fits into the overall team. Identify all members of the private entity's team, including major subcontractors known to the proposer, at the time a proposal is submitted for the conceptual phase. State the status of the applicable Virginia license of each partner, proposer, contractor, and major subcontractor.
- b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project. Include experience with projects of comparable size and complexity and prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the length of time in business, business experience, public sector experience, and other engagements of the firm or consortium of firms. Describe the past safety performance record and current safety capabilities of the firm or consortium of firms. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims or litigation by or against the firm or consortium of firms. Identify any firms that will provide design, construction, and completion guarantees and warranties and a description of such guarantees and warranties.
- c. For each firm or major subcontractor (\$1 million or more) that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past five years and their contact information. If a firm has worked on more than 10 projects during this period, it may limit its prior project list to 10 but shall first list all projects similar in scope and size to the proposed project and then list its most recent projects. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents in its possession evaluating the firm's performance during the preceding three years in terms of cost, quality, schedule maintenance, safety, and other matters relevant to successful project development, operation, and completion.
- d. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
- e. Provide a current or most recent audited financial statement of the firm or consortium of firms and the financial statement of each partner with an equity interest of 10 percent or greater.
- f. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflicts of Interests Act (Va. Code § 2.2-3100 *et seq.*).

- g. Identify the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
- h. For each firm or major subcontractor that will perform construction or design activities, provide the following information:
 - i. A sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state, or local government entity.
 - ii. A completed qualification statement that reviews all relevant information regarding technical qualifications and capabilities, firm resources, and business integrity of the firm, including bonding capacities, insurance coverage, and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past five years of any of the following:
 - 1. Bankruptcy filings
 - 2. Claims for liquidated damages
 - 3. Fines, assessments or penalties
 - 4. Judgments or awards in contract disputes
 - 5. Contract defaults, contract terminations
 - 6. License revocations, suspensions, or other disciplinary actions
 - 7. Debarments or suspensions by a governmental entity
 - 8. Denials of prequalification
 - 9. Findings of non-responsibility
 - 10. Safety performance issues, including fatality incidents, "Experience Modification Rating," "Total Recordable Injury Rate" and "Total Lost Workday Incidence Rate"
 - 11. Violations of any federal, state or local criminal or civil law
 - 12. Criminal indictments or investigations
 - 13. Claims filed by or against the firm
 - i. Worker safety programs: Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.
- 2. Pursuant to Virginia Code § 56-575.4, private entity may request approval of a qualifying project by including the following material, unless waived by the RPE:
 - a. Provide a topographic map (1:2000 or other appropriate scale) indicating the location of the qualifying project.
 - b. Provide a description of the proposed project, including the conceptual design, in sufficient detail so that the type and intent of the project, its location, and the communities that may be affected are clearly identified.
 - c. Identify any facility, building, infrastructure, or improvement included in a proposal as part of a qualifying project specifically or conceptually.

- d. Information relating to the current plans for development of facilities or technology infrastructure to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction.
- e. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- f. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings;
- g. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known or anticipated adverse impacts of the project. Indicate if any environmental or archaeological assessment has been completed.
- h. Identify the projected positive social, economic, and environmental impacts of the project.
- i. Identify the proposed schedule for the work on the project, including sufficient time for the County to review the proposal and plans, and the estimated time for completion.
- j. Identify contingency plans for addressing public needs if the project is not completed according to projected schedule.
- k. Propose allocation of risk and liability for work completed beyond the Comprehensive Agreement's completion date and assurances for timely completion of the project.
- l. State assumptions related to ownership, legal liability, and operation of the project and the existence of any restrictions on the County's use of the project.
- m. Provide information about phased or partial openings of the propose project prior to completion of the entire work.
- n. List other assumptions relied on or any contingencies that must occur for the project to be successful.

3. Project Financing

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of an proposed sources and uses for such funds. Include any supporting due diligence studies, analyses or reports.
- c. Include a list and discussion of assumptions underlying all major financial elements of the plan.
- d. Identify proposed risk factors and methods for dealing with these factors.
- e. Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and ongoing.

4. Project Benefit and Compatibility

- a. Identify community benefits, including the economic impact the project will have on the County and local community in terms of amount of tax revenue to be generated for the

County, the number of jobs generated for County residents, the level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs generated by the project, and the number and value of subcontracts generated for County subcontractors.

- b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
- c. Explain the strategy and plan to involve and inform the general public, business community, local governments, and governmental agencies in areas affected by the project.
- d. Describe the compatibility of the project with local, regional, and state economic development efforts.
- e. Describe the compatibility with the local comprehensive plan, infrastructure development plans, and capital improvement program.

13-4.3 Unsolicited and Competing Proposal Review Fees

The PPEA authorizes the County to charge fees to cover the costs of processing, reviewing, and evaluating proposals, including reasonable attorney's fees and fees for financial, technical, and other advisors or consultants.

1. An initial consideration fee paid with certified funds shall accompany any solicited proposal, in accordance with the Fee Schedule below. The initial consideration fee shall be based on the estimated total cost of the proposed project.
2. If the County accepts an unsolicited proposal for consideration and seeks competing proposals, competing proposers are not required to pay the initial consideration fee.
3. If an unsolicited or competing proposal is advanced to the detailed review phase, a detailed review fee based on the estimated total cost of the proposed project shall accompany the proposer's detailed proposal. The detailed review fee shall be paid with certified funds.
4. The County Executive is authorized to refund all or part of these proposal review fees to all proposers during the initial consideration or detailed review phases.

For unsolicited and competing proposals, proposers shall pay the following fees:

FEE SCHEDULE:

Review Phase	Fee	Minimum	Maximum
Initial Consideration	1%	\$2,500.00	\$25,000.00
Detailed	1%	\$5,000.00	\$50,000.00

13-5 Consideration of Proposals

13-5.1 Working Group

The Purchasing Agent shall designate a PPEA working group (the “Working Group”) to evaluate proposals. For General Government projects, the Working Group shall include the Purchasing Agent and persons appointed by the County Executive. For education projects, the Working Group shall include the Purchasing Agent and representatives of Albemarle County Public Schools designated by the Superintendent of Schools (“Superintendent”). If a project includes construction, the Working Group shall also include a licensed architect or engineer and the Director of Facilities and Environmental Services (or designee) or the Director of Building Services (or designee).

The Purchasing Agent shall serve as the chair of the Working Group, shall administer these guidelines, and shall receive and respond to inquiries and proposals. The Working Group will consult with, and make recommendations to, the County Executive for General Government projects and to the Superintendent for education projects.

After consulting with the County Executive or the Superintendent, the Working Group shall engage the services of qualified professionals to provide independent analysis of the specifics, advantages, disadvantages, and the long-term and short-term costs of proposals. These professionals may include a cost estimator, architect, professional engineer, or certified public accountant not employed by the County. However, the Board or the School Board may determine that such analysis other than cost estimation shall be performed by County employees. See Virginia Code § 56-575.3:1(C)(1).

13-5.2 Consideration of Unsolicited Proposals & Solicitation of Competing Proposals

- A. After receipt and review of an unsolicited proposal, the Working Group shall recommend whether to accept the unsolicited proposal for consideration. The Working Group may request additional information from the proposer prior to making its recommendation.
 1. If an unsolicited proposal is for a General Government facility or services, the County Executive shall receive the Working Group’s recommendation and shall recommend to the Board whether the unsolicited proposal should be accepted for consideration.
 2. If an unsolicited proposal is for an early education facility or services, the Superintendent shall receive the recommendation of the Working Group and shall recommend to the School Board whether the proposal should be accepted for consideration. If the School Board recommends acceptance of the unsolicited proposal for consideration, the County Executive shall forward the School Board’s recommendation to the Board along with this recommendation about whether the Board should accept the unsolicited proposal for consideration.
 3. The Board shall make the final decision on whether to accept an unsolicited proposal for consideration. If the Board accepts the proposal for consideration, it shall specify the time period between 90 and 120 days during which competing proposals may be submitted after the Purchasing Agent posts notice of its decision as provided in IV(B) below. If the Board rejects an unsolicited proposal that purports to develop specific cost savings, the Board shall specify the basis for rejection. See Va. Code § 56-575.3(D).

4. The Purchasing Agent shall return any unsolicited proposal not accepted for consideration, together with the initial consideration fee and accompanying documentation, to the private entity.
- B. If the Board decides to accept an unsolicited proposal for consideration, the Purchasing Agent shall post a notice within 10 working days of the Board's decision on the County's procurement website and in a public area regularly used by the County for posting of public notices. The notice shall be posted for at least 45 days. See Va. Code Sec. 56-575.3:1(11) The Purchasing Agent may also publish the notice in one or more newspapers or periodicals of general circulation in the County.
- C. The notice shall state that the County (i) has accepted an unsolicited proposal for consideration, (ii) intends to further evaluate the unsolicited proposal, and (iii) will accept for simultaneous consideration any competing proposals that comply with these guidelines and the PPEA. The notice also shall summarize the proposed project and identify its proposed locations.
- D. Interested parties may submit competing proposals within the time period specified by the Board and listed in the notice. Competing proposals shall provide the information required for unsolicited proposals as outlined in Subsection 13-4.2.

13-5.3 Posting and Inspection of Conceptual Proposals

Within 10 working days of the County's acceptance of a conceptual proposal, the Purchasing Agent shall post the conceptual proposal on the County's procurement website. The Purchasing Agent shall also make at least one copy of each conceptual proposal available for public inspection.

However, trade secrets, financial records, or other records of the proposer excluded from disclosure under state law shall not be posted or made available for public inspection unless the County and private entity agree otherwise. See Va. Code § 56-575.17(A)(2).

13-5.4 Detailed Review Phase of Competing Proposals

If the County Executive or Superintendent decide to proceed to the detailed review phase, the Purchasing Agent's written notice to proposers shall establish a reasonable deadline for submission of detailed proposals based upon the complexity of the project. The Purchasing Agent's notice may require additional information in the detailed proposals. Detailed proposals must contain the following information:

1. For a proposed construction project, construction plans and specifications that are at least 50% complete, as determined by the County.
2. Conceptual site plan indicating proposed location and configuration of the project on the proposed site. Any facility, building, infrastructure, or improvement included in a proposal as a part of a qualifying project shall be identified specifically or conceptually.
3. Conceptual (single line) plans and elevations depicting the general scope, appearance, and configuration of the proposed project.

4. Detailed description of the proposed participation of, use by, and financial involvement of the County.
5. List of public facilities or other public improvements required of the County to complete the project.
6. Statement of the plans for securing all necessary real property interests, such as easements, rights-of-way, etc., for the project. The statement must include the names and addresses, if known, of the current owners of the necessary property and the location of any property the proposer request the County to condemn.
7. Detailed listing of all firms that will provide design, construction, and completion guarantees and warranties, and a brief description of the guarantees and warranties.
8. Total life-cycle costs, methodology, assumptions of the project, and the proposed project start date. The life-cycle cost analysis should include a detailed analysis of the projected return, rate of return, or both; the expected useful life of the facilities; and estimated operating expenses. The information should also include each party's anticipated commitment; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs.
9. Detailed discussion of assumptions about user fees or rates and about usage of the project.
10. Identification of known government or public support or opposition for the project. Government or public support should be demonstrated through resolutions of government departments or boards, minutes of meetings, letters, or other official communications.
11. Demonstration of consistency with the County's comprehensive plan or a schedule of the steps necessary to amend the comprehensive plan.
12. Description of an ongoing evaluation system to track key performance criteria, including schedules, cash management, quality, worker safety, change orders, and legal compliance.
13. Identification of any known conflicts of interest or other factors that may impact consideration of the proposal, including the identification of persons who would be obligated to disqualify themselves from participation in any transaction in connection to the project because of COIA.
14. Acknowledgement of conformance with the Ethics in Public Contracting provisions of Va. Code §§ 2.2-4367 through 2.2-4377.
15. Additional information requested by the County.

The Working Group shall evaluate each detailed proposal using the criteria listed in above. After the Working Group has reviewed the detailed proposals, it shall make its recommendations to the County Executive or the Superintendent.

For General Government proposals, the Board shall receive the County Executive's recommendation and hold a public hearing on the detailed proposals. For education proposals, the School Board shall receive the Superintendent's recommendation and hold a public hearing on the detailed proposals. The public hearing shall be held at least 30 days before execution of an Interim or Comprehensive Agreement.

After the public hearing, the Board or School Board shall determine by resolution:

- (i) not to proceed further with any proposal;
- (ii) to defer a decision until it has received additional information from one or more proposers; or
- (iii) to proceed to the negotiation phase with one or more proposers.

13-5.5 Consideration of Solicited Proposals

The Working Group shall review solicited proposals, accepted unsolicited proposals, and competing proposals using the criteria listed in Subsections 13-4.1 and 13-4.2. The Working Group shall recommend in writing one of the five actions listed below to the County Executive for General Government proposals or to the Superintendent for education proposals. Upon receipt of the Working Group's recommendation, the County Executive or Superintendent shall determine:

- (i) not to proceed further with any proposal;
- (ii) to proceed to the detailed review phase with the original unsolicited proposal;
- (iii) to proceed to the detailed review phase with a competing proposal;
- (iv) to proceed to the detailed review phase with a solicited proposal; or
- (v) to proceed to the detailed review phase with multiple proposals.

The Purchasing Agent shall give written notice to all proposers of the decision of the County Executive or Superintendent in writing.

13-6 Proposal Evaluation Criteria

In addition of any criteria listed in a Solicitation, the County will consider the following items in its evaluation of PPEA proposals:

13-6.1 Qualifications and Experience

Factors to be considered in determining whether the proposer possesses the requisite qualifications and experience include:

1. Professional qualifications and experience with similar projects;
2. Demonstrated ability to perform the work;
3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
4. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
5. Leadership structure;
6. Project manager's experience;
7. Management approach;
8. Project staffing plans, the skills levels of the proposed workforce, and the proposed safety plans for the project; and
9. Financial condition of the proposer.

13-6.2 Project Characteristics

Factors to be considered in evaluating the project characteristics include:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project after completion;
4. Technological and technical feasibility;
5. Conformity to state and County laws, regulations, and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project after completion.

13-6.3 Project Financing

Factors to be considered about the proposed project financing include:

1. Cost and economic benefit to the County;
2. Financing, including debt source, and its impact on the debt or debt burden of the County;
3. Financial plan, including overall feasibility and reliability of plan; default implications; degree to which proposer has conducted due diligence investigation; maintenance and operational costs after completion; and
4. Life-cycle cost analysis.

13-6.4 Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the County's long-term development goals and objectives include the following:

1. Community benefits, including the economic impact the project will have on the County in terms of amount of tax revenue generated for the County, the number of jobs generated for area residents, the level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities;
5. Compatibility with County, regional, and state economic development efforts; and
6. Compatibility with the County's land use and transportation plans.

13-7 Negotiation Phase

If the Board or School Board agrees to proceed to the negotiation phase, the Working Group shall begin negotiations with one or more proposers on a Comprehensive Agreement. If desirable or necessary, the

Working Group may also negotiate an Interim Agreement while the Comprehensive Agreement is being negotiated. The negotiations shall be based on the detailed proposals that were the subject of the public hearing at the end of the detailed review phase.

The private entity must enter into a Comprehensive Agreement with the County prior to developing or operating the project.

The County anticipates that the negotiation phase may last three months or longer for simple projects and six months or longer for more complex projects. The length of the negotiation phase will vary from project to project.

13-7.1 Interim Agreement

Prior to, or in connection with, the negotiation of the Comprehensive Agreement, the County may enter into an Interim Agreement with the private entity. The Interim Agreement may (i) permit the private entity to commence and be compensated for initial activities related to the qualifying project, such as project planning and development, design and engineering, environmental analysis and mitigation, surveying, and ascertaining the availability of financing for the proposed facilities or services; (ii) establish the process and timing of the negotiation of the Comprehensive Agreement; and (iii) contain other provisions related to the development or operation of a qualifying project. *See Va. Code § 56-575.9:1.*

The Board must review, and by Board resolution authorize the County Executive to execute, an Interim Agreement for General Government projects. The Board must review, and by Board resolution authorize the School Board to execute, an Interim Agreement for education projects. *See Va. Code §§ 56-576.16(5); 56-575.3:1(C)(2).*

13-7.2 Posting and Filing of Proposed Agreements

Once the negotiation phase for an Interim or a Comprehensive Agreement is complete, but before an Interim or a Comprehensive Agreement is executed, the Purchasing Agent shall post the negotiated agreement on the County's purchasing website or on the Commonwealth of Virginia Department of General Services' central electronic procurement website for at least 10 days.

In addition, the Purchasing Agent may publish a summary of the negotiated agreement and the location where copies of the negotiated agreement are available for public inspection in a newspaper of general circulation in the County.

The Purchasing Agent shall make at least one copy of the negotiated agreement available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of Va. Code § 2.2-3705.6(11) shall not be required to be posted, except as otherwise agreed to by the County and the private entity.

13-8 Comprehensive Agreement

The Comprehensive Agreement shall include the components listed below and other terms agreed to by the parties. Any changes in the Comprehensive Agreement shall be made by written amendment.

The Board must review, and by Board resolution authorize the County Executive to execute, a Comprehensive Agreement for General Government projects. The Board must review, and by Board resolution authorize the School Board to execute, a Comprehensive Agreement for education projects. See Va. Code §§ 56-576.16(5); 56-575.3:1(C)(2).

Within 30 days after the County enters into a Comprehensive Agreement, the Purchasing Agent shall submit a copy to the Commonwealth of Virginia's Auditor of Public Accounts. Comprehensive Agreements must contain the following components:

1. Delivery of maintenance, performance, and payment bonds or letters of credit in connection with the development or operation of the qualifying object, in the forms and amounts satisfactory to the County and in compliance with Va. Code § 2.2-4337 for those components of the qualifying project that involve construction;
2. Review and approval of plans and specifications for the qualifying project by the County;
3. County's inspection of the qualifying project to ensure the private entity's compliance with the Comprehensive Agreement;
4. Maintenance of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. County's monitoring of the practices of the private entity to ensure proper maintenance of the qualifying project;
6. Terms under which the private entity will reimburse the County for County services, if any;
7. Policy and procedures governing the rights and responsibilities of the parties if the Comprehensive Agreement is terminated or there is a material default by the private entity. See Va. Code § 56-575.9(A)(8);
8. Filing of appropriate financial statements by private entity on a periodic basis;
9. User fees, lease payments, or service payments as may be established upon agreement of the parties. Any payments or fees shall be the same for persons using the facility under like conditions and shall not materially discourage the use of the qualifying project;
 - a. A copy of any service contract shall be filed with the County; and
 - b. A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.
10. Any grants from, or loans by, the County from amounts received from federal, state, or local government sources;
11. Incorporation of the duties of the private entity from the PPEA;
12. Certification by the private entity and its team members that all material representations, information, and data provided in connection with a proposal are true and correct. If material changes occur with respect to any representations, information or data provided for a proposal, the private entity shall immediately notify the County. Any violation of this section of the Comprehensive Agreement by the private entity shall give the County the right to terminate the

agreement, withhold payment or other consideration due, and seek any other remedy available under the law;

13. Requirement for the written approval of the County for the private entity to substitute or replace identified team members, including major subcontractors performing over \$1 million of work;
14. The date for the commencement of activities related to the qualifying project. See Va. Code § 56-575.4(F); and
15. Other requirements of the PPEA or terms that the County determines serve the public interest, such as liquidated damages and reporting of SWAM and Tier 2 data.

13-9 Posting of Records

Once an Interim or Comprehensive Agreement has been executed, the Purchasing Agent shall make procurement records available for public inspection upon request. Procurement records shall not include trade secrets of the private entity or financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise. See Va. Code § 56-575.17(D).

13-10 Virginia Freedom of Information Act

Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*) (“FOIA”).

In accordance with Va. Code § 2.2-3705.6(11)(b), proposal documents are subject to disclosure if requested except to the extent that they relate to (i) trade secrets of the private entity; (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if such information was made public prior to the execution of an Interim Agreement or a Comprehensive Agreement, the financial interest or bargaining position of the County or private entity would be adversely affected. The private entity must invoke this exception in accordance with Virginia Code § 2.2-3705.6(11)(b).

Virginia Code § 56-575.4(G) imposes an obligation on the County to protect confidential proprietary information submitted by a private entity. When the private entity requests that the County not disclose information, the private entity must make a written request to the County:

1. Invoking the exclusion upon submission of the data or other materials to the County;
2. Identifying with specificity the data or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.

The County is only authorized and obligated to protect confidential proprietary information. The County will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.

Upon timely receipt of a request that designated portions of a proposal be protected from disclosure as confidential and proprietary, the Purchasing Agent shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. The Purchasing Agent will send the proposer a written determination of the nature and scope of the protection.

To protect other information submitted by the private entity from disclosure, the Purchasing Agent shall determine whether public disclosure prior to the execution of an Interim Agreement or Comprehensive Agreement would adversely affect the financial interest or bargaining position of the County or the private entity. In accordance with Virginia Code § 56-575.4(G), the Purchasing Agent shall take appropriate action to protect confidential and proprietary information provided by the private entity pursuant to an agreement under Virginia Code § 2.2-3705.6(11).

Upon a final determination by the Purchasing Agent to afford less protection than requested by the proposer, the proposer will be afforded an opportunity to withdraw its proposal. A proposal so withdrawn will be treated in the same manner as a proposal not accepted for consideration.

Once an Interim Agreement or Comprehensive Agreement has been entered into, the County will make the procurement records available upon request in accordance with Virginia Code § 2.2-4342. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have an adverse effect on the financial interest or bargaining position of the County or private entity in accordance with Virginia Code § 2.2-3705.6(11)(b)(iii). Such procurement records shall not include (i) trade secrets of the private entity; (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if such information was made public prior to the execution of an Interim Agreement or Comprehensive Agreement, the financial interest or bargaining position of the County or the private entity would be adversely affected.

END OF CHAPTER.

CHAPTER 14. PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995 (PPTA)

The Public-Private Transportation Act of 1995, codified in Chapter 18 of Title 33.2 of the Code of Virginia (the “Act” or the “PPTA”) is the legislative framework allowing Virginia public entities to enter into agreements which allow private entities to develop or operate qualifying transportation facilities. These facilities include roads, bridges, tunnels, transit, airports, and other transportation infrastructure.

On March 20, 2024, the Board of Supervisors adopted a resolution to approve PPTA Guidelines. The Guidelines herein are revised and intended to guide in the selection of projects as authorized by the PPTA. Where these Guidelines conflict with the Act, compliance with the Act is mandatory.

14-1 The Act

The Act grants responsible public entities the authority to allow private entities to “develop” or “operate” (as those terms are defined in the Act) qualifying transportation facilities, if the public entity determines that (i) there is a need for the facilities and (ii) private involvement may provide the facilities to the public in a timely or cost-effective fashion. Virginia PPTA statute, requires findings of public interest, competitive evaluation, public notice, and execution of legally binding Interim or Comprehensive Agreements. Individually-negotiated Interim and Comprehensive Agreements will define the respective rights and obligations of the responsible public entity and the private entity.

14-1.1 Definitions

Unless a term is defined below, these Guidelines adopt the definitions in Virginia Code § 33.2-1800.

- **County:** means the County of Albemarle, and relative to “decisions made by the County”, the term “County” also means at the direction of the County Executive, unless otherwise specified herein.
- **Highway, road, and roadway:** are defined in Virginia Code § 33.2-100.
- **Responsible public entity (RPE):** means the County of Albemarle.
- **Acceptance:** represents the Board of Supervisor’s decision to advance a conceptual proposal and initiate process to request detailed proposals
- **Conceptual proposal:** is the initial, preliminary proposal for a transportation project with basic scope including benefits to the public and demonstrating that concept meets PPTA requirements.
- **Detailed proposal:** is required to meet PPTA requirements and includes cost, scope and schedules

14-2 General Provisions

14-2.1 Finding of Public Interest

Before issuing a request for detailed proposals, the County Executive will make a finding of public interest. The finding of public interest will include the information required by [Virginia Code § 33.2-1803.1](#).

14-2.3 Use of Public Funds

Constitutional, statutory, and County ordinance requirements apply to the appropriation and expenditure of public funds, including to Interim and Comprehensive Agreements entered under the PPTA.

If federal aid funds are anticipated in the project, the County will notify the Federal Highway Administration (FHWA). If state aid funds are anticipated in the project, the County will notify the Virginia Department of Transportation (VDOT).

14-2.4 Applicability of Other Laws

The applicability of the Virginia Public Procurement Act (the “VPPA”) to PPTA procurement is set forth in the PPTA. Private entities must comply with applicable federal, state, and local laws.

14-2.5 Selection Committee

The County Executive will designate a Selection Committee to evaluate proposals and negotiate Interim Agreements and Comprehensive Agreements. The County Executive will implement these Guidelines, receive proposals, and respond to inquiries regarding the PPTA or these Guidelines. A Selection Committee will be chaired by a County employee of the County Executive’s choosing, and may include the Director of Facilities & Environmental Services, Director of Planning, and Director of Finance. The County Executive may also name one or more VDOT representatives to the Selection Committee.

14-3 PPTA Proposals

PPTA process may begin with unsolicited proposal or solicited proposal process.

Proposals must be clearly identified as a “PPTA PROPOSAL.” To be considered, any unsolicited proposal must be submitted along with the fee, if any, set out in these Guidelines to the Purchasing Agent in the Office of Procurement.

Under Virginia Code § 33.2-1805(A), proposers must provide copies of their proposal to the governing body of each affected public body (county, city, town, or regional authority) other than the County of Albemarle in which the proposed project is to be located. The proposer must forward a copy of the proposal to VDOT and FHWA, if required by the PPTA.

Proposers may be required to give one or more oral presentations.

The County may request clarification of any submissions.

Proposals must certify that all material representations, information, and data provided with a proposal are true and correct. If a material change occurs with respect to any representations, information, or data provided, the private entity must immediately notify the County. Any violation of this provision is a material breach of the resulting Interim and Comprehensive Agreement.

14-3.1 Key Distinctions Between Processes

Unsolicited	Solicited
Initiated by private entity	Initiated by public entity (County)
Requires \$5,000 fee with PPTA proposal	No fees charged
Public notice & 120-day competing proposal period	No competing proposal period (unless multi-phase RFP)
Board must decide whether to accept and publish proposal	County issues structured PPTA solicitation after finding of public interest

14-3.2 Unsolicited Proposals

The Act permits the County to consider unsolicited proposals from private entities to acquire, construct, improve, maintain, develop, or operate qualifying transportation facilities. The County will evaluate unsolicited proposal that meet the requirements of the Act and these Guidelines. After accepting an unsolicited proposal, the County will publish a notice inviting others to submit competing proposals.

14-3.2.1 Decision to Accept and Consider Unsolicited Proposal; Notice

Upon receipt of any unsolicited proposal and payment of the required fees (as set out in these Guidelines), the Selection Committee will recommend whether to accept the unsolicited proposal for publication and further consideration. The Board of Supervisors will consider unsolicited proposals forwarded by the Selection Committee and decide whether to publish and further consider them. The criteria used to determine the acceptability of a proposal include, without limitation, the requirements set out in Virginia Code § 33.2-1803(C).

If the Board of Supervisors accepts an unsolicited proposal, the County will publish it by posting a notice in a public area regularly used by the County for posting of public notices and on the County's website for a period of not less than 120 days as required in Virginia Code § 32.2-1820(A)(1). The notice will state that the County (i) has received and accepted an unsolicited proposal under the PPTA, (ii) intends to evaluate the proposal, (iii) may negotiate a Comprehensive Agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with these Guidelines that are received by the County within 120 days following the date of posting of the notice. The notice will summarize the proposed qualifying transportation facility or facilities, identify their proposed locations, and will outline the opportunities for public comment. Copies of unsolicited proposal will be available upon request subject to the revisions of the Virginia Freedom of Information Act ("FOIA") (Va. Code § 2.2-3700 et seq.) and the PPTA. At least one copy will be made available for public inspection at the County Executive's Office.

Proposals received in response to a published unsolicited proposal will not be charged a fee for processing, reviewing, and evaluating.

14-3.2.2 Unsolicited Proposal Fees

An unsolicited proposal must be accompanied by a processing, review, and evaluation fee of \$5,000.00. If an unsolicited proposal is accepted for publication, the fee will be refunded. Failure to submit all fees will result in suspension of consideration of a proposal. Fees must be submitted by cashier's check payable to the County of Albemarle.

14-3.3 Solicited Proposals

The County may request proposals from private entities to acquire, construct, improve, maintain, develop, or operate qualifying transportation facilities provided that a finding of public interest has been issued (see Va. Code § 33.2-1803.1). Such solicitations may invite private entities to identify projects or may solicit proposals on identified projects.

The RFP will specify information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The RFP will also set out other terms, including any unique capabilities or qualifications that will be required of a private entity. Pre-proposal conferences may be held.

No fees will be charged for processing, reviewing, or evaluating a solicited proposal.

The County may instead issue a Request for Information (RFI) inviting private entities to express interest in developing or operating one or more qualifying transportation facilities. No fees will be charged for processing, reviewing, or evaluating responses to an RFI.

14-3.4 Withdrawing a Proposal

An applicant may withdraw its proposal at any point through Detailed Review, in writing. An applicant that withdraws its proposal may submit a new proposal if a new applicant could have submitted a proposal; the resubmitted proposal will be treated as a new proposal in all respects, including the payment of fees.

14-3.5 Review by Consultant

The County may submit a proposal to an outside consultant or advisor for review, without notice to the proposer. Such consultant or advisor will be required to maintain the confidentiality of information so designated.

14-3.6 Virginia Freedom of Information Act

All proposals are subject to FOIA. Proposals containing confidential or proprietary information must, at the time of submission (i) invoke the appropriate FOIA exclusion (including citation), (ii) identify the data or other materials for which protection from disclosure is sought, and (iii) state the reasons why the exclusion from disclosure is necessary. A proposal will not be protected from disclosure if the entire proposal is so designated.

The County will determine whether protection is appropriate and communicate its determination to the proposer. If the County determines that less protection than requested is appropriate, the proposer may withdraw its proposal.

Once a Comprehensive Agreement has been entered, non-proprietary or confidential procurement records will be available to the public. The County will comply with any Court order regarding access to procurement records, notwithstanding these Guidelines.

14-4 Solicited and Unsolicited Proposal Contents

The Act requires that proposals meet three criteria, among others.

1. The proposal must seek approval to develop or operate specified transportation facilities.
2. The transportation facilities specified must be one or a combination of the following: a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility, or similar commercial facility used for the transportation of persons or goods together with any buildings, structures, parking areas, appurtenances, and other property needed to operate the facility, not including a commercial or retail use or other enterprise not essential to the transportation of persons or goods.
3. The County must currently have or could assert the power itself to perform the functions that the proposer seeks to perform with respect to at least a portion of the specified transportation facilities.

Proposals must be signed by an authorized representative of the private entity, and contain all information required by these Guidelines. Proposers failing to submit all information requested for proposals may be given an opportunity to promptly submit missing information or may be given a lowered evaluation of the proposal.

Proposals submitted for consideration should include a scope of work and provide enough information about the transportation facility to determine whether it satisfies the evaluation and selection criteria.

Proposals should be organized in the order requested below. All pages of the proposal should be numbered.

The proposal should contain a table of contents that references the Guideline requirements. Information that does not fall within any of the requirements should be at the end of the proposal.

14-4.1 Introduction of Firm

Information included in this section:

1. General Information:
 - a. Legal name of firm
 - b. Address
 - c. Tax ID number
 - d. Type of business structure
 - e. Contact person and contact information

- f. Debarment status of the firm or any of its principals
 - g. Conflict of Interest Statement
- 2. Describe the experience of the firm or firms making the proposal and the key principals involved, including experience with projects of comparable size and complexity.
- 3. Describe the length of time in business, business experience, public sector experience, and other engagements.
- 4. Describe the past safety performance record and current safety capabilities.
- 5. Describe the technical performance history on recent projects of comparable size and complexity.
- 6. Disclose for the past three years any of the following:
 - a. Bankruptcy filings
 - b. Liquidated damages paid
 - c. Assessments or penalties
 - d. Court or arbitration claims, judgments, or settlements in contract disputes
 - e. Contract defaults, contract terminations
 - f. License revocations, suspensions, or other disciplinary actions
 - g. Prior debarments or suspensions by a governmental entity
 - h. Denials of prequalification, findings of non-responsibility
 - i. Maximum five years safety performance data
 - j. "Experience Modification Rating" and issuing insurance company
 - k. "Recordable Incidence Rates" "Lost Time Incidence Rates"
 - l. OSHA 200 Summary and OSHA 300A Forms
 - m. OSHA violations, dates, and disposition
 - n. Violations of any federal, state or local criminal or civil law by the firm or its principals
 - o. Criminal indictments or investigations of the firm or its principals
- 7. Identify any firms that will provide design, construction, or completion guarantees, and a description of such guarantees.
- 8. Provide resumes of the key individuals who will be involved in the project.
- 9. For each firm or major subcontractor (\$1 million or more) that will be used in the project, provide a statement listing all of the firm's projects and clients for the past 3 years with contact information for those clients (names/addresses/telephone numbers/email). If a firm has worked on more than 10 projects during this period, it may limit the project list to 10, but must first include all projects similar in scope and size to the proposed project, and second, it must include as many of its most recent projects as possible. Each firm or major subcontractor must submit all performance evaluation reports or other documents provided by its clients during the past 3 years.
- 10. Identify the Project Administrator, and if the person works for the principal firm. If not, clearly define the role and responsibility of the Project Administrator relative to the members of the firm. Provide information regarding the relevant experience the Project Administrator has leading this type and magnitude of project.
- 11. Provide the names, addresses, email, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.

12. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent (20%) or greater. Submit the most recent Securities and Exchange Commission 10-K and 10-Q reports if applicable.
13. Identify proposed plan for obtaining sufficient qualified workers in all trades required for the project.
14. Provide information on any training programs, including but not limited to apprenticeship programs registered with the U.S. Department of Labor or a State Apprenticeship Council, in place for employees of the firm and employees of any member of a consortium of firms.
15. Describe worker safety training programs, job-site safety programs, accident prevention programs, safety and health plans, including incident investigation and reporting procedures.

14-4.2 Project Description

1. Describe the project, including its conceptual design and all proposed interconnections with other transportation facilities. Describe the proposed project in sufficient detail to identify the project's intent, locations, and the communities that may be affected. Include a description of any components that are expected to generate revenue and for whom.
2. Identify the proposed ownership arrangements for each phase of the project and indicate proposed legal liabilities and responsibilities during each phase of the project.
3. Describe any work to be performed by the County or any other public entity.
4. Describe plans to secure necessary property, including the names and addresses, of the current owners, as well as any property the proposer intends to requires the County to acquire.
5. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining them.
6. Indicate whether environmental, archaeological, or other assessments must be completed.
7. Propose a project schedule.
8. Propose contingency plans for addressing public needs if the project is not completed on schedule and how the risk and liability for delays is to be apportioned.
9. State assumptions related to ownership, risk and liability, law enforcement, and operation of the project, and the existence of any restrictions on the public entity's use of the project.
10. List any other assumptions relied on for the project to be successful.
11. List any contingencies that must occur for the project to be successful.
12. Provide information on phased or partial openings of the project before completion of the entire work.
13. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.

14-4.3 Project Benefit and Compatibility

1. Identify anticipated positive and adverse community, economic, environmental, or other impacts. Include the amount of additional tax revenue, jobs, level of pay and fringe benefits of those jobs, training opportunities and other programs, and the number and value of local subcontracts generated by the project.
2. Propose strategies to mitigate adverse impacts.

3. Describe how the project will compliment and be compatible with existing and anticipated other transportation systems, economic development goals, and the County's comprehensive plan.
4. Describe how the project will increase performance, safety, mobility, or meet transportation demands.
5. Identify anticipated public or governmental support or opposition for the project.
6. Propose a plan to involve and inform the public and business community.

14-4.4 Project Financing

1. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
2. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include any supporting due diligence studies, analyses, or reports.
3. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
4. Identify all anticipated risk factors and methods for dealing with these factors.
5. Describe the methods and remedies associated with any financial default.
6. Identify any local, state or federal resources that the private entity contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify each such source) and the timing of any anticipated commitment. Such disclosure should include any direct or indirect security or pledge of County revenue and expected effect on the County's debt burden.
7. Identify any proposed user fees or other third-party payments.
8. Provide financial information that indicates the private entity's financial stability and ability to finance the project.
9. Identify the amounts and the terms and conditions for any revenue sources.
10. Identify any aspects of the project that could disqualify the project from obtaining tax-exempt financing.
11. Identify any third parties that the private entity contemplates will provide financing for the project and describe the nature and timing of each such commitment.
12. The cost analysis of a proposal should not be linked solely to the financing plan proposed, as the County may determine to finance the project through other available means and may select its own finance team, funding sources, or financing vehicle.

14-4.5 References

Provide a contact person of a client for which the private entity has completed a relevant project. More than one reference may be provided. References should include:

1. Name of client
2. Name, address, and telephone number of the contact person
3. Summary of the project, including original budget and final cost
4. Project schedule, proposed versus actual

14-5 Detailed Review

If the Selection Committee decides to proceed to the detailed stage of review with one or more proposals, the proposers will submit supplemental information, as discussed in Format of Submission for Detailed Review below. The Selection Committee will evaluate all Detailed Review phase proposals based on the criteria outlined above and specific criteria outlined in its solicitation. It will then recommend whether the Board of Supervisors should permit the County to negotiate a Comprehensive Agreement or an Interim Agreement with one or more private entities.

14-5.1 Affected Jurisdictions

Detailed Review proposals must also be submitted to all other affected jurisdictions, as well, inviting those other jurisdictions to provide comment to the County on how the project will affect those jurisdictions' safety, mobility, or transportation demands. Those jurisdictions will have 60 days from the receipt of the request to comment on the proposal.

14-5.2 Information Required for Detailed Review

The following information must be provided by each private entity selected for Detailed Review, unless waived in writing by the Selection Committee. Some of this information is similar to that required in Solicited and Unsolicited Proposals, but greater detail is expected at the Detailed Review phase, reflecting the greater preparation expected by this stage. The County may request additional information in response to a proposer's submission.

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the transportation facility.
2. A description of the transportation facility, including the conceptual design of the facility and all proposed interconnections with other transportation facilities.
3. The proposed dates for development and operation of the transportation facility along with an estimate of the life-cycle costs of the transportation facility.
4. A statement setting forth (i) the method by which the private entity proposes to secure any property interests required for the transportation facility; (ii) the names and addresses of the owners of those property interests; and (iii) a list of any property the proposer intends to request the County to obtain.
5. How the project will affect the transportation plans of other jurisdictions.
6. Describe how the projects will increase performance, safety, mobility, or meet transportation demands.
7. All permits and approvals – federal, state, and local – required to develop or operate the transportation facility, and a schedule for obtaining them.

8. The public utility facilities that will be impacted by the transportation facility and plans to address those impacts.
9. Plans for developing and operating the transportation facility.
10. Anticipated revenue, debt, and equity, and which party will incur each.
11. The County's proposed participation and financial involvement, including what existing public lands, facilities, and improvements will be needed to complete the project.
12. The firms that will provide design, construction, and completion guarantees, and a description of those guarantees.
13. The project's anticipated cost and revenue throughout its life-cycle, and the estimated useful life. Explain the calculation methodology and assumptions. Assumptions about use and user fees must be addressed.
14. Any government or public support or opposition. Provide resolutions bodies, minutes of meetings, letters, and other documentation.
15. Demonstration of the project's consistency with the County's Comprehensive Plan.
16. Description of the private entity's performance evaluation system or method to track performance criteria, including schedule, cash management, quality, worker safety, change orders, and legal compliance.

14-6 Recommendation to Board of Supervisors

The Selection Committee will evaluate the additional information submitted by proposers and make a recommendation to the Board of Supervisors based on their review of proposals.

The Selection Committee can make one of the following recommendations to the Board of Supervisors:

1. Recommend one or more Interim Agreements
2. Recommend one or more Comprehensive Agreements
3. Recommend no Agreement be entered into
4. Recommend re-solicitation for proposals
5. Recommend an Agreement with another public entity, instead of a private entity. Such Agreements are not subject to further PPTA procedures.

14-7 The Comprehensive or Interim Agreement

If approved by the Board of Supervisors, the selected private entity will be invited to negotiate either an Interim or a Comprehensive Agreement that defines the rights and obligations of the County and the private entity. The County may seek external advice, as well as further comment from affected jurisdictions, during negotiations. At the conclusion of negotiations, the Selection Committee will submit a draft Interim or Comprehensive Agreement, along with its recommendation, to the Board of Supervisors. The Board of Supervisors will decide whether to authorize the County Executive to execute an Agreement.

14-7.1 Use of Interim Agreement

The County may determine that an Interim Agreement before or in connection with the negotiation of the Comprehensive Agreement is warranted. An Interim Agreement may not address all of the matters

contemplated in Subsection 14-9.2. An Interim Agreement may only permit the private entity to commence the following types of activity:

1. Project planning and development, advance right of way acquisition, design and engineering, environmental analysis, and mitigation.
2. Surveying, conducting transportation and revenue studies, and ascertaining the availability of financing for the proposed facility of facilities.
3. Or other similar work.

The Interim Agreement may establish the process and timing of the negotiation of the Comprehensive Agreement.

14-7.2 Use of Comprehensive Agreement

Before entering into a Comprehensive Agreement, the County Executive will make the certification to the Governor and General Assembly required by the PPTA (Va. Code § 33.2-1803).

Changes to the project scope that do not impact the assignment of risks or liabilities or the mitigation of revenue risk will not require a change to the finding of public interest, provided that such changes were presented in a public meeting to the Board of Supervisors.

If the Board of Supervisors approves a Comprehensive Agreement, the terms of that Agreement will control the remainder of the project.

14-7.3 Interim or Comprehensive Agreement Terms

An Interim or Comprehensive Agreement may address:

1. The rights and responsibilities to develop an operate the transportation facility, the termination date for the private entity's authority under the agreement, and the conditions under which rights and responsibilities will transfer from one party to another.
2. The liability of the private entity and the County for property damage, personal injury, necessary repair, hazardous waste remediation, and other unforeseen damage.
3. How user fees will be established and amended. User fees will be reasonable, considering lease payments, services payments, and compensation.
 - a. A copy of any service contract must be filed with the County.
 - b. A schedule of the current user fees must be made available by the private entity to any member of the public on request.
4. The reasonable maximum return or rate of return on investment authorized for the private entity to earn:
 - a. The formula by which such rate of return will be calculated;
 - b. The distribution of any earning in excess of the negotiated maximum rate of return; and
 - c. The payment of remaining revenues to the private entity upon the occurrence and during the continuation of material default, as remedy of such default, subject to the negotiated maximum rate of return.
5. The performance milestones that will be required of the private entity.

6. The right of the private entity to access County property, subject to permitting and other legal requirements.
7. The obligation of the private entity to acquire the right to cross utilities, other property, and waterways, and the obligation to pay the cost to do so.
8. How all involved entities will interact to establish interconnections and interoperability between the project's transportation facility and other transportation facilities.
9. Whether and for what parcels the County must exercise eminent domain.
10. The design, construction, operation, and maintenance standards with which the private entity must comply.
11. The private entity's responsibility to conform its work to standards acceptable to the County.
12. The rights of the County and its agents to inspect the construction, operation, and maintenance of the transportation facility.
13. The right of the private entity to make and enforce rules for the transportation facility.
14. The terms under which the private entity will reimburse the County for services.
15. The terms under which the County may make grants or loans, or contribute financial or in-kind resources for the development and operation of the transportation facility.
16. Whether the County will dedicate public property to be operated or otherwise used by the private entity; conveyance of that property through a dedication as allowed by the PPTA (Va. Code § 33.2-1806), which may include licenses, franchises, easements, or other interest necessary.
17. The events that constitute default by the private entity, the private entity's right to notice and cure, and the remedies available to the private entity.
18. The events that constitute default by the County, the County's right to notice and cure, and the remedies available to the private entity.
19. The terms under which the County may terminate for convenience, which may include payment of a reasonable development fee and development expenses.
20. The events that constitute force majeure and the remedies available for them.
21. The insurance and bonding requirements at each stage of development or operation of the transportation facility.
 - a. Performance and payment bonds must be in form and amounts satisfactory to the County, and reasonably sufficient to ensure coverage of tort liability as set out in the PPTA (Va. Code § 33.2-1804(4)).
 - b. Insurance policies must be filed with the County and timely updated.
22. Cost and completion guarantees, and what damages must be paid to the County for failure to meet those guarantees.
23. The obligation of the private entity to maintain records, to allow inspection and audit, and to provide regular reports to the County.
24. The obligation of the private entity to provide financial statements to the County.
25. The conditions under which the private entity or the County may assign its rights under the Interim or Comprehensive Agreement.
26. Other requirements that may be added to the PPTA, and any other terms that the Board of Supervisors deems necessary.

27. Funding for state police, as required by Virginia Code § 33.2-1808.

14-7.4 Amendments

Amendments to an Interim or Comprehensive Agreement must be approved by the Board of Supervisors.

14-7.5 Comprehensive Agreement Provisions Relating to Construction Projects

With respect to construction projects considered under the PPTA, the County generally anticipates addressing the following in the Comprehensive Agreement. Private entities are encouraged to include a discussion of these matters in proposals relating to construction projects.

1. The private entity must provide the County with single-contact responsibility and liability for all design and construction activities.
2. The private entity must perform a geotechnical investigation of subsurface conditions at the project site. The private entity bears the risk of inadequate investigation or improper interpretation of the results. Only if expressly stated in the Comprehensive Agreement, the County may assume partial risk for subsurface conditions that could not reasonably have been foreseen through a geotechnical investigation meeting the ordinary standard of care.
3. The private entity must perform an environmental assessment and any other studies required by federal, state, or local laws at the project site. The private entity will bear the risk of inadequate assessment and any other studies or improper interpretation of the results. Only if expressly stated in the Comprehensive Agreement, the County may assume partial risk for environmental conditions that could not reasonably have been foreseen through an environmental assessment meeting the ordinary standard of care.
4. The County encourages private entities to propose a formula for the mutual sharing of cost savings realized during construction. Mutually agreed-upon terms for the sharing of savings will be incorporated in the Comprehensive Agreement.

14-7.6 Comprehensive Agreement Provisions Relating to Private Entity Legal Structure

The County may enter into Comprehensive Agreements with private entities that have formed joint ventures. In such cases, one or more individual private entities must provide a surety on behalf of all involved private entities participating in the joint venture. This requirement is in addition to the statutory requirement for a performance bond.

14-7.7 Independent Audit for Agreements for a project with estimated construction cost over \$50 million

For any project with an estimated construction cost over \$50 million, the responsible public entity shall require the private entity to pay for an independent audit of traffic/cost estimates and a review of public costs/liabilities; the independent consultant is selected by the responsible public entity and the results are fully disclosed. § 33.2-1803(F)

14-8 Posting of Proposals; Public Comment; Public Access to Procurement Records

Conceptual Proposals will be posted for public inspection within 10 working days after Board of Supervisor acceptance as follows:

1. Trade secrets and proprietary information that would be protected from disclosure under the Virginia Freedom of Information Act will not be posted, if the private entity complies with the requirements of that Act.
2. For 30 days before entering an Interim or Comprehensive Agreement, the County will provide an opportunity for public comment on the proposals received. The Board of Supervisors may set a public hearing during that period.
3. Once negotiation of an Interim or a Comprehensive Agreement is complete and a decision to award is made, the County will (i) post the major business points of the interim or comprehensive agreement, including the projected use of any public funds, on its website and on the Department of General Services' central electronic procurement website; (ii) outline how the public can submit comments on those major business points; and (iii) present the major business points of the interim or comprehensive agreement, including the use of any public funds, to the Board of Supervisors at a regularly scheduled meeting.
4. Once an Interim or Comprehensive Agreement has been signed by all parties, the County will make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act.
5. Cost estimates relating to a proposed procurement transaction prepared by or for the County are not open to public inspection.
6. Any inspection of procurement transaction records under this section is subject to reasonable restrictions to ensure the security and integrity of the records.
7. The provisions of this section apply to accepted proposals, regardless of whether an Agreement is entered.

14-9 General PPTA Milestone Schedule

The following schedule sets out the typical timeframe within which the proposal selection process occurs, but may vary widely. All proposals advanced to the Detailed Review phase will be provided a specific, anticipated, schedule for evaluation of the proposals.

Major Milestone Summary: Unsolicited Proposals

Milestone	Description	Responsible Party	Timeline / Reference
1. Receipt of Unsolicited Proposal	Private entity submits a qualifying transportation project proposal with required format, supporting documentation, and \$5,000 processing fee.	Private Entity / County Executive's Office	Va. Code § 33.2-1803

Milestone	Description	Responsible Party	Timeline / Reference
2. Initial Evaluation & Acceptance Decision	County Selection Committee reviews submission for completeness and compliance. Recommends whether to accept for publication and further consideration.	Selection Committee / Board of Supervisors	Within 1–2 months
3. Public Notice & Posting	If accepted, County posts notice for a minimum of 45 days inviting competing proposals. Notice outlines project details, timeline, and public comment opportunities.	County Executive	≥ 45 days
4. Competing Proposal Period	Other private entities may submit competing proposals in response to notice. Deadline: 120 days from notice publication.	Private Entities	120 days
5. Initial Proposal Review	Selection Committee reviews all timely proposals (original & competing) for technical, financial, and compatibility factors.	Selection Committee	1–5 months
6. Selection for Detailed Review	Committee recommends whether to advance one or more proposals for Detailed Review based on evaluation criteria.	Selection Committee / Board of Supervisors	1–3 months
7. Detailed Review	Proposers provide additional technical, environmental, and financial details. County may consult external advisors.	Selection Committee / Consultant	8–14 months
8. Affected Jurisdictions Review	Other affected jurisdictions have 60 days to review and comment.	Affected Jurisdictions	During Detailed Review
9. Finding of Public Interest	County Executive makes formal determination that project meets public interest criteria required by PPTA.	County Executive	Prior to negotiation
10. Negotiation of Agreement	County negotiates Interim and/or Comprehensive Agreement , addressing roles, financing, performance standards, and legal obligations.	Selection Committee / Board of Supervisors / Private Entity	2–12 months

Milestone	Description	Responsible Party	Timeline / Reference
11. Board Approval & Execution	Board of Supervisors authorizes and executes final agreement.	Board of Supervisors	Following negotiations
12. Project Implementation	Project moves into planning, design, and construction phases under terms of agreement.	County / Private Entity	Post-approval

Major Milestone Summary: Solicited Proposals

Milestone	Description	Responsible Party	Timeline / Reference
1. Finding of Public Interest	County Executive issues finding required under Va. Code § 33.2-1803.1 prior to solicitation.	County Executive	Pre-RFP
2. Development & Issuance of RFP / RFI	County develops scope, evaluation criteria, and terms for qualifying projects. Publishes Request for Proposals (RFP) or Request for Information (RFI).	County	
3. Proposal Submission	Private entities submit proposals according to RFP instructions. No processing fees are charged.	Private Entities	1–2 months
4. Evaluation	Selection Committee reviews all submissions based on technical, financial, and public benefit criteria. Short-listed Proposals identified.	Selection Committee	1–5 months
5. Detailed Review	Shortlisted proposers submit additional project details (e.g., design, permits, financing). County may use consultants.	Selection Committee / Consultant	8–14 months
5. Affected Jurisdictions Review	Affected jurisdictions receive notice and provide comment within 60 days .	Affected Jurisdictions	During Detailed Review
6. Negotiation of Agreement	County negotiates Interim and/or Comprehensive Agreement with selected proposer. (Public review/comment 45 days)	Selection Committee / Board of Supervisors / Private Entity	2–12 months

Milestone	Description	Responsible Party	Timeline / Reference
7. Board Approval & Execution	Board approves and authorizes execution of agreement.	Board of Supervisors	Post-nego.
8. Project Implementation	Project advances to planning, design, and construction.	County / Private Entity	Post-approval

End of Chapter

CHAPTER 15. VENDOR QUALIFICATION

Summary

The County intends to procure only from qualified vendors (see Chapter 2). There are three key procedures concerning vendor qualification:

1. Determination of a vendor's responsibility
2. Prequalification of prospective vendors prior to commencing the competitive sealed bidding or competitive negotiation procedures
3. Debarment of a vendor

15-1 Determination of a vendor's responsibility

Vendor responsibility is defined in Chapter 2.

15-1.1 Criteria for considering responsibility

The Purchasing Agent considers the following criteria when determining responsibility ([Virginia Code § 2.2-4317.C.1.](#)):

- Whether the vendor has sufficient financial ability to perform the contract. If a bond is required to ensure performance of the contract, the vendor must give evidence that it can acquire a surety bond from a corporation included on the [United States Treasury list of acceptable surety corporations](#) (<https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html>) in the amount and type required by the County.
- Whether the vendor has appropriate experience to perform the contract.
- Whether the vendor or any officer, director, or owner thereof has a judgment entered against them within the past 10 years for breach of a contract.
- Whether the vendor has been in substantial noncompliance with the terms of any prior contract with any public body without good cause. This criterion will apply only if the facts underlying the prior substantial noncompliance were documented in the prior contract file and the vendor was given a cure notice with the opportunity to respond.
- Whether the vendor or any officer, director, or owner has been convicted within the past ten years of a crime relating to contracting. Crimes relating to contracting include violations of the following:
 - Article 6, VPPA: Ethics in Public Contracting ([Virginia Code § 2.2-4367 et seq.](#))
 - Virginia Governmental Frauds Act ([Virginia Code § 18.2-498.1 et seq.](#))
 - Conspiracy to Rig Bids to Government ([Virginia Code § 59.1-68.6 et seq.](#))
 - Any substantially similar law of the United States or another state.
- Whether the vendor or any officer, director, or owner is currently debarred from bidding or contracting by any public body or agency of any state or agency of the federal government, pursuant to an established debarment procedure.

Failure on the basis of any of the criteria identified in this section or otherwise set forth in the applicable solicitation may cause a vendor to be held not responsible.

15-1.2 Conducting the investigation

The Purchasing Agent may conduct an inquiry to determine vendor responsibility. In addition to information solicited in the IFB or RFP, the Purchasing Agent may:

- Require evidence of a vendor's qualifications from the vendor
- Consider information concerning the financial, technical, and other qualifications and abilities of the vendor. The Purchasing Agent should consider all information relevant to the inquiry, not solely information adverse to the vendor.
- Require assurances from the vendor. Assurances may include a guarantee from a financially stronger parent company, the approval of subcontractors used, the designation of a particular project manager or superintendent, or a guarantee that management will be present at the job site during specified times.
- Require the vendor to complete a qualification questionnaire. If the review of the questionnaire suggests the vendor may not be qualified, the Purchasing Agent should invite the vendor to a meeting to resolve or explain deficiencies.

The Purchasing Agent will determine the vendor's responsibility after completing the investigation.

15-1.3 Procedure if vendor is determined non-responsible

If the Purchasing Agent determines that a vendor is non-responsible, the following procedure will apply ([Virginia Code § 2.2-4359\(A\)](#)):

1. The Purchasing Agent will notify the vendor of the results of the investigation, disclose the factual support for the determination, and allow the vendor an opportunity to inspect documents relating to the determination, if requested, within five business days after receipt of the notice. The vendor may submit rebuttal information challenging the determination within 10 business days after receipt of the notice.
2. After receiving rebuttal information, the Purchasing Agent will issue a determination within five business days. If no rebuttal information is received, the Purchasing Agent will issue a notice of intent to award (Sections 8-10 and 9-12).
3. A determination of non-responsibility is final unless the vendor brings a legal claim as allowed by the VPPA.

The Purchasing Agent may consult with the using department and the county attorney in making the determination as to whether a vendor is responsible.

15-2 Prequalification of prospective vendors

The Purchasing Agent may require that vendors be prequalified – before the deadline for bids or proposals – to participate in the competitive sealed bidding or competitive negotiation procedures. Prequalification must be based on the same criteria as the criteria for determining responsibility established in Section 15-1.1.

15-2.1 Procedure for prequalification

If the Purchasing Agent determines that the County would benefit from restricting a procurement to prequalified vendors, they may prequalify vendors as follows:

1. The Purchasing Agent must include a provision in the IFB or RFP stating that prequalification will be required and including a prequalification application.
2. The IFB or RFP must require that each application for prequalification be received by the Office of Procurement 60 days prior to the receipt deadline for bids or proposals. A prospective vendor whose prequalification is not received by the application due date will not be eligible to participate in the procurement.
3. The Purchasing Agent must provide their determination to each prospective vendor at least 30 days prior to the receipt deadline for bids or proposals ([Virginia Code § 2.2-4317](#))

15-2.2 Procedure if vendor is determined to not be qualified

If the Purchasing Agent determines that a vendor is not qualified, the following procedure will apply ([Virginia Code § 2.2-4357\(A\)](#)):

1. The Purchasing Agent will notify the vendor of their determination; disclose the factual support for it; and allow the vendor an opportunity to inspect documents relied upon, if requested within five business days after receipt of the notice. The vendor may submit rebuttal information challenging the determination within 10 business days after receipt of the notice.
2. The Purchasing Agent must issue a final determination as to disqualification within five business days after receiving rebuttal information. If the vendor does not submit rebuttal information, then the original determination becomes final 15 business days after that determination was issued.
3. The vendor must institute legal action within 10 days of a final determination.

15-3 Debarment of a vendor

The Purchasing Agent may debar a prospective vendor from participating in a procurement ([Virginia Code § 2.2-4321](#)) as set forth in this section.

15-3.1 Criteria for debarment

In determining whether a vendor should be debarred, the Purchasing Agent will consider the following:

- Conviction or civil judgment involving submitting bids or offers on governmental procurements; obtaining, attempting to obtain, or performing a public contract; or any crime involving fraud.
- Conviction or civil judgment involving embezzlement, theft, forgery, bribery, falsification of records, destruction of records, making false statements, or receiving stolen property.
- Acts indicating a lack of business integrity and honesty.
- Any other act of a similar gravity.

Vendors debarred by the [Virginia Department of General Services](#) will be debarred by the Purchasing Agent.

15-3.2 Debarment procedure

The procedure for debarment is as follows:

1. The Purchasing Agent notifies the prospective vendor, any named affiliate, the county attorney, and the county executive that debarment is being considered. The notice must state the reasons for the proposed debarment.
2. The prospective vendor may submit a response to the Purchasing Agent within 30 calendar days of the notice being sent. The response should include both information and argument. If the reason for debarment is not based on a conviction or civil judgement, the vendor may request that an informal hearing be conducted by the Purchasing Agent.
3. The Purchasing Agent must hold an informal hearing, if requested, within 30 calendar days of receiving a request for a hearing. At the hearing, the Purchasing Agent and the prospective vendor may question witnesses.
4. The Purchasing Agent must render a decision on the proposed debarment, including the basis for the decision and, if the vendor is debarred, the duration of the debarment. The Purchasing Agent must render the decision within one of the following timelines:
 - a. No sooner than 30 calendar days after the notification of the debarment procedure, if the vendor does not respond to the notification.
 - b. Within 15 calendar days after receipt of the proposed vendor's response to the notification of debarment procedure, if the vendor does not request a hearing.
 - c. Within 15 calendar days after the conclusion of the hearing, if the vendor requests a hearing.

The Purchasing Agent has sole discretion to determine the period of debarment, which must be no less than 90 calendar days and no more than three years.

A debarment may be lifted or suspended at any time if the Purchasing Agent determines that it is in the best interests of the County. A debarred individual or firm can apply for reinstatement at any time to the Purchasing Agent, citing actions taken to remedy the reason for debarment or prevent future recurrence of the situation that caused debarment.

The decision of the Purchasing Agent debarring a prospective vendor will be final unless the proposed vendor commences a legal action as provided by law ([*Virginia Code § 2.2-4364*](#))

CHAPTER 16. VENDOR PROTEST

Summary

A vendor may protest the award of a contract, following the procedure set forth in this chapter. **16-1**

Procedure for making a protest

A vendor seeking to protest the award of a contract must make their protest in writing. The protest must include the basis for protest and the relief the vendor seeks. Decisions not subject to protest:

- Claims that the selected vendor is responsible.
- Claims that challenge the terms of the IFB or the RFP.

Protests must be received in the Office of Procurement, within 10 calendar days of ([Virginia Code § 2.2-4360.A](#)):

- Posting of the notice of award, or the notice of intent to award; or
- If the protest depends on County procurement records, when those records are made available for inspection, whenever is later.

The Purchasing Agent may reject any protest that is untimely or fails to state the basis for the protest or the relief sought. However, the Purchasing Agent may waive those requirements if it is in the best interest of the County to do so.

16-2 Response to protest

The Purchasing Agent will investigate the facts surrounding the protest and issue a decision within 10 days. In making that decision, the Purchasing Agent considers the following factors:

- Whether it is more likely than not that the grounds stated in the protest are true.
- Whether those grounds constitute a violation of the VPPA or this manual.
- Whether the procurement award was arbitrary or capricious.

The response must state the reasons why the protest was denied or upheld ([Virginia Code § 2.2-4360\(A\)](#)).

16-2.1 Denial

If the protest is denied, the Purchasing Agent will hand deliver the response to the vendor or send the response by certified mail. If the response is hand delivered, the Purchasing Agent must prepare a certificate stating the date of the delivery to retain in the contract file. The decision of the Purchasing Agent will be final unless the protestor then invokes the judicial appeal process described in the VPPA within 10 calendar days after receipt of the response.

16-2.2 Remedies if protest is upheld

If the protest is upheld because the decision to award the contract was arbitrary or capricious, the Purchasing Agent will grant the following relief, depending on at what stage in the contract timeline the determination to uphold the protest is made ([Virginia Code §2.2-4360\(B\)](#)):

- If the protest is upheld before the contract is awarded, the award must be canceled or revised to comply with the law.
- If the protest is upheld after the contract is awarded, but prior to contract performance, the purchasing office may enjoin performance of the contract if they determine that doing so is in the best interest of the public.
- If the protest is upheld after contract performance has begun, the contract may be declared void, if the Purchasing Agent determines that doing so is in the best interest of the public.

If the protest is upheld because of evidence that the decision to award the contract was based on fraud, corruption, or an act in violation of the ethics provisions of the VPPA (see Chapter 3), the Purchasing Agent must enjoin the award of the contract to the vendor. Before making the determination that the contract was awarded due to fraud, corruption, or ethics abuse, the Purchasing Agent must hold a hearing following reasonable notice to all vendors who submitted bids or proposals ([Virginia Code §2.2-4360\(C\)](#)).

16-3 Effect of protest on contract award

The Purchasing Agent may award a contract during the protest period. However, if a timely protest is received, the Purchasing Agent will take no further action to award the contract unless they make a determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire ([Virginia Code §2.2-4362](#)).

END OF CHAPTER

CHAPTER 17. GENERAL TERMS

Summary

Every contract with the County is subject to the following terms, which are automatically made a part of the contract as though fully set forth therein.

Advertising

If a contract is awarded for supplies, equipment, or services resulting from this proposal, no indication of such sales or services to the County of Albemarle will be used in product literature or advertising. The contractor must not state in any of its advertising or product literature that the County of Albemarle has purchased or uses any of its products or services, and the contractor must not include the County of Albemarle in any client list in advertising and promotional materials, unless the contractor has been given written permission by a County representative who is authorized to sign on behalf of the County.

Applicable laws and courts

This procurement transaction, and any resulting contract, is governed by the laws of the Commonwealth of Virginia, notwithstanding conflicts of laws provisions, and any litigation with respect to it must be brought in the state courts having venue within Albemarle County.

Assignment of contract

A contract will not be assignable by the contractor in whole or in part without the written consent of the County.

Authority to transact business

Pursuant to [Virginia Code § 2.2-4311.2](#) and in accordance with [Title 13.1](#), [Title 50](#), or as otherwise required by law, a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership must be authorized by the State Corporation Commission to transact business in the Commonwealth as a domestic or foreign business entity and must maintain registration as current through the life of the awarded contract.

Availability of funds

Continuation of a contract past the end of any fiscal year is subject to appropriations by the Board of Supervisors or School Board, as applicable.

Cancellation of contract

The County may terminate any agreement resulting from this solicitation at any time, for any reason or for no reason, upon thirty days' advance written notice to the Contractor. In the event of such termination the Contractor must be compensated for services and work performed prior to termination.

Changes to the contract

Changes can be made to the contract in any of the following ways:

- a. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification must be agreed to by the parties as a part of their written agreement to modify the scope of the contract. No fixed price contract may be increased by more than twenty-five percent (25%) of the amount of the contract or \$50,000, whichever is greater, without the advance approval of the County Executive, and under no circumstances may the amount of this contract be increased, without adequate consideration, for any purpose (including, but not limited to, relief of the Contractor from the consequences of an error in its bid or offer).
- b. The County may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor must comply with the notice upon receipt. The contractor must be compensated for any additional costs incurred as the result of such order and must give the County a credit for any savings. Said compensation must be determined by one of the following methods:
 1. By mutual agreement between the parties in writing; or
 2. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the County's right to audit the contractor's records and/or to determine the correct number of units independently; or
 3. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup must be used for determining a decrease in price as the result of savings realized. The contractor must present the County with all vouchers and records of expenses incurred and savings realized. The County must have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the County within thirty (30) days from the date of receipt of the written order from the County. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance must be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract must excuse the contractor from promptly complying with the changes ordered by the County or with the performance of the contract generally.

Clarification of terms

The County assumes no responsibility for oral instructions, suggestion or interpretation. Any question regarding the offer documents or specifications must be directed to the Purchasing Division and any material change will be submitted to all Offerors through issuance of an addendum. Any questions related to a solicitation must be submitted to the person named on the first page of the solicitation no fewer than

seven work days prior to the bid opening or proposal closing date. Questions should be in writing and electronic transmission is preferred. Questions submitted beyond the time specified above may be left unanswered if sufficient time does not allow a response to all prospective Offerors without causing an unacceptable delay in the process. Any contact with any County representative, other than that outlined within this solicitation, concerning this solicitation is prohibited. Such unauthorized contact may disqualify your firm from this procurement.

Collusive offers

The offer of any Offeror who engages in collusive practices may be rejected. Any Offeror who submits more than one offer in such a manner as to make it appear that the offers submitted are not on a competitive basis is considered a collusive Offeror. However, nothing in this section will prevent an Offeror from superseding an offer by a subsequent offer delivered prior to bid opening or proposal closing, if it expressly revokes the previous offer.

Confidentiality of personally identifiable information

The contractor certifies that, if an awarded contract involves information obtained as to personal facts and circumstances related to individuals, such information will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the County's written consent and only in accordance with federal law or the Code of Virginia. Contractors who use, access, or store personally identifiable information as part of the performance of a contract must safeguard that information and immediately notify the County of any breach or suspected breach in its security. Contractors must allow the County to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees may be required to sign a confidentiality statement.

Contractor's forms/boilerplate contracts

All written agreements, contracts, service agreements, account applications, forms and other documents, of any nature, that the Contractor would require the County to sign in connection with any contract resulting from this procurement transaction, or the performance thereof by the Contractor, must be submitted along with the Contractor's offer. Under no circumstances does the County agree to any contractual provision (i) that would materially conflict with any provision of its solicitation, (ii) that would affect the price, quality, quantity or delivery schedule for any goods or services, or (iii) that would, in the County's sole discretion, materially alter the overall combination of quality, price and various elements of required services that in total are optimal relative to the County's needs, and the Contractor's condition of its performance or delivery upon any such agreement by the County is void.

Contractor license requirements

Some statutes and regulations require that some firms be properly registered and licensed, or hold a permit, prior to performing specific types of services. If firms provide removal, repair, improvement, renovation or construction-type services they, or a qualified individual employed by the firm, will possess and maintain an appropriate State of Virginia Class A, B, or C Contractor License (as required by applicable regulations and value of services to be performed) for the duration of the Agreement. It is the firm's

responsibility to comply with the rules and regulations issued by the appropriate regulatory agencies. A copy of the license must be furnished upon request to the County of Albemarle.

Contractual claims and dispute resolution

1. **Compliance.** Strict compliance with this procedure is a prerequisite to proceeding with a claim under this Agreement, and no action or statement by County representatives waives such compliance. All notices and communications required by this section must be in writing. A procedure for consideration of contract claims may be included in each contract. Such procedure, which may be incorporated into the contract by reference, shall establish applicable timelines that govern the resolution of contractual claims and dispute resolution.
2. **Intent to submit claim.** Contractor must notify the Purchasing Agent of its intent to submit a claim, whether for money or other relief, at the time of the occurrence or at the beginning of the work upon which the claim is based, whichever comes first. "At the time of the occurrence or at the beginning of the work upon which the claim is based" means within 48 hours or, if good cause is shown, within 5 business days. "Occurrence" includes:
 - a. The County transmits final payment; and
 - b. A representative of the County states that the County will not pay a requested amount.

A Contractor's failure to timely notify the Purchasing Agent of its intent to file a claim constitutes a waiver of that claim.

3. **Submission of claim.** Contractor must submit its claim no later than 60 days after it has notified the Purchasing Agent of its intent to file a claim. The claim should be submitted to the Purchasing Agent. Failure to timely submit a claim constitutes a waiver of that claim. The claim must:
 - Identify the time of the occurrence or the beginning of the work upon which the claim is based
 - State the basis for the claim, and
Identify with specificity the relief sought.
4. **Investigation of claim.** The Purchasing Agent must investigate the claim. As part of the investigation, the Purchasing Agent may request that Contractor submit additional information, or appear before the Purchasing Agent, to support its claim. The period between such request and Contractor's response tolls the time within which the Purchasing Agent must respond to the claim. Failure to provide the requested information constitutes noncompliance with this procedure and will result in denial of the claim.
5. **Purchasing Agent's decision.** The Purchasing Agent must render a decision within 30 days of receipt of Contractor's claim, setting forth the reasons for such decision. If the Purchasing Agent does not render a decision within 30 days, the claim is considered denied. For good cause, the Purchasing Agent may notify Contractor that more time is required to render a decision. The decision of the Purchasing Agent shall be final and conclusive unless Contractor appeals the decision within 6 months of the Purchasing Agent's decision. Contractor's appeal must comply with the VPPA and Title 15.2 of the Virginia Code.

6. **Settlement of claim.** The Purchasing Agent may settle the claim. If resolution of the claim requires that the County pay additional money or forego goods or services that it is arguably owed, then the Purchasing Agent's authority to settle the claim is limited to 25 percent of the value of the contract or \$50,000, whichever is greater.
7. **Institution of legal action.** If the contractor is not satisfied with the Purchasing Agent's decision, or the Purchasing Agent does not render a decision, it may appeal to the Circuit Court of Albemarle County. The contractor's appeal must comply with the VPPA and [Title 15.2 of the Virginia Code](#). Nothing in this Manual is intended to prohibit or limit the County's ability to institute legal action against a Contractor.
8. **Amounts not in dispute.** Contractor's notice of an intent to file a claim does not permit the County to withhold or delay payment of amounts that it does not dispute. Purchasing Agent's non-response to a claim within the required time constitutes a dispute of amounts claimed.

Debarment status

By submitting a bid or offer, a vendor certifies that they it is not debarred by the Commonwealth of Virginia from submitting offers or proposals on contracts, nor is it an agent of, owned by, or controlled by any person or entity that is currently debarred.

Default

If a Contractor fails to deliver or perform in accordance with the Contract, the County may find the Contractor in Default. In case of failure to deliver goods or services in accordance with the contract terms, the County, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy is in addition to any other remedies that the County may have, up to and including termination of the Contract for Default.

Prior to taking any default action, the following should be weighed and considered: (1) the Department Head for the Using Department and the Purchasing Agent should be notified as soon as practicable; (2) the specific reasons for the Contractor's failure to comply with the Contract and its terms; and (3) the time period that is required to obtain the goods or services from other sources compared to the delivery time specified by the delinquent Contractor.

Using Departments must notify the Purchasing Agent when a Contractor is not performing in accordance with the Contract. Using Departments must provide the Purchasing Agent written documentation of the issues to include all relevant information regarding the Contractor's non-performance. The Purchasing Agent, in coordination with the Using Department, will attempt to resolve the issue with the Contractor in a manner that is in the County's best interest. Efforts to resolve the issue may include the following:

- (1) Informal communication with the Contractor, such as meetings, phone calls; and/or emails;

(2) The issuance of a “Notice to Cure” letter signed by the Purchasing Agent, which will state the issues and give the Contractor a specific time frame in which to resolve the issues;

(3) The issuance of a “Notice of Termination for Default”, in accordance with this Purchasing Manual, the VPPA, and other applicable law; and

(4) Recommendation for Debarment, if warranted.

The efforts undertaken by the Purchasing Agent and the Using Department to resolve issues with the Contractor will be decided on a case-by-case basis.

Drug-free workplace (applies to contracts of \$10,000 or greater)

Pursuant to [*Virginia Code Section § 2.2-4312*](#), during the performance of this Agreement, Contractor agrees as follows:

1. Contractor will provide a drug-free workplace for Contractor’s employees.
2. Contractor will post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition.
3. Contractor will state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace.
4. Contractor will state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace.

Error in extension of prices

In the case of error in the extension of prices the unit price will govern.

Ethics in public contracting

Pursuant to [Virginia Code § 2.2-4367](#): By submitting a bid, the bidder certifies that their bid is made without collusion of fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

Form W-9 required

Each offeror must submit a completed W-9 form with their offer. In the event of contract award, this information is required in order to issue purchase orders and payments to your firm. A copy of this form can be downloaded from <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

Headings

Section, article and paragraph headings contained within this solicitation have been inserted only as a matter of convenience and for reference, and they in no way define, limit, or describe the scope or intent of any term, condition or provision of this solicitation.

Immigration Reform and Control Act of 1986 ([Virginia Code § 2.2-4311.1](#))

By entering into a written contract with the County of Albemarle, the Contractor certifies that the Contractor does not, and must not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

Inclement weather/closure of County offices

If the County of Albemarle is closed for business at the time scheduled for bid opening or proposal closing, for whatever reason, sealed offers will be accepted and opened on the next scheduled business day, at the originally scheduled time.

Indemnification

Contractor agrees to defend, indemnify, and hold harmless the County and all of its officers, agents, and employees ("Indemnified") against any liability, loss, claim, or damages, including attorney fees that the Indemnified may incur or be subject to, on account of death or injury to any person and for damage to or loss of any property that arises out of or results from actions taken by Contractor in the performance of its obligations under this Agreement, or which occurs as a consequence of any omission or conduct by Contractor or its subcontractors, agents, or employees, regardless of whether such damage or loss is caused in part by Indemnified.

Under Virginia law, the County may not indemnify another party. Any provisions to the contrary are void.

Independent Contractor

Contractor is an independent contractor and not an employee or agent of the County or the School Board, and cannot bind the County or the School Board to agreements with third parties.

Insurance

By submitting a proposal under this solicitation, the offeror certifies that, if awarded the contract, it will purchase and maintain, at its sole expense, and from a company or companies authorized to do business in the Commonwealth of Virginia, insurance policies containing the types of coverages and minimum limits specified in the solicitation.

Non-discrimination

By submitting their bids or proposals, offerors certify to the County that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginias with Disabilities Act, the Americans with Disabilities Act and [Virginia Code § 2.2-4311](#). If the award is made to a faith-based organization, the organization must not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipients religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and must be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds must be subject to audit by the public body. ([Virginia Code § 2.2-4343.1\(E\)](#)).

Every contract over \$10,000 must include the provisions:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, must state that it is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting these requirements.
2. The contractor will include the provisions of No. 1 above in every subcontract or purchase order over \$10,000, so that the provision will be binding upon each subcontractor or vendor

Non-discrimination of contractors

A bidder, offeror, or contractor must not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the County has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body must offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

Online vendor registration required

Upon contract award, Contractor must register itself in the County's online vendor registration so that the County may issue purchase orders and payments. Further information regarding our online vendor registration can be found on our website at

<https://www.albemarle.org/government/finance/procurement/vendor-registration>.

OSHA standards

All contractors and subcontractors performing services for the County are required and must comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupational Health Standards and any other applicable rules and regulations. Also, all contractors and subcontractors must be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.

Ownership of documents

All information, documents, and electronic media furnished by the County to the Contractor belong to the County, are furnished solely for use in connection with the Contractor's performance of Services required by this Agreement, and must not be used by the Contractor on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than Services rendered to the County hereunder is specifically authorized in writing by the County in advance. All documents or electronic media prepared by or on behalf of the Contractor for the County are the sole property of the County, free of any retention rights of the Contractor. The Contractor hereby grants to the County an unconditional right of use, for any purpose whatsoever, documents or electronic media prepared by or on behalf of the Contractor pursuant to this Agreement, free of any copyright claims, trade secrets, or any other proprietary rights with respect to such documents.

Payment ([Virginia Code § 2.2-4354](#))

1. To Prime Contractor:

- a. The County must promptly pay for completed delivered goods or services by the required payment date. The required payment date is either: (i) the date on which payment is due under the terms of a contract for the provision of goods or services, or (ii) if a date is not established by contract, not more than 45 days after goods or services are received or not more than 45 days after an invoice is rendered, whichever is later. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery. Within 20 days after the receipt of an invoice for goods or services, the County must notify the supplier of any defect or impropriety that would prevent payment by the required payment date. In the event that the County fails to make payment by the required payment date, the County must pay any finance charges assessed by the supplier that must not exceed one percent per month. In cases where payment is made by mail, the date of postmark must be deemed to be the date payment is made.
- b. Individual contractors must provide their social security numbers, and proprietorships, partnerships, and corporations must provide the County with a federal employer identification number, prior to receiving any payment from the County.
- c. Invoices for items ordered, delivered and accepted must be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices must show the County contract number and/or purchase order number.
- d. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, must be billed by the contractor at the contract price, regardless of which County department is being billed.
- e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the County must promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve any County department of its prompt payment obligations with respect to those charges which are not in dispute ([Virginia Code § 2.2-4363](#)).

2. To Subcontractors:

- a. A contractor awarded a contract is hereby obligated to take one of the two following actions within seven (7) days after contractor's receipt of payment from the County for work performed by the subcontractor under the contract:
 - i. Pay subcontractor(s) for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor(s) under the contract; or
 - ii. Notify the County and the subcontractor(s), in writing, of the contractor's intention to withhold all or in part of the subcontractor's payment with the reason for nonpayment.
- b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the County, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the County.
- c. For construction contracts under § 2.2-4301:
 - i. Contractor must pay all subcontractors in the manner provided in [Virginia Code Section 2.2-4354\(1\)](#).
 - ii. Contractor must pay all subcontractors in the manner provided in [Virginia Code Section 2.2-4354\(2-5\)](#).

Permits and fees

All offers submitted must have included in their price the cost of any licenses, permits, or fees required for performance. The offeror must, at the time its offer is submitted, have all necessary licenses to perform the services in Virginia and, if practicing as a corporation, be authorized to do business in the Commonwealth of Virginia.

Precedence of terms

If there is a conflict between any of these General Terms, Special Terms, and Contractor's terms, then these General Terms take precedence over the Special Terms, and the Special Terms take precedence over Contractor's terms.

Public inspection of certain records

Except as otherwise provided, and in accordance with [Virginia Code § 2.2-4342](#), all proceedings, records, contracts and other public records relating to the County's procurement transactions must be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act ([Virginia Code § 2.2-3700 et seq.](#)). Any offeror, upon request, must be afforded

the opportunity to inspect bid or proposal records within a reasonable time after the opening of all bids but prior to award, except in the event the County decides not to accept any of the offers and to reopen the solicitation. Otherwise, bid or proposal records must be open to public inspection only after award of the contract. Trade secrets or proprietary information submitted by a offeror in connection with this procurement transaction must not be subject to the Virginia Freedom of Information Act, but only if the offeror (i) invokes the protections of [Virginia Code § 2.2-4342](#) prior to or upon submission of the data or other materials; (ii) identifies the specific data or other materials to be protected, and (iii) states the reasons why protection is necessary. A general designation of a contractor's entire bid or proposal submission or volume as being "confidential" will not be sufficient to invoke the protections referenced above.

Qualification of offerors

The County may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the services/furnish the goods and the Offeror must furnish to the County all such information and data for this purpose as may be requested. The County reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The County further reserves the right to reject any offer if the evidence submitted by, or investigations of, such Offeror fails to satisfy the County that such Offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

Small business subcontracting and evidence of compliance

It is the policy of the County of Albemarle to facilitate the establishment, preservation and strengthening of small businesses and businesses owned by women and minorities and service disabled veterans and to encourage their participation in the County's procurement activities. Toward that end the County of Albemarle encourages these firms to compete and encourages other firms to provide for the participation of these firms through partnerships, joint ventures, subcontracts or other contractual opportunities. Offerors are asked, as part of their submission, to describe any planned use of such business in fulfilling this contract. Upon request, a list of certified businesses under this requirement must be made available.

State corporation commission identification number

Pursuant to [Virginia Code § 2.2-4311.2\(B\)](#), an Offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any Offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the Offeror is not required to be so authorized. Link to the Virginia State Corporation Commission site: <http://www.scc.virginia.gov/>.

Taxes

Include only taxes applicable to the project in this bid or proposal. The County is exempt from State Sales Tax and Federal Excise Tax. Tax Exemption Certificate indicating the County's tax exempt status will be furnished by the County of Albemarle upon request.

Testing and inspection

The County may conduct any test or inspection that it deems advisable to assure goods and services conform to the specifications.

Virginia Governmental Frauds Act

Each offeror is subject to the provisions of the Virginia Governmental Frauds Act, [Virginia Code, Title 18.2, Chapter 12, Article 1.1](#). In compliance with this law, each offeror is required to submit a certification that its offer, or any claim resulting therefrom, is not the result of, or affected by, any act of collusion with another person engaged in the same line of business or commerce, or any act of fraud punishable under the Act. Any offeror who knowingly makes a false statement on the Certificate of No Collusion shall be guilty of a felony, as provided in [Virginia Code § 18.2-498.5](#). As part of this offer a Certificate of No Collusion must be submitted with the offer.

Compliance with all laws

Contractor agrees to comply with all federal, state, and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of scope of work set forth herein. Contractor represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this Agreement prior to the initiation of work.

Choice of Law

Pursuant to [Virginia Code § 2.2-4311.3](#), no term or provision in any public contract for the acquisition of information technology goods or services shall be valid or enforceable to the extent that it is in conflict with Virginia law. A public contract containing such a term or provision shall otherwise remain enforceable.

END OF CHAPTER

CHAPTER 18. BONDS AND SECURITIES

Summary

This chapter sets out the security required for some contracts and the procedure for applying them and for releasing them. They are bid bonds, performance bonds, payment bonds, and alternative forms of security such as certified checks, cash escrow, and letters of credit. **18-1 Bid bonds**

The Purchasing Agent may require that a potential vendor submit a bid bond with their bid or proposal. A bid bond ensures that the vendor:

1. Will not withdraw its bid within the period specified for acceptance
2. Will execute a written contract
3. Will furnish other security such as performance and payment bonds, a certificate of insurance, or any other documents that are required by the solicitation.

A bid bond promises that the vendor and its surety are jointly and severally liable for the bond's value if the vendor refuses to honor the bid or proposal upon being awarded the contract.

18-1.1 Circumstances requiring bid bonds

Except in emergencies, all bids or proposals for construction contracts in excess of \$300,000 must be accompanied by a bid bond ([Virginia Code § 2.2-4336](#)).

The Purchasing Agent may require a bid bond in procurements below that threshold. The Purchasing Agent will consider the nature of the goods or services being sought and, where the competitive sealed bidding procedure is used, the likelihood of an apparent low bidder not being willing to execute a written contract.

18-1.2 The form and amount of the bid bond

A bid bond must be in the form and amount as follows:

- Executed by a surety company that is authorized to do business in Virginia and registered with the State Corporation Commission.
- Identifies the name and address of an attorney-in-fact who is appointed to act on behalf of the surety. The attorney-in-fact must affix a certified and current power of attorney.
- In an amount sufficient to cover the anticipated differential cost between the lowest and next-lowest bidder, as well as the administrative costs associated with a possible re-solicitation. The Purchasing Agent will not require a bid bond should exceeding five percent of the amount of the bid or proposal ([Virginia Code § 2.2-4336.A](#)).
- The beneficiary must be either "County of Albemarle, Virginia," or "School Board of Albemarle County, Virginia," or both, as appropriate.

The Purchasing Agent may permit a vendor to submit an alternative form of security in lieu of a bid bond. See Section 18-4.

18-1.3 Amount of forfeiture

The amount of a bid bond's forfeiture must be at least:

1. The difference between the bid or proposal for which the bond was written and the next lowest bid or proposal; or
2. The face amount of the bid bond, whichever is less.

18-2 Performance bonds

The Purchasing Agent may require a vendor to submit a performance bond upon the award of a contract.

18-2.1 Circumstances requiring performance bonds

For any non-transportation-related construction contract exceeding \$500,000 or any transportation-related construction contract exceeding \$350,000, the contractor must obtain a performance bond naming the County as an additional insured or beneficiary ([Virginia Code § 2.2-4337](#)).

The Purchasing Agent may require a performance bond below those thresholds, where appropriate. A copy of the performance bond must be provided to the Office of Procurement within 10 days of contract award.

18-2.2 The form and amount of the performance bond

A performance bond must meet the following requirements:

- On the form provided by the Office of Procurement or, if otherwise, acceptable to the Purchasing Agent.
- Executed by a surety company that is authorized to do business in Virginia and registered with the State Corporation Commission.
- Includes the contract number.
- Identifies the name and address of an attorney-in-fact who is appointed to act on behalf of the surety. The attorney-in-fact must affix to the bond a certified and current copy of the power of attorney.
- Signed by an authorized representative of the surety company.
- Executed and dated on or after the date that the vendor signs the contract, and in effect during the entire term of the contract, including any changes to the term pursuant to change orders, and until it is released upon the County's determination that the vendor has acceptably completed performance.
- Conditioned upon the faithful performance of the contract in strict conformity with its plans, specifications, and conditions.
- Written for the contract's total value. If change orders or amendments are made, then the bond must be renewed and re-executed to reflect the changed amount.

- The beneficiary must be either “County of Albemarle, Virginia,” or “School Board of Albemarle County, Virginia,” or both, as appropriate.

The Purchasing Agent may permit a vendor to submit an alternative form of security in lieu of a performance bond. See Section 18-4.

18-3 Payment Bonds

The Purchasing Agent may require a vendor to submit a payment bond upon the award of the contract.

18-3.1 Circumstances requiring payment bonds

Upon the award of any construction contract exceeding \$300,000, the contractor must provide a payment bond ([Virginia Code § 2.2-4337](#)). For contracts below that threshold, the Purchasing Agent may require a vendor to provide a performance bond, where appropriate. A copy of the payment bond must be provided to the Office of Procurement within 10 days of contract award.

18-3.2 The form and amount of the payment bond

Each payment bond must meet the following requirements:

- On the form provided by the Office of Procurement or, if otherwise, acceptable to the Purchasing Agent.
- Executed by a surety company that is authorized to do business in Virginia and registered with the State Corporation Commission.
- Includes the contract number.
- Identifies the name and address of an attorney-in-fact who is appointed to act on behalf of the surety. The attorney-in-fact must affix to the bond a certified and current copy of the power of attorney.
- Signed by an authorized representative of the surety company.
- Executed and dated on or after the date that the vendor signs the contract, and in effect during the entire term of the contract, including any changes to the term pursuant to change orders, and until it is released upon the County’s determination that the vendor has acceptably completed performance.
- Conditioned upon the faithful performance of the contract in strict conformity with its plans, specifications, and conditions.
- Written for the contract’s total value. If change orders or amendments are made, then the bond must be renewed and re-executed to reflect the changed amount.
- The beneficiary must be either “County of Albemarle, Virginia,” or “School Board of Albemarle County, Virginia,” or both, as appropriate.
- Require that the vendor promptly pay all subcontractors for any materials furnished or labor supplied or performed by them.

The Purchasing Agent may permit a vendor to submit an alternative form of security in lieu of a payment bond. See Section 18-4.

18-4 Alternative forms of security

In lieu of a bid, performance, or payment bond, a vendor may provide a certified check or cash escrow in the face amount required for the bond, or a bank or savings institution's letter of credit guaranteeing funds in the face amount required for the bond ([Virginia Code § 2.2-4338\(B\)](#)). A letter of credit must be in the form and substance that complies with the provisions of the Uniform Commercial Code ([Title 8.1A of the Code of Virginia](#)) pertaining to letters of credit, and satisfy the following requirements:

- Afford protection to the County that is equivalent to or greater than the relevant bond.
- Includes the contract number.
- In an amount equal to that required of the relevant bond.
- Executed and dated on or after the date that the vendor signs the contract, and in effect during the entire term of the contract, including any changes to the term pursuant to change orders, and until it is released upon the County's determination that the vendor has acceptably completed performance.
- The beneficiary must be either "County of Albemarle, Virginia," or "School Board of Albemarle County, Virginia," or both, as appropriate.
- Must be irrevocable and incapable of amendment without the written consent of the Purchasing Agent.
- Have an expiration date of greater than one year and provide for automatic renewal for at least one additional year.

The Purchasing Agent should seek county attorney's office review of any letter of credit before it is accepted as an alternative form of security.

END OF CHAPTER

APPENDIX A. SPECIAL TERMS

This appendix is maintained by the Purchasing Agent in the Office of Procurement. Special terms are to be utilized with select contracts, as needed.

Anti-trust

By entering into a contract, the contractor conveys, sells, assigns, and transfers to the County of Albemarle all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the County of Albemarle under said contract.

Brand names

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the County, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the County to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its bid or proposal that the product offered is an equal product, such offer will be considered to offer the brand name product referenced in the solicitation.

Business License

Albemarle County businesses must furnish a copy of their active business license, upon request.

Transportation and packaging

All prices submitted shall be FOB Destination - Freight Prepaid and Allowed. By submitting their offers, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

Idling reduction requirement

For any work performed within the City of Charlottesville, contractors are required to comply with the City of Charlottesville's Idling Reduction Policy for Motor Vehicles and Equipment, policy number 100-12. This policy is available at www.charlottesville.org/purchasing under the Vendor Registration link.

New equipment

Unless otherwise noted any equipment offers shall be new, unused, of current production and standard to the manufacturer. Where any part or nominal appurtenances of equipment are not described it shall be understood that all equipment and appurtenances standard to or recommended by the manufacturer for complete and safe use shall be included as part of this offer.

END OF APPENDIX

APPENDIX B. EXEMPTIONS FROM COMPETITIVE REQUIREMENTS

This appendix is maintained by the Purchasing Agent in the Office of Procurement.

For some procurements, competitive procedures are impracticable or undesirable. The VPPA outlines purchases that are exempt from competitive purchasing procedures ([Virginia Code §2.2-4344](#)). In addition, the VPPA authorizes the County to establish purchasing procedures not requiring competitive sealed bids or competitive negotiation for goods and nonprofessional services if the aggregate or sum of all phases is not expected to exceed \$200,000 ([Virginia Code §2.2-4303.G](#)). Even where the cost is not expected to exceed \$200,000, using departments must seek multiple quotes (See Chapter 7), with the following exceptions, where a single quote is sufficient:

Academic expertise: Academic research or consulting services exemption is limited to services provided by an individual academic with specific qualifications not generally available in the marketplace. The academic may be employed by either a public or private institution of higher learning or a research institute. This exception does not apply to consulting services generally. The using department shall justify the single-quote process by verifying exclusivity.

Accreditation and testing: Accreditation fees and academic testing services

Athletic fees: Fees associated with participation in athletic tournaments and events including registration and associated fees for all athletic events.

Athletic officials and/or referees: Referees, umpires, or other sports officials to officiate competitive athletic and sporting events sponsored by the County or Albemarle County Public Schools. The services include observing the play, detecting infractions of rules, and imposing penalties established by the rules and regulations of the various sports.

Books, printed materials, reprints, and subscriptions: Books, printed materials, and subscriptions (print or electronic), and pre-recorded audiovisual materials, when only available from the publisher or producer. The using department shall justify the single-quote process by verifying exclusivity and documenting an independent search for other sources.

Copyright and/or royalty fees: Purchase of the exclusive legal right to display, perform, reproduce, publish, sell or distribute the matter and form of something (as a literary, musical, artistic work, or performing rights organization)

Dues and professional licenses: Professional organization membership dues, fees to maintain professional licenses, and professional memberships that are unique organizations and have no counterpart.

Equipment, used or surplus: Single purchases of used or surplus equipment, including vehicles. This exemption is not applicable to aggregate purchases of more than a single item.

Grant programs: Grant programs that specify a specific product or service provider that is required for receipt of the grant.

Guest speaker: Payment for a one-time service (e.g. making a speech), not exceeding \$50,000, provided by a contractor such as an author, speaker, lecturer, musician, or performing artist.

License agreements (software): License agreements with the owner of the source code for existing software currently in use, to include instructional software.

Maintenance agreements (software/sophisticated equipment): Subsequent maintenance agreements with:

- The owner of the proprietary source code for previously purchased software currently in use, and
- The manufacturer of sophisticated medical, scientific, or engineering equipment that remains in service with the County or School Board.

Media purchases: Advertisements and legal notices such as in newspapers, magazines, journals, radio, television, and other media sources.

Nutrient Credits: credits purchased under the Virginia Code related to allocations for nitrogen and phosphorus delivered to waterways

Parts or installation of parts: Manufacture required replacement parts and installation of new or replacement parts where manufacture requires a specific service provider.

Sporting and/or entertainment events: Tickets to sporting events or entertainment events, such as movie or theme park tickets.

Specialized training: Training that is specialized, proprietary, and not typically available to the general public. Specialized technical training provided by a vendor for their equipment is included in this category. The using department shall justify the single-quote process by documenting verification of exclusivity.

Textbooks: Books purchased for the school district which are only available through a single publisher

Training provided by professional organization: Classes, workshops, or conferences provided by a professional organization. This exemption is limited to organizations that are associated with professional accreditation or certification.

Virtual School Programming: [§ 22.1-212.24. Approval of multidivision online providers; contracts with local school boards](#)

END OF APPENDIX