

Chapter 11. Competitive Negotiation: Procedure

Summary

This chapter provides an overview of the procedure for procuring goods and services using the competitive negotiation procedure. The competitive negotiation procedure is permitted for the procurement of goods and services other than professional services (“nonprofessional services”) if the cost of the goods or services is expected to exceed \$5100,000, ~~and it is determined in advance that the competitive sealed bidding procedure is either not practicable or not fiscally advantageous to the public.~~ The competitive negotiation procedure is required for the procurement of professional services if the cost of the services is expected to exceed \$580,000.

Essential Information in this Chapter

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

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

Key References to the Code of Virginia Applicable to this Chapter

Section 2.2-43601: Definitions of competitive negotiation and other key terms
Section 2.2-4303(A): When competitive negotiation required, generally
~~Section 2.2-4303(C): Availability in lieu of competitive sealed bidding, generally~~
Section 2.2-4303(C)(1): ~~Alternate procurement~~ availability in lieu of competitive sealed bidding, insurance
Section 2.2-4303(CD)(2): Availability in lieu of competitive sealed bidding, construction

11-1 General

The competitive negotiation procedure for goods and nonprofessional services may be used if the cost of the goods or services is expected to exceed \$5100,000 ~~and competitive sealed bidding is determined by the purchasing agent~~

~~to be either not practicable, such as when cost is not the most important issue, when specifications are difficult to draft, or when the competitive sealed bidding procedure is not fiscally advantageous to the public. The procedure to determine whether the competitive sealed bidding procedure is not practicable or not fiscally advantageous is discussed in section 4-8.~~

The competitive negotiation procedure is required for the procurement of professional services if the cost of the services is expected to exceed \$~~5~~80,000.

Table 11-1

The Fourteen<u>Thirteen</u> Steps in the Competitive Negotiation Procedure	
1.	Identify the goods or services to be procured
2.	Create the selection committee and prepare the request for proposals
3.	Establish the procurement schedule
4.	Compile a list of vendors
5.	Issue the request for proposals and provide public notice thereof
6.	Conduct pre-proposal conferences or site visits, if warranted
7.	The submittal of proposals Proposals submitted
8.	The receipt of proposals Proposals received
9.	The evaluation of proposals Proposals evaluated
10.	Develop a list of vendors with whom to negotiate
11.	Arrange a tour of the site or the facility, if applicable
12 <u>1</u> .	Conduct negotiations
13 <u>2</u> .	Rank vendors of professional services
14 <u>3</u> .	Negotiate a contract

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

11-2 Identify the Goods or Services to be Procured

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

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

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

The RFP shall be prepared by the using department and the purchasing agent, and then be reviewed by the selection committee. Before drafting a complex RFP, it is recommended that the using department prepare a work statement.

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

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

The RFP must, at a minimum:

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

A comprehensive description of the elements of an RFP is set forth in [eChapter 12](#).

11-4 Establish the Procurement Schedule

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

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

- Preparation of the RFP documents: Allow ~~sufficient time at least fifteen work-days~~ to prepare the RFP documents —including a deliberative process during which desired requirements, evaluation criteria, and stakeholder review can all be thoughtfully considered-- and issue a written RFP.
- Public notice period and the date for receipt of proposals: Allow at least ten calendar days to provide public notice of the RFP prior to the date set

for the receipt of proposals.

- Evaluation of proposals, negotiation and issuance of notice of award: Allow ~~sufficient time at least fifteen work days~~ to evaluate proposals, conduct interviews, ~~and engage in~~ negotiations, and issue a notice of the award.
- Execution of contract: Allow ~~sufficient time for any issues that may require resolution prior to signing a contract. At least 10 ten~~ calendar days after notice of intent to award shall pass before execution of the contract. ~~Factors that may affect timing include verification or resolution of vendor's status with the Virginia State Corporation Commission, amendment to a certificate of insurance, or similar considerations. at least ten work days to execute the contract after the notice of award of the contract.~~

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

11-5 Compile a List of Vendors

The purchasing agent and the using department should compile a list of vendors from staff knowledge of local vendors and through directories and lists of vendors. The purchasing agent should send RFPs directly to these vendors, in addition to the public notice of the RFP that will otherwise be provided. Any additional solicitations shall include certified businesses selected from a list made available by the Virginia Department of Small Business and Supplier Diversity.

11-6 Issue the RFP and Provide Public Notice Thereof

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

- Manner of giving public notice: The purchasing agent shall provide public notice of an RFP by posting on the Purchasing Office's current solicitation website and on the Virginia Department of General Services' central electronic procurement website. ~~in a designated public area, or Posting shall also be made by publication by publication~~ in a newspaper of general circulation, ~~or both.~~ In addition, the purchasing agent may solicit proposals directly from potential vendors, ~~and~~ Any additional solicitations shall include businesses selected from a list made available by the Virginia Department of Small Business and Supplier Diversity ~~Minority Business Enterprise. Public notice may also be published on the Virginia Department of General Services' central electronic procurement website and other appropriate websites.~~
- Notice period: The public notice shall be given at least ten calendar days prior to the date set for receipt of proposals.

- Contents of the notice: The notice shall contain, at a minimum, the following information: (1) the name of the purchasing entity; (2) a brief description of the goods or services to be procured; (3) the date and time set for receipt of proposals; (4) the requisite qualifications for vendors, if applicable; (5) the factors that will be used in evaluating the proposal, including an indication of whether a numerical scoring system will be used and point values assigned to each criteria~~the date and time of the pre-proposals conference, if applicable; (6) the name of the purchasing agent;~~ (7) the location where RFP documents can be obtained; and (8) the sample contract or general contract terms and conditions that will be applicable to the eventual contract~~legal authority for the procurement.~~

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

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

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

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

- When a pre-proposal conference should be held: Pre-proposal conferences may be particularly advisable when the County seeks to procure goods that are highly technical or complex or for consultant services contracts.
- Notice of the pre-proposal conference: If a pre-proposal conference is conducted, the public notice and the RFP must provide the time, date, and location of the conference. The conference should be held as soon as possible after the RFP is issued, but after sufficient time is allowed for offerors to have read the solicitation.
- Attendance at a pre-proposal conference: Attendance of prospective vendors at pre-proposal conferences should be discretionary as a general rule, not mandatory, in order to ensure that qualified vendors who are unable to attend are not excluded from submitting a proposal. If attendance is mandatory, only those proposals from prospective vendors

represented at the pre-proposal conference shall be accepted.

- Oral representations at the pre-proposal conference: The purchasing agent should make a written note of all inquiries and points of contention raised by the prospective vendors. Clarification may be provided at the pre-proposal conference so long as the specifications or conditions are not altered. Oral representations made at the pre-proposal conference by the purchasing agent or any member of the selection committee shall not be binding on the County. All material clarifications of any provision of the RFP, or the amendment of a specification or condition of the RFP, shall be made only be in writing and documented as an addendum, as provided herein.

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

11-8 The Submittal of Proposals

Proposals submitted shall comply with the following:

- Proposal in standard format: All proposals shall be in the format prescribed by this manual, as set forth in Chapter 12.
- Changes to the proposal: All erasures, interpolations, and other changes in a proposal shall be signed or initialed by an authorized representative of the vendor.
- Delivery of proposal: The purchasing agent shall not accept oral proposals nor proposals received by telephone, fax, or other form of electronic transmission.
- Deviations: Proposals containing conditions, omissions, erasures, alterations, or items not called for in the RFP may be rejected by the County as being incomplete or may be clarified by the offeror upon request if, in the opinion of the purchasing agent, doing so will be in the best interests of the County.
- Proposal must be signed: A proposal must be signed by an authorized representative of the vendor in order to be considered. If the vendor is a corporation, the proposal must be submitted in the name of the corporation, not the corporation's trade name. The vendor must indicate the corporate title of the individual signing the proposal.
- Proposal must be submitted in sealed opaque envelope: A proposal and all other documents required to be submitted as part of the proposal shall be enclosed in a sealed opaque envelope.
- Identification of proposal: The envelope containing the proposal should be sealed and marked with the RFP number, the hour, and date upon which

the bid must be received and the vendor's Virginia contractor registration number (if required). If an envelope does not contain the proper identification, and it is inadvertently opened in advance of the prescribed date and time for which the proposals are to be received, the purchasing agent should write an explanation of the inadvertent opening on the envelope, with the RFP number, time, and date of opening. The envelope should be resealed and deposited with the other proposals.

11-9 The Receipt of Proposals

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

- Proposals must be timely received in pPurchasing eOffice: All proposals shall be received in person, through the mail, or by parcel service, in the pPurchasing eOffice, until, but no later than, the time and date set for the receipt of proposals in the RFP. The time stamp clock in the pPurchasing eOffice shall be the sole clock used to determine whether a proposal is timely received.
- Timely receipt of proposals sole responsibility of vendors: It shall be the sole responsibility of the vendor under all circumstances to asensure that its proposal is timely received. The County shall assume no responsibility in asensing that proposals sent by mail or by parcel service and delivered to the County Office Building will be timely received and time-stamped in the pPurchasing eOffice.
- Proposals must be time stamped: The time for the receipt of proposals shall be determined by the time clock stamp in the pPurchasing eOffice. Vendors are responsible for asensing that their proposals are stamped by pPurchasing eOffice personnel by the time and date for which proposals are to be received.
- Proposals kept in secure location until opened: All proposals received and time stamped will be kept in a secure location in the pPurchasing eOffice until the time and date for their receipt has passed.
- Identity of vendors confidential: Prior to the time and date that proposals are to be received, the identity of the vendors and the number of proposals received is confidential, and may be disclosed only to County officials -and only when disclosure is considered necessary for the proper conduct of the RFP process.
- Late proposals: Late proposals shall not be considered under any circumstances, and shall be returned unopened to the sender or retained unopened in the file.

The purchasing agent may impose additional requirements pertaining to the receipt of proposals if ~~such~~these requirements are set forth in the RFP and are

consistent with this manual and the Virginia Public Procurement Act.

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

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

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

The procedure for evaluating proposals is discussed in more detail in ~~e~~Chapter 15.

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

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

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

11-1~~1~~2 Conduct Negotiations

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

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

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

Table 11-2

Comparison of Procedures for Negotiations and Contract Award	
Professional Services	Goods and Nonprofessional Services
Discussions emphasize professional competence to provide the required services	Discussions emphasize qualifications and suitability, based on the factors in the request for proposal
May discuss nonbinding estimates of total project costs	Price may be considered, but need not be the sole determining factor
Offerors ranked by qualifications and proposed services	Offerors not ranked
Negotiations begin with the offeror ranked first	Negotiations conducted with each offeror deemed fully qualified and best suited
Award to the offeror ranked first if a contract satisfactory and advantageous to the County can be negotiated at a fair and reasonable price; if not, begin negotiations with offeror ranked second, and so on	Award to offeror who, in County's opinion, has made the best proposal
County may determine only one offeror fully qualified or clearly more highly qualified, and may negotiate and award contract to that offeror	County may determine only one offeror fully qualified or clearly more highly qualified, and may negotiate and award contract to that offeror

11-13 Contract Award

After the negotiations are completed with each vendor for the procurement of goods and nonprofessional services, the purchasing agent, upon the recommendation of the selection committee, selects the vendor that has made

the best proposal, and awards the contract to that vendor. For the procurement of professional services, if a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the contract award is made to that vendor. If a contract award cannot be made, the County then moves to the second-ranked vendor and attempts to negotiate a contract with that vendor, and so on.

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

- Notice of intent to award: The purchasing agent shall post in a public place a written announcement of the decision to award, which may be identified as a notice of intent to award. The notice of intent to award shall also include a statement that the public records pertaining to the procurement have been and are available for inspection by those vendors participating in the procurement process. The purchasing agent is not required to provide individual notice of the intent to award to any participating vendors; rather, it is each vendor's duty to ascertain when the notice of intent to award is issued and posted.
- Protest period: The receipt of the notice of intent to award by a vendor shall commence a ten-day period in which any vendor who desires to protest the decision to award a contract may do so, as provided in [Chapter 24](#).
- Contract award if no timely protest received: The purchasing agent shall not award a contract until the protest period has expired. After the protest period has expired, and if no vendor has protested the decision to award, the purchasing agent shall award the contract to the vendor identified in the notice of intent to award.
- Contract award if timely protest received: If a written protest is timely received, the purchasing agent shall take no further action to award the contract unless, upon prior consultation with the county attorney, the purchasing agent determines in writing that proceeding without delay is necessary to protect the public interest or unless the offer would expire. The written determination shall be placed in the contract file.
- Contract award if legal action brought: If a legal action is brought by a vendor, actual or prospective, as provided in *Virginia Code* § 2.2-4364, the purchasing agent shall take no further action to award the contract unless, upon prior consultation with the county attorney, the purchasing agent determines in writing that proceeding without delay is necessary to protect the public interest or unless the offer would expire. The written determination shall be placed in the contract file.

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

to award a contract.

Chapter 12. Competitive Negotiation: Elements of a Request for Proposals

Summary

This chapter identifies the minimum elements of a request for proposals when procuring goods or services using the competitive negotiation procedure.

Essential Information in this Chapter
• The competitive negotiation procedure formally begins when the RFP is issued. • The RFP must, at a minimum, describe the goods or services to be procured, and identify the applicable contractual terms and conditions, the minimum qualifications for the successful vendor, and the criteria by which each proposal will be evaluated.
Key References to the Code of Virginia Applicable to this Chapter
Section 2.2-4301: Definitions of competitive negotiation and other key terms Section 2.2-4303(A): When competitive negotiation required, generally

12-1 General

The competitive negotiation procedure formally begins when the purchasing agent issues an RFP. The RFP defines the responsibilities of the vendor as well as those of the County, describes the requirements for performance, and establishes criteria against which the vendor will be measured. At a minimum, the RFP must contain:

- A description, in general terms, of the goods or services to be procured.
- The contractual terms and conditions applicable to the procurement, or incorporation one of those terms and conditions by reference.
- A statement of any requisite qualifications of the potential vendors.
- A statement describing the criteria by which each proposal will be evaluated, as well as whether a numerical scoring system will be used, including any unique capabilities or qualifications which will be required of the vendor.

The following sections discuss in detail each of the elements of an RFP. The level of detail contained in an RFP depends in part on the nature of the particular procurement.

The template for an invitation for bids a request for proposal solicitation held by the purchasing agent should be used for all such invitations requests, unless the purchasing agent, in his sole discretion, permits a substitution. See Appendix B.

Table 12-1

The Nine Elements of a Request for Proposals	
1.	The Introduction
2.	General information
3.	Description of the goods or services to be procured
4.	The minimum qualifications of a vendor
5.	Contractual terms and conditions
6.	Minimum standards of a proposal
7.	Required elements of a proposal
8.	Submittal requirements
9.	Evaluation criteria

12-2 The Introduction

The introduction to the RFP provides prospective vendors with general, but important, information pertaining to the procurement. The introduction should contain the following:

- Identifying information: Provide the full names of the County and the using department, the name of the project, and the RFP number assigned by the purchasing agent.
- Summary description of the goods or services: Briefly describe what is being procured.
- Summary explanation for the procurement: Briefly explain why the using department is procuring the goods or services. The explanation may include, as appropriate, information about the goals and objectives of the using department and how the procurement relates to the department's goals and objectives, a summary of the functions to be supported by the goods or services, or a statement that the goods will supplement or replace existing equipment.

The information provided in the introduction should be stated in clear, simple, and concise language. Information that is not directly related to the procurement should not be included.

12-3 General Information

The general information section of the RFP should provide information about the procurement process and instructions as to how to respond to the RFP. This section should contain the following information:

- Anticipated procurement schedule: The anticipated procurement schedule, setting forth each milestone, if practicable, from the date proposals must be received to the date performance of the contract will begin.
- Procurement procedure: A brief description of the competitive negotiation procedure applicable to the procurement consistent with this manual and the Virginia Code.
- Proposal requirements: A statement that the proposal must be prepared and submitted as provided in the RFP.
- Designate proprietary information: A statement that vendors may designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential in accordance with state law.
- Identify references: Identify all documents pertinent to the procurement, such as studies, feasibility studies, surveys, drawings, plans, configurations, specifications and standards, government regulations and correspondence, and when and where the reference documents are available to prospective vendors.
- Identify the contract: Include in the solicitation ~~Identify~~ the proposed County contract that will be used for the procurement or the County's general terms and conditions, as well as specific terms and conditions, if applicable. The proposed contract should include the anticipated term and optional renewal period(s).
- Identify contact persons: ~~Identify each County contact person and his mailing address, email address, telephone number and fax number. The purchasing agent~~ or responsible buyer should be identified as the contact person for procedural questions pertaining to the procurement, including the contact mailing address, email address, telephone and fax numbers. ~~and a representative of the using department should be identified as a contact person for questions pertaining to the goods or services to be procured.~~
- Solicit notice of competition-restricting requirements: A statement requesting notification of solicitation requirement or requirements that restrict competition to a single source.
- Solicit comments and questions: A statement soliciting comments from all prospective vendors about the RFP.
- Information pertaining to addenda: A statement informing prospective vendors that inquiries relating to the interpretation and technical details of the RFP must be in writing and must be received by the purchasing agent,

not the using department, at least seven days prior to the date proposals must be received. The statement shall include a provision advising prospective vendors to contact the purchasing agent or responsible buyer in the ePurchasing eOffice five days before the date proposals must be received to ascertain whether addenda have been issued.

- Right to waive informalities: A statement that the purchasing agent may waive informalities in any proposal.
- Right to cancel the procurement or reject all offers: A statement that, at any time prior to award of the contract, the purchasing agent may cancel for any reason the RFP, or reject any or all of the proposals, as provided by law.

The purchasing agent should include any other general information when appropriate for a particular procurement, ~~such as anticipated funding or budgeting requirements.~~

12-4 Description of the Goods or Services to be Procured

The goods or services to be procured should be described in detail. If goods are being procured, the description should be in the form of a specification developed pursuant to eChapter 7.

If services are being procured, the description should state in simple ~~non-technical terms~~ the services to be performed by the vendor. The description should include the following information:

- Deliverables: All items to be delivered and services to be performed by the vendor, including operating manuals, training, repair parts, software, and reports. The services to be performed should be identified by each required task, set forth in a logical sequence.
- Mandatory approaches: If a service must be performed in a particular manner, it must be identified.
- Quality assurance: Identify quality assurance requirements applicable to performance of all items to be delivered and services to be performed.
- Questions requiring answers: Identify all questions that the County has that require answers.

This list is not exhaustive. The primary purpose of the description is to inform prospective vendors what the County desires to procure.

12-5 Cost

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

An RFP for the procurement of professional services may not request that prospective vendors include the cost of the services or even furnish estimates of man-hours.

12-6 Minimum Qualifications of Vendors

The RFP shall specify the requisite qualifications of the successful vendor by identifying the minimum necessary experience, background, or expertise in the area of the procurement. The qualifications will vary depending on the goods or services to be procured. However, they may not be so onerous so as to restrict competition. The qualifications of vendors are discussed in more detail in [Chapter 23](#).

12-7 Contract Terms and Conditions

The contract terms and conditions contained in or attached to an RFP shall be only those terms and conditions developed by the purchasing agent and the county attorney. The using department shall not substitute any term or condition.

- General contract terms and conditions: The RFP shall contain general terms and conditions for doing business with the County that apply to all procurements by the County.- The [invitation request](#) may also include or reference a contract template identified by the purchasing agent as applicable to the procurement.
- Specific terms and conditions: The RFP shall also contain terms and conditions that are specific to the procurement.

Contract and solicitation templates, as well as the general These terms and conditions are set forth in the Appendix and may be provided in the solicitation or on the [Purchasing Office's website](#). The templates and general terms and conditions and specific terms and conditions, and are subject to change from time to time by the purchasing agent and the county attorney. See Appendix A, Contract templates; Appendix B, Solicitation templates; Appendix D, general terms and conditions; Appendix E, specific terms and conditions.

12-8 Minimum Standards of a Proposal

The RFP shall include a section that sets forth the required standards of a proposal to assure that the County receives information from each vendor in a consistent format. The minimum standards of a proposal are as follows:

- Proposal must be in writing: The proposal shall be in writing, in legible text.
- Proposal must be in a standard format: The proposal shall be in a standard format, provided by the County. The reasons for this requirement are: (1) to place vendors of different sizes on a more equal basis; and (2) to assist the purchasing agent, the using department and the selection committee in its evaluation of the proposals, since all vendors will provide similar information and it will be easier to make comparisons and determine which vendors are less qualified.

The purchasing agent may impose other standards ~~including, but not limited to, page limitations.~~

12-9 Required Elements of a Proposal

The RFP shall include a section that sets forth the required elements of a proposal to assure that the County receives relevant information from each vendor. The required elements of a proposal are as follows:

- Identification of vendor: 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.
- Identification and experience of key personnel: The names, abilities, qualifications, and experience of all personnel who would be assigned to work on the project. This element is required for the procurement of services, but may be waived for the procurement of goods.
- Discussion of the project: A statement of the vendor'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 discussion should also include a plan giving as much detail as is practical explaining how the services will be performed. The plan should include a list of the key verifiable milestones in the project.
- Identification of prior experience: Identification of all other contracts under which goods or services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time.

Other elements may be required, in the discretion of the purchasing agent. ~~In requiring additional elements, the purchasing agent should consider the evaluation criteria established for the procurement, in order to assure that the proposals will address all of the evaluation criteria.~~

12-10 Submittal Requirements

The RFP shall identify all of the bid submittal and receipt requirements identified in sSections 11-8 and 11-9.

12-11 Evaluation Criteria

The RFP shall 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 and professional services, the evaluation criteria may include best value concepts, which allow consideration of the overall combination of quality, price, and other elements that in total are optimal relative to the County's needs. "Best value," as determined in the solicitation, means the overall combination of quality, price, and other elements of required services that in total are optimal relative to the County's needs. The RFP should also indicate the relative importance of each criterion. Criteria that will not affect the determination of whether a vendor is qualified, that will preclude otherwise competent vendors from competing, or that the selection committee will be unable to judge, should not be included. In addition, the number of evaluation criteria should not be so numerous so as to make it impossible for the selection committee to determine whether a vendor has satisfied all of the criteria.

See eChapter 13 for a detailed discussion on developing evaluation criteria and weighting those criteria.

Chapter 13. Competitive Negotiation: Evaluation Criteria

Summary

This chapter discusses the procedure for developing relevant and material evaluation criteria and methods to weight the criteria to score a proposal.

Essential Information in this Chapter	
• The RFP must identify those criteria determined by the purchasing agent, the using department, and the selection committee to be relevant and material to properly evaluate a proposal. • The criteria may include the vendor's plan for providing the goods or services, qualifications, experience with similar projects, past performance, availability, reputation, and familiarity with the County. • If criteria are weighted, it should be done with caution to assure that they are properly weighted in accordance with the importance of each criterion. • The RFP should indicate the relative importance of the criteria by describing the decisional logic that the selection committee intends to use to make the selection decision.	
Key References to the Code of Virginia Applicable to this Chapter	
Section 2.2-4301: Definitions of competitive negotiation and other key terms Section 2.2-4303(A): When competitive negotiation required, generally Section 2.2-4302.2: Process for competitive negotiation	

13-1 General

The RFP must identify those criteria determined by the purchasing agent, the using department, and the selection committee to be relevant and material to properly evaluate a proposal. The number of evaluation criteria should not be so numerous so as to make it impossible for the selection committee to determine whether a vendor has satisfied them all. ~~As noted in chapter 12, f~~For the procurement of goods and services other than construction and professional services, the evaluation criteria may include best value concepts, which allow consideration of the overall combination of quality, price, and other elements that in total are optimal relative to the County's needs.

13-2 Types of Evaluation Criteria

Evaluation criteria can be divided into three primary categories: (1) technical capability; (2) managerial capability; and (3) competitiveness and reasonableness of cost:

- Technical criteria: Technical criteria include the vendor's understanding of

the procurement; the vendor's management plan; the quality of the proposed design for certain goods; the experience and qualifications of key personnel; and vendor resources.

- Management criteria: Management criteria include the vendor's experience on similar projects; the vendor's performance on similar projects; the vendor's available facilities and resources for the project; and the vendor's plan for management and control of the project.
- Cost criteria: For the procurement of goods and nonprofessional services only, cost criteria include the vendor's proposed price (for fixed-price contracts); the realistic expected cost of performance, plus any proposed fixed fee (for cost-reimbursement contracts); and other costs, such as that of ownership, including transportation costs, and life-cycle costs (installation, operation, maintenance, security and disposal).

13-3 **Evaluation Criteria to be Included in a Request for Proposals**

The evaluation criteria that should be included in an RFP are listed below. The criteria at the top of the list are relatively more important than those at the bottom of the list.

- Plan for performing services: When services are being procured, the vendor's plan for performing the required services.
- Qualifications of the vendor: The qualifications and experience of the vendor and, in particular, the project team members, including the consultants, proposed to be assigned to the project.
- References: Provide at least three (3) references for work done within a specified number of years, with respect to the current requirement and on projects of similar size and scope.
- Experience with similar projects: A record of recent past performance of similar projects of similar scope. When appropriate, emphasize experience at the local government level and Virginia experience. State that the information provided should include such factors as controls of costs, quality of work, and the record of schedule adherence.
- Past performance: The past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of the work, and the ability to meet schedules.
- Availability of the vendor: The personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting. This criterion should include considering the current and projected workloads of the vendor that would affect its ability to perform the required work on schedule, and the availability of key personnel to be assigned to the project.

- Reputation: The vendor's reputation for personal and professional integrity and competency.
- Familiarity with the County: ~~If applicable, the familiarity of the vendor with the County and, if services are being procured, familiarity with the problem to be addressed by the procurement as it exists in the County.~~

This list is not exhaustive, though it does address the technical and management criteria that should be included in all procurements using the competitive negotiation procedure. Although the list of criteria may be expanded for a particular procurement, the purchasing agent, the using department, and the selection committee should avoid creating sub-criteria that will make it difficult to apply ~~the criteria~~.

Table 13-1

Sample Evaluation Criteria for a Consultant	
•	The methodology proposed
•	Qualifications and experience of assigned workers
•	Understanding of the project and its objectives
•	The degree of completeness of the vendor's response to the specific requirements of the RFP
•	The vendor's e Experience and history of the vendor in the disciplines covered by the RFP
•	Availability of personnel and whatever else is necessary for the performance of the work
•	The cost of the services to be provided

13-4 The Relative Importance of the Evaluation Criteria

The RFP should indicate the relative importance of the criteria by describing the decisional logic that the selection committee intends to use to make the selection decision. This may be accomplished in various ways, including the following:

- List by relative importance, differences small: List the criteria by relative importance, without assigning a specific weight to each; state in the RFP that the difference between the importance assigned to any one criterion and the criteria immediately preceding or following is small.
- List in descending order, predominant criteria: List the criteria in descending order of importance; identify which criteria are predominant.
- Identify most important class of criteria: State which class of criteria is most important; for example, state that the technical criteria ~~is~~are more important than the cost criteria.

- Identify the relative emphasis to be placed on classes of criteria: State that primary emphasis will be placed on one class of criteria, a lesser degree of importance will be placed on other classes, and include descriptions of the relative weight to be given by identifying that criterion within a class where satisfaction is mandatory, highly desirable, or desirable.
- Numerical weighting: Identify the weight given to each criterion by assigning a numerical value to that criterion.

Whether criteria should be weighted and how they should be weighted are addressed in sSections 13-5 and 13-6.

13-5 Whether to Weight the Criteria

The purchasing agent and the selection committee may use its discretion in determining how to score proposals, provided that it is not arbitrary. There are advantages and disadvantages to weighting the evaluation criteria listed in an RFP. If criteria are weighted, it should be done with caution to asensure that they are properly weighted in accordance with the importance of each criterion.

Weighting criteria can be a problem if the selection committee later wants to elevate the importance of a particular criterion that initially was given a lower weight. The selection committee should consider to not weight the evaluation criteria until the interview.

If a numerical scoring system will be used to evaluate proposals, the point values assigned to each criterion shall be included in the RFP or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.

13-6 Methodologies for Weighting Criteria

Following are several methodologies that can be used to weight the criteria. In selecting any of these or any other methodologies, the key is to have a method for evaluating proposals that is reasonable, fair, and objective to the extent practicable.

- Fixed weights: This is a simple mathematical weighting system. The selection committee assigns weight to each evaluation criterion by percentage distribution.
- Variable weights: This weighting system allows more flexibility in the weighting of criteria where it is determined that, as to satisfying certain criteria, proposals are of relatively equal merit. In such a case, the selection committee could give greater weight to other criteria. For example, the weight given to cost as a criterion could increase as the

selection committee determines that the proposals are relatively equal based on other certain criteria evaluated.

- Trade-off analysis: This weighting system requires the selection committee to evaluate the value of technical differences between proposals in order to determine if these differences justify paying the cost or price differential. The technical criteria are point scored and the differences between technical proposals are then traded off against the differences in price or cost. For example, the RFP may inform vendors that an award will be made on the basis of a cost-technical trade-off, with technical being of more relative importance than cost. The selection committee has a great deal of discretion when using this system. When this system is used, the RFP must inform vendors that the selection committee will determine the weight to be accorded cost or price criteria after determining the relative merits of the technical proposals. The cost or price criteria are not scored because the weight to be accorded them can only be judged after the relative merits of the proposals have been determined from a technical standpoint.
- Go, no-go: This weighting system is frequently used in situations in which goods are being procured and are to be subjected to testing. The technical and management criteria are scored on a go, no-go basis, which means that a technical or management element of a proposal is either adequate (go) or inadequate (no-go). If the element is inadequate, the vendor may be asked to revise its proposal; if the factor is adequate, it is no longer relevant in the evaluation process and an award is made on the basis of the other criteria. If this weighting system is used for the procurement of goods, the RFP should provide for the award to the vendor with the lowest overall price among those proposals found acceptable in the technical and management areas.

As an alternative or in addition to the weighting systems described above, the selection committee should also consider adopting decision rules. A decision rule tells the committee how to deal with a criterion under varying conditions. For example, a decision rule might be: "if management is rated anything less than satisfactory, the entire proposal is unacceptable" or, "if the proposed price is 30 percent higher than the using department's estimate, it will be judged as being potentially unrealistic and the vendor's proposal will be reevaluated to determine if there is a misunderstanding of the requirements."

13-7 Scoring Proposals

After the system for weighting the criteria is determined, the selection committee must also determine how the proposals will be scored. There are several methods by which proposals may be scored, including by adjective (excellent, good, fair . . .), numerical (10, 9, 8 . . .), narrative and ranking. A narrative evaluation may be the most effective scoring procedure in situations where the selection committee must present its results to the ~~h~~Board of ~~s~~Supervisors.

Narratives can communicate specific information that adjectives and numbers cannot.

Chapter 14. Competitive Negotiation: Addenda, Modifications, and Withdrawals

Summary

This chapter address situations in which the RFP is revised by an addendum or the proposal submitted by a vendor is either modified or withdrawn.

Essential Information in this Chapter
• The purchasing agent may modify an RFP by issuing a written addendum no later than five calendar days prior to the date proposals must be received; if the addendum modifies the date proposals must be received, it may be issued at any time prior to that date. • A proposal may be modified by the vendor any time prior to the time and date proposals must be received. • A proposal may be withdrawn at any time, and a withdrawn proposal may be resubmitted any time prior to the time and date proposals must be received.
Key References to the Code of Virginia Applicable to this Chapter
Section 2.2-4301: Definitions of competitive negotiation and other key terms Section 2.2-4303(A): When competitive negotiation required, generally

14-1 General

Once the RFP is issued, the course of the procurement process is still subject to change. It may become apparent to the purchasing agent, the using department, or the selection committee that the RFP contains an omission or an ambiguity that must be corrected or clarified prior to the date that proposals must be received. A vendor may realize after its proposal has been submitted that it contains errors or omissions that must be corrected or ~~that~~which compel the vendor to desire to withdraw its proposal altogether.

14-2 Amending a Request For Proposals by Addendum

If, after an RFP is issued but prior to the receipt of proposals, the RFP must be amended or clarified, the purchasing agent may issue addenda that modify the RFP. The following procedures shall apply:

- Authority to issue an addendum: The purchasing agent shall have the sole authority to issue an addendum.
- Initiation of an addendum: An addendum may be initiated by the

purchasing agent in his discretion, upon his own determination of the need, upon the request of the using department, or upon the request of a prospective vendor who requests clarification of a provision of the RFP.

- Addendum must be in writing: All addenda shall be in writing. No oral modification of any provision of an RFP shall be permitted.
- Timing of issuance of addendum: If the purchasing agent determines that an addendum is necessary, it shall be issued no later than five calendar days prior to the date proposals must be received. An addendum extending the date for the receipt of proposals or withdrawing the RFP may be issued any time prior to the date proposals must be received.
- Notifying prospective vendors about addendum: An addendum shall be provided to all potential vendors who were provided an RFP. Acceptable means of providing addenda to potential vendors are hand delivery, first class mail, fax with telephone confirmation of receipt, email, posting on the ePurchasing eOffice website for download, or other means designed to ensure receipt of the addenda as soon as possible.
- Changing the date proposals must be received: When issuing an addendum, the purchasing agent should consider the effect on the time for prospective vendors to prepare their proposals. If additional preparation time is likely to be required by the vendors, the addendum should also extend the date proposals must be received by a reasonable period of time.

14-3 Modifying a Proposal Prior to Proposal Receipt Date and Time

A proposal may be modified by the vendor, subject to the following requirements:

- Notification: The vendor shall notify the purchasing agent in writing of its intentions to modify its proposal.
- Time to modify: If the vendor modifies its proposal, it must submit and the purchasing office must receive the corrected proposal before the deadline for receipt of proposals.
- ~~Cost may not be revealed: If cost is an evaluation criterion, the modification must be so worded by the vendor as to not reveal the original amount of the proposal.~~

14-4 Withdrawing a Proposal

A vendor may withdraw from the competitive negotiation process at any time, prior to and after the date time which proposals must be received. The vendor shall notify the purchasing agent in writing of its intention to withdraw. A

withdrawn proposal may be resubmitted to the purchasing agent up to the time and date proposals must be received.

Chapter 15. Competitive Negotiation: Evaluating Proposals

Summary

This chapter describes the steps to be taken in order to properly evaluate each proposal received in response to an RFP.

Essential Information in this Chapter	
• The selection committee reviews and scores each proposal based on the evaluation criteria specified in the RFP. • The evaluation process should consist of feature-by-feature comparisons of the proposals <u>to the evaluation criteria set forth in the solicitation</u>, the evaluation of trade-offs among competing proposals, and, if goods or nonprofessional services are being procured, cost comparisons. • The scope of the evaluation of each proposal should cover, at a minimum, the proposal's general quality and responsiveness, and the vendor and its personnel. • The selection committee should use the information contained in each proposal to evaluate its merit. Other relevant information from previous surveys, field technical reports, and advisors and consultants may be used to evaluate criteria other than technical criteria. • An RFP for the procurement of goods or nonprofessional services that requests pricing information should be evaluated using either a cost, price, or value analysis. • The selection committee may exclude a vendor from further consideration in the procurement process if it determines that its proposal is <u>not competitive and, therefore, not suitable for further consideration</u>, unacceptable; whether a proposal is <u>suitable for further consideration</u>, acceptable or unacceptable should not be determined on the basis of a predetermined cut-off score. • Upon completion of the evaluation of the proposals, proposals are classified as being either <u>suitable for further consideration or are eliminated from further consideration</u>, “acceptable”, “potentially acceptable” and “unacceptable.”	
Key References to the Code of Virginia Applicable to this Chapter	
Section 2.2-4301: Definitions of competitive negotiation and other key terms Section 2.2-4303(A): When competitive negotiation required, generally	

15-1 General

The selection committee reviews and scores each proposal based on the evaluation criteria specified in the RFP. After the committee reviews the proposals, it chooses two or more vendors who are qualified, responsible, and suitable. The committee may choose a single vendor, but only if the purchasing agent documents in writing that the vendor is the only one qualified or is clearly the most qualified.

The purchasing agent then coordinates negotiations with ~~those two or more~~ vendors submitting proposals that are ~~the most competitive acceptable or potentially acceptable~~, and issues a notice to those vendors whose proposals were ~~eliminated from further consideration determined to be unacceptable~~.

15-2 The Evaluation Process

After the proposals are opened and the vendors are identified, the selection committee is convened. Before the first committee meeting, the purchasing agent should prepare scoring forms. Evaluation must be based only on the criteria specified in the RFP. Other criteria cannot be added or substituted.

All RFP responses are to be evaluated. Evaluators should not compare proposals against one another and should not include in the comments on one proposal any references to another offeror's proposal. Proposals not meeting requirements should be scored lower. Evaluators should carefully document and justify their scores providing detailed, legible comments and specific references to an offeror's responses, as this information is used during debriefing conferences with unsuccessful offerors.

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

Table 15-1

Techniques to Insure Fairness in the Evaluation Process	
• • • •	Have technical and cost elements of a proposal evaluated by different groups of the committee, with cost information withheld from the technical personnel <u>until technical scoring is completed</u> .
	Have all the same evaluators review each proposal or portion of a proposal .
	The committee may should select a member to conduct references of acceptable vendors.
	During reference checks, the committee member should obtain information as to how the vendor performed for the organization, the type and extent of claims filed, problems that occurred during the contract term and how they were resolved, and the vendor's reliability and professionalism. During interviews, any questions arising from reference checks should be asked.

The selection committee should select the top ~~two or more~~ ~~three to five~~ proposals to move on to the negotiation or discussion stage. The process becomes cumbersome when more than five vendors are considered.

15-3 The Scope of an Evaluation

The evaluation of proposals by the selection committee is limited to the criteria set forth in the RFP. At a minimum, the scope of the evaluation of each proposal should cover the following, so long as each of these is included in the published evaluation criteria:

- General quality and responsiveness: Responsiveness to terms, conditions, and time of performance; completeness and thoroughness; understanding of the problem or of the work to be performed; and the proposed approach to be used.
- Organization and personnel: Evidence of good organizational and management practices; qualifications of personnel; experience and past performance; financial condition; and, for goods and nonprofessional services, price and bid-price breakdown, or price range and cost schedule.

The selection committee must ~~also~~ evaluate each proposal for satisfaction of all ~~other~~ criteria set forth in the RFP.

15-4 Information Used to Evaluate Proposals

The selection committee should use the information contained in each proposal to evaluate its merit. ~~However, it may also use other relevant information from previous surveys, field technical reports and advisors and consultants. If information not contained in a proposal is used, it should be considered to evaluate all proposals, and vendors should be notified that the outside information is being considered.~~

For the evaluation of technical criteria, only the information contained in each proposal should be considered. However, the selection committee may request that a vendor provide additional technical information. ~~For cost analysis, field pricing reports and audit reports may be used.~~

15-5 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 pricing information should be treated as nonbinding, primarily because negotiations may bring to light additional needs or requirements not identified in the RFP, or because some anticipated services may not be required.

Nevertheless, if an RFP for the procurement of goods or nonprofessional services identifies cost as an evaluation criterion, it must be evaluated. Following are three different ways in which the cost of a procurement may be evaluated:

- Cost analysis: This analysis consists of reviewing and evaluating separate cost elements and proposed profit of: (1) a vendor's costs or pricing data; and (2) the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion as to the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. This analysis requires that the committee evaluate specific elements of cost, the necessity for certain costs, the reasonableness of the amounts estimated for the necessary costs, the reasonableness of allowances for contingencies, the basis used for allocation of indirect costs, the appropriateness of allocations of particular indirect costs to the proposed contract, and the reasonableness of the total cost or price.
- Price analysis: This analysis is made by examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. In making this analysis, consideration must be given to any differing terms and conditions. Price analysis is used to determine if a price is reasonable and acceptable, and involves an evaluation of the prices for the same or similar goods or services. This analysis requires the selection committee to evaluate the price submissions of prospective vendors in the current procurement, prior price quotations and contract prices charged, prices published in catalogues or price lists, prices available on the open market, and in-house estimates of cost.
- Value analysis: This analysis evaluates the function of a product and its related costs in order to determine its inherent worth, or value, and to determine if the price is consistent with what the goods or services should cost. This analysis requires that the committee evaluate what the goods or services provide to the County, the life-cycle costs, whether there are other ways in which the service or function could be obtained and what it would cost, and whether there are features of the goods or services that could be modified or eliminated.

The selection committee must determine how cost information will be evaluated before the evaluation process begins.

15-6 Determining Whether a Proposal is Suitable for Further Consideration

The selection committee may exclude a vendor from further consideration in the procurement process if it determines that its proposal is inferior based on scoring of the evaluation criteria and, therefore, not suitable for further consideration. unacceptable. The committee should not determine which proposals are not suitable unacceptable on the basis of a predetermined cut-off score. Rather, those proposals determined to be excluded from further consideration unacceptable should be those that are inferior not close to being acceptable because of deficiencies that are not easily correctable.

A proposal must contain sufficient information so that the selection committee knows what is being proposed. An informational deficiency should be considered material, and the proposal inferior~~unacceptable~~, only after the selection committee considers: (1) the detail called for in the RFP; (2) whether the omissions make the proposal unsuitable for further consideration~~unacceptable~~ or merely inferior; (3) the scope and range of the omissions; (4) whether the proposal offers significant cost savings; and (5) the number of offerors in the competitive range.

A proposal should not necessarily be determined to be unsuitable for further consideration~~unacceptable~~ solely because it fails to conform to all of the requirements of the RFP. The selection committee has broad discretion in determining whether a proposal is competitive or inferior~~acceptable, potentially acceptable or unacceptable~~, as long as its decision is neither arbitrary or capricious. The key question is whether the proposal has a reasonable chance of being selected for award.

Following are examples of deficiencies in a proposal that the selection committee may determine to be material and to render the proposal not suitable for further consideration~~unacceptable~~:

- Fails to satisfy technical objectives: The proposal is incapable of satisfying the technical objectives of the RFP.
- Material deficiencies: The proposal contains deficiencies that are so material as to preclude any possibility of upgrading the proposal except through major modifications or revisions.
- Extremely low rating: The proposal is rated so low that any attempt to upgrade the proposal to an acceptable level would require an unreasonable and unfair degree of assistance from the County.
- Technical issue not clarified: The proposal is technically inferior~~unacceptable~~ and the vendor fails to timely respond to a request for clarification.
- Price omissions: The proposal omits a number of required prices.
- Feasibility of approach unsupported: The proposal fails to include detailed information establishing the feasibility of the vendor's proposed approach.
- Addendum not acknowledged: The vendor fails to acknowledge receipt of an addendum to the RFP where offered prices would have been significantly increased by the addendum and vendors were advised that failure to acknowledge the amendment would result in rejection of the proposal.

A vendor should not be excluded if there is a close question as to whether its proposal is competitive~~acceptable~~, or if information deficiencies in the proposal

can be corrected by information obtained during the negotiation process, particularly if the deficiencies are the result of deficiencies in the RFP.

15-7 Establishing a Short-list of Vendors

Upon completion of the evaluation of the proposals, the selection committee should assign a score based on evaluation criteria and classify each proposal either “acceptable for further consideration”, ~~“potentially acceptable”~~ or “not suitable for further consideration~~unacceptable~~.” Thereafter, the committee shall invite two or more vendors it deems fully qualified, responsible and suitable, to interview with the committee.

The County is not required to interview all vendors who submit proposals. The number of vendors selected depends in part on the size, scope and complexity of the project, the number of qualified proposals, and the time available to complete the selection process. The process becomes cumbersome when more than five vendors are considered at the interview stage.

If the purchasing agent, on the recommendation of the selection committee, determines in writing and in his sole discretion that only one vendor is fully qualified, or that one vendor is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that vendor.

Vendors whose proposals are eliminated from further consideration~~unacceptable~~ should be notified by the purchasing agent that their proposals were removed from further consideration. The notice should be in writing and advise the vendors of the decision and express appreciation for their participation in the process.

Chapter 16. Competitive Negotiation: Negotiations

Summary

This chapter establishes the procedure for conducting negotiations with vendors selected by the selection committee following evaluation of the proposals.

Essential Information in this Chapter

- Before negotiations begin with the selected vendors, the selection committee should request any additional information from the vendors, provide advance information to vendors, arrange a tour of the site or the facility, if appropriate, schedule the negotiations, identify who should attend, and visit each vendor's office and recent projects, if appropriate.
- Negotiations must be confined to the vendor's proposal and its identified deficiencies in relation to the requirements of the RFP, and the requirements and format of the proposed written contract.
- The vendor may elaborate on its qualifications during negotiations and may revise, modify, or alter its proposal.
- The evaluation criteria established by the selection committee guide the negotiations.
- Negotiations should be conducted in a way to arrive at a complete agreement on all basic issues, and not leave any issues for later negotiation.
- If there is a concern about cost or price being too high or too low in the procurement of goods or nonprofessional services, the selection committee should advise the vendor during the negotiations so that the vendor may submit a revised cost proposal.

Key References to the Code of Virginia Applicable to this Chapter

Section 2.2-4301: Definitions of competitive negotiation and other key terms

16-1 General

Each vendor selected for negotiations (goods or nonprofessional services) or discussions (professional services), shall be invited to participate in an interview and make combined with an oral presentation. For simplicity, negotiations, discussions, and interviews and presentations are referred to as "negotiations."

Negotiations at this stage provide an opportunity to compare the different approaches, qualifications, and experiences of the vendors. Negotiations also allow the selection committee to compare the personal styles of each vendor's managers and key personnel, since the vendor selected will be closely associated with the County's staff over a period of time. The selection of a vendor is addressed in Chapter 17.

The negotiation procedure applicable to the procurement of goods or nonprofessional services differs from the procedure for the procurement of professional services. These procedures are summarized in ~~s~~Sections 16-2 and 16-3.

16-2 Negotiation Procedure for the Procurement of Goods or Nonprofessional Services

If goods or nonprofessional services are being procured, negotiations are conducted with each of the vendors selected. Price is considered, but need not be the sole determining factor. After negotiations have been conducted with each vendor, the selection committee shall recommend the vendor that, in its opinion, has made the best proposal. With the agreement of the head of the using department, the purchasing agent shall award the contract to that vendor.

16-3 Negotiation Procedure for the Procurement of Professional Services

If professional services are being procured, the negotiation process has three steps:

- Negotiations with all selected vendors: Negotiations are conducted with each of the vendors selected. The vendors should be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the procurement, as well as alternative concepts. The selection committee may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Repetitive informal negotiations are permissible.
- Selection and ranking: At the conclusion of the ~~first~~ negotiation ~~s~~ stage, the purchasing agent, on the recommendation of the selection committee, selects in the order of preference two or more vendors whose professional qualifications and proposed services are deemed most meritorious. This selection is based on the evaluation factors stated in the RFP and all of the information learned during the discussion stage.
- Negotiation of contract: ~~After the vendors are selected to advance to the next round and ranked, a second round of negotiations are then conducted, beginning with the vendor ranked first. Contract negotiations shall be had with the top-scoring vendor.~~ If a contract satisfactory and advantageous to the County can be negotiated at a price considered by the purchasing agent to be fair and reasonable, the award shall be made to that vendor. Otherwise, negotiations with the vendor ranked first shall be formally terminated and negotiations shall be conducted with the vendor ranked second, until a contract can be negotiated at a fair and reasonable price. This process continues until a contract can be successfully negotiated with a vendor, if at all.

Table 16-1

Comparison of the Two Competitive Negotiation Procedures	
Professional Services	Goods and Nonprofessional Services
Discussions emphasize professional competence to provide the required services	Discussions emphasize qualifications and suitability, based on the factors in the request for proposal
May discuss nonbinding estimates of total project costs	Price may be considered, but need not be the sole determining factor
Offerors ranked by qualifications and proposed services	Offerors not ranked
Negotiations begin with the offeror ranked first	Negotiations conducted with each offeror deemed fully qualified and best suited

16-4 Preparing for Negotiations

Before negotiations begin with the selected vendors, there are several preparatory steps to be taken to [ensure](#) that the interviews are useful in selecting the most qualified vendor.

- Request additional information: The selection committee may require each vendor to submit additional written materials, which should be delivered sufficiently in advance of the negotiations. The written submission may cover, as appropriate, responses to questions about points in the original proposal that may not have been clear, a non-binding estimate of the cost of services (goods or nonprofessional services only), a draft budget, staffing charts, schedules, and an estimate of the hours to be spent on the project by principals.
- Provide advance information to vendors: Vendors should be given as much advance information as possible, including the date, place, and time of the negotiations; the date for a tour of the site or facilities, if appropriate; a list of project issues; any feasibility studies, project program, or other background information not previously provided; the size and makeup of the selection committee; the time allocated for negotiations; a brief explanation of the selection process; and the evaluation criteria for negotiations. Each vendor should be provided identical information.
- Arrange a tour of the site or facility: For design projects other than those that are the simplest and most straightforward, a site or facility visitation prior to negotiations ~~may~~[will](#) allow vendors to observe the situation and ask questions before they finalize their presentation for negotiations. [If](#)

practicable. Tours should be made available for the entire group of vendors. If time permits, the tour should take place at least two weeks prior to negotiations.

- Schedule negotiations: The schedule for negotiations should be made alphabetically, by lot, or some other means, rather than in the order of each vendor's scoring during the proposal stage. All negotiations should be scheduled on the same day so that the members of the selection committee can compare all vendors while the information is still fresh in their minds. This will ensure consistent evaluation of the vendors. At least ~~45~~forty-five minutes should be allotted for each interview, and a ~~15~~fifteen minute free period should be provided between each vendor. This will allow ample time for negotiations and a question and answer period, and for the selection committee members to discuss negotiations with the vendor among themselves before beginning negotiations with the next vendor.
- Identify who should attend negotiations: The purchasing agent should request that a vendor's key personnel who would actually be assigned to the project appear at the negotiations. Representatives from the using department should also attend each negotiation.
- Visit each vendor's office and recent projects: For large projects, the selection committee should consider visiting each vendor's office and its recent projects.

This list is not exhaustive, and the purchasing agent should take all other steps in preparation of the negotiations that he deems necessary and appropriate.

16-5 Scope of Negotiations

Negotiations must be confined exclusively to the vendor's proposal and its identified deficiencies in relation to the requirements of the RFP, and the requirements and format of the proposed written contract. During negotiations, the vendor may elaborate on its qualifications and may revise, modify, or alter its proposal so that the County can obtain the best and final offer.

For the procurement of goods and nonprofessional services, the County may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of the price for services.

The selection committee shall not:

- Help a vendor bring its proposal up to the level of other proposals through successive rounds of discussion.
- Disclose technical information to a vendor that results in improvement of its proposal.

- Indicate to a vendor a cost or price that it must meet to obtain further consideration.
- Disclose proprietary information, technical information or ideas, or cost information of another vendor.
- Advise a vendor of its price standing relative to another vendor.
- Disclose the relative strengths and weaknesses of competing vendors.
- Ask for nonbinding estimates of costs for professional services at this stage of the procedure.

During the negotiation process, the selection committee must be sensitive not to disclose any unauthorized information that may provide an unfair advantage to one vendor over other vendors.

16-6 Negotiation Guidelines

The evaluation criteria established by the selection committee, ~~that~~^{which} guided the selection of vendors for the negotiations stage, also guide the negotiations themselves. Following is a brief summary of some recommended evaluation criteria, with an explanation of what those criteria allow the selection committee to evaluate during negotiations:

- Understanding of project requirements: To evaluate the vendor's analysis, preparation, and level of interest.
- Approach or methodology: To evaluate the vendor's creativity and problem solving ability.
- Key personnel: To evaluate the personal qualifications and professional skills of key individuals.
- Relevant vendor experience: To evaluate relevant related projects presented as previous work of the vendor.
- Relevant individual experience: To evaluate related projects presented as previous work of key personnel.
- Consultant and in-house resources: To evaluate the vendor's abilities and the importance of consultant or in-house support services.
- Technical project management: To evaluate the vendor's abilities related to technical functions, such as project cost controls, construction observation, and time schedules.

- Responsiveness to the County's concerns: To evaluate the vendor's ability to form successful working relationships and communications with the County.
- Method of compensation: To evaluate the vendor's method of determining compensation.

The selection committee should raise other questions in order to evaluate other important or relevant issues raised by the vendor.

16-7 Conducting Negotiations: Generally

The selection committee is responsible for conducting negotiations in a manner that will ultimately lead to the award of a contract to a vendor. The objective of the negotiation process is to arrive at a complete agreement on all basic issues, and not leave any issues for later negotiation. Thus, negotiations should be conducted so that best and final offers can be accepted without the need for further negotiations.

The following are general guidelines for conducting negotiations, during which the selection committee should:

- Control: Control all discussions.
- Identify deficiencies: Advise the vendor of deficiencies in its proposal so it has the opportunity to satisfy the RFP's requirements. (See [sSection 16-8](#) below)
- Resolve uncertainties: Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal. (See [sSection 16-8](#) below)
- Resolve mistakes: Resolve any suspected mistakes by calling them to the vendor's attention as specifically as possible, without disclosing information concerning other vendors' proposals or the evaluation process. (See [sSection 16-8](#) below)
- Opportunity to revise: Provide the vendor a reasonable opportunity to submit any cost, price, technical, or other revisions to its proposal that may result from the interviews (goods or nonprofessional services only).
- Cost or price: Inform a vendor that its cost or price is considered to be too high or unrealistic (goods or nonprofessional services only). (See [sSection 16-8](#) below)

The selection committee should document its proceedings and final decision in order to answer any questions that may arise about the final decision. However, individual selection committee members should be careful about retaining

personal notes made during the selection process because those notes may be subject to public disclosure.

16-8 Conducting Negotiations: Addressing Deficiencies, Uncertainties and Mistakes in a Proposal

Negotiations should address deficiencies, uncertainties, and mistakes in a proposal, and provide the vendor the opportunity to revise its proposal. The selection committee should be specific when identifying deficiencies, uncertainties, and mistakes, but must do so without advising the vendor of the corrections required. The selection committee should strive to ensure that it has reasonably communicated the specific deficiency, uncertainty, or mistake to the vendor.

- Deficiencies: A deficiency is any part of a proposal that does not satisfy a minimum requirement of the RFP, rather than a weakness of the proposal based on a comparative evaluation of the relative strengths and weaknesses of competing proposals. Disclosure of a deficiency should be made so that the vendor may correct the deficiency, thereby resulting in a better proposal and better competition. All deficiencies that may be corrected should be disclosed, not just those from selected areas of the proposals. The selection committee is not required to disclose deficiencies that cannot be corrected. Examples of deficiencies in a proposal ~~are include, but are not limited to,~~ the vendor's proposed personnel ~~are being~~ considered to be unqualified; the vendor's proposed costs ~~are being~~ unrealistically low; and the vendor's estimated level of effort and proposed price ~~being are~~ considered unreasonably high.
- Uncertainties: Uncertainties in a proposal may arise from a proposal not providing adequate information, and the selection committee being unable to determine the extent of the vendor's compliance with the requirements of the RFP. Discussions should be thorough to address uncertainties. An example of an uncertainty in a proposal ~~includes, but is not limited to, is~~ the selection committee ~~is being~~ unable to determine the extent of a proposal's indirect costs.
- Mistakes: A mistake is an error in a proposal. Discussions should resolve suspected mistakes by bringing them to the attention of the vendor as specifically as possible without disclosing information about other vendors' proposals.

The selection committee shall not instruct a vendor how to correct a deficiency, uncertainty, or a mistake.

16-9 Conducting Negotiations: Cost

If there is a concern about cost or price being too high or too low in the procurement of goods or nonprofessional services, the selection committee should advise the vendor during negotiations so that the vendor may submit a revised cost proposal.

It is proper for the selection committee to reveal the County's estimate or price goal, to disclose the amount of funds available for the project, or to inform a vendor that its proposed cost greatly exceeds the County's budget limits.

It is improper for the selection committee or any County officer or employee to indicate to a vendor that it must meet a certain cost or price in order to receive further consideration, to advise a vendor of its price standing relative to other vendors, to reveal the identity of the low vendor or that all vendors are in the same price range, or to otherwise furnish information about other vendors' prices.

Chapter 17. Competitive Negotiation: Selecting a Vendor After Negotiations

Summary

This chapter establishes the procedures for selecting a vendor after negotiations have been conducted. The procedure at this stage of the process differs depending on whether goods or nonprofessional services⁷ or professional services, will be procured.

Essential Information in this Chapter

- On the basis of the evaluation criteria published in the RFP and all of the information developed through the negotiation process, the selection committee selects a vendor or vendors with whom to negotiate a contract.
- If goods or nonprofessional services are being procured, the selection committee shall select the vendor that, in its opinion, has made the best proposal⁷ and shall recommend that the contract be awarded to that vendor.
- If professional services are being procured, the selection committee shall select in the order of preference two or more vendors whose professional qualifications and proposed services are deemed most meritorious. Negotiations are then conducted with the vendor ranked first and if a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that vendor. If not, negotiations with the vendor ranked first shall be formally terminated¹, and negotiations are conducted with the vendor ranked second, and so on.

Key References to the Code of Virginia Applicable to this Chapter

Section 2.2-4301: Definitions of competitive negotiation and other key terms; award

17-1 General

On the basis of the evaluation criteria published in the RFP and all of the information developed through the negotiation process, the selection committee selects a vendor or vendors with whom to negotiate a contract.

17-2 Selection: Goods or Nonprofessional Services

If goods or nonprofessional services are being procured, the selection committee shall select the vendor that, in its opinion, has made the best proposal⁷ and shall recommend that the contract be awarded to that vendor. Before the selection is made, the following steps shall be complied with:

- Solicit best and final offers: After negotiations have been conducted with all of the vendors selected, the selection committee shall solicit best and final offers from each vendor. The request should inform the vendors that

the negotiations have been concluded and should include a notice that vendors now have an opportunity to submit a best and final offer, and a common closing date for submitting the best and final offer.

- Evaluate best and final offers: The selection committee shall then evaluate the best and final offers and, if further negotiations and another round of best and final offers are not necessary, make a recommendation for award.
- Further round of best and final offers, if necessary: Best and final offers ~~should~~ be submitted only once, unless the purchasing agent makes a written determination that it is in the County's best interest to conduct an additional round. It is in the County's best interest to conduct an additional round of best and final offers if: (1) deficiencies in the initial best and final offers prevent their acceptance; or (2) further negotiations are necessary, as provided below.
- Further negotiations, if necessary: ~~Once best and final offers are received, negotiations should not be reopened unless it is clearly in the County's interest to do so.~~ Further negotiations may be necessary in the following situations: (1) substantial questions requiring further negotiations are raised by one of the best and final offers; (2) previously existing ambiguities are not discovered until after the best and final offers are received; (3) additional technical information is needed to evaluate the proposals; (4) the County's requirements change; or (5) the information available is inadequate to reasonably justify the vendor selection and award based on the best and final offers received. If negotiations are reopened, additional negotiations must be conducted with all vendors.
- Clarification, if necessary: 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 remaining in the selection process.

~~If further negotiations and another round of best and final offers are necessary, the subsequent round shall be evaluated, and the vendor selected, as provided above.~~

If the purchasing agent, on the recommendation of the selection committee, determines in writing and in hiss sole discretion that only one vendor is fully qualified, or that one vendor is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that vendor.

17-3 Selection: Professional Services

If professional services are being procured, the selection committee shall select in the order of preference two or more vendors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the vendor ranked first. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that vendor. Otherwise, negotiations with the vendor ranked first shall be formally terminated and negotiations conducted with the vendor ranked second, and so on until a contract can be negotiated at a fair and reasonable price. Once negotiations are terminated with a vendor, the selection committee may not return to negotiate with that vendor. ~~The terms “negotiated” and “fair and reasonable” imply a process of give and take in which both the County and the vendor are fully satisfied with the agreement.~~

If the purchasing agent, on the recommendation of the selection committee, determines in writing and in ~~its~~this sole discretion that only one vendor is fully qualified, or that one vendor is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that vendor.

17-4 Price and Scope of Work Documents

All details of the procurement should be resolved by the time a vendor is selected and, consequently, there should be little need for negotiation after the vendor is selected. The selection committee may request the selected vendor to provide the following two documents, to be attached to the contract:

- Contract amount: Although the contract amount should be identified in the contract itself, a contract amount exhibit may be included when the vendor may use individual prices in invoices for goods or services. This document should be predicated on the agreed upon work statement. Unit prices may include hourly labor rates for various classes of workers, equipment rental charges, and percentage discounts that apply to materials used. Services of an indeterminate nature, such as surveys and investigations, regulatory agency permits, and other like matters should be included under a separate section for special services, and contain caps of reasonable amounts, on these tasks.
- Work statement: A work statement exhibit may be included to state in detail how a service will be performed and the duties and responsibilities of the vendor. The work statement should reflect the scope of work that was agreed upon by the County and the vendor at the conclusion of the interview, and should identify each task to be performed by the vendor.

~~In the event that~~Because both of ~~if~~ these documents ~~are~~will be prepared by the vendor, they should be carefully reviewed by the using department, the selection committee, and the purchasing agent to be certain that they reflect the agreement of the parties and, if either does not, the document must be revised or further negotiations must be conducted.

Chapter 18. Competitive Negotiation: Canceling the Procurement or Rejecting All Bids Proposals

Summary

This chapter identifies the circumstances and establishes the procedure to cancel the RFP or to reject all proposals.

Essential Information in this Chapter
- At any time prior to award of the contract, the purchasing agent may cancel the RFP or reject any or all of the proposals. - The purchasing agent may cancel the RFP or reject any or all of the proposals for any reason, except to avoid awarding a contract to a particular vendor.
Key References to the Code of Virginia
Section 2.2-4301: Definitions of competitive negotiation and other key terms Section 2.2-4303(A): When competitive negotiation required, generally Section 2.2-4319(A): Authority to cancel or reject all proposals

18-1 General

At any time prior to award of the contract, and for any reason except as provided in [§](#)Section 18-3, the purchasing agent may cancel the RFP or reject any or all of the proposals.

18-2 Circumstances When Cancellation or Rejection Justified

Following is a list of circumstances in which cancellation or rejection may be considered:

- RFP too narrowly written: The purchasing agent may consider canceling the RFP or rejecting all proposals if it is determined that the work statement, specifications, or other requirements of the RFP were written in such a way so as to preclude a reasonable pool of vendors submitting proposals. The purchasing agent should consider canceling the RFP or rejecting all proposals if the number of proposals received is inadequate to [as](#)ensure that the procurement process is competitive.
- Ambiguous instructions: The purchasing agent may consider canceling the RFP or rejecting all proposals if, upon review of the proposals, it is apparent that numerous proposals were determined to be deficient for a similar reason, and it is determined that ambiguous instructions in the RFP were likely the cause for the deficiencies. The purchasing agent

should consider rejecting all proposals if it is determined that there is an inadequate number of acceptable proposals.

- Substantial omission in the work statement specifications: The purchasing agent may consider rejecting all proposals if it is determined that an essential requirement was omitted from the work statement or the specifications. The purchasing agent should consider cancellation or rejection if: (1) the purchasing agent is unable to determine whether the goods or services will meet the County's needs absent compliance with the omitted requirement or; (2) in taking into account the omitted requirement during the proposal evaluation process, fairness, impartiality, or competitiveness in the procurement process is compromised.
- Cost or price exceed available funds: If the cost or price of the goods or services exceeds available funds, the purchasing agent may cancel the procurement or reject all proposals if: (1) the purchasing agent requests that the using department provide him with a suggested reduction in scope of the proposed procurement; (2) the selection committee invites each vendor to amend its proposal based upon the proposed reduction in scope provided by the using department; and (3) no vendor deemed by the selection committee to be fully qualified and best suited for the procurement amends its proposal within the funds available.

This list is not exhaustive.

18-3 Circumstances When Cancellation or Rejection Prohibited

The purchasing agent shall not cancel an RFP or reject all proposals solely to avoid awarding a contract to a particular vendor.

18-4 Procedure to Cancel the Request For Proposals or Reject All Proposals

If the RFP is canceled, or if any or all of the proposals received are rejected, the purchasing agent shall state ~~such~~the reasons for rejecting the proposals in writing and place it the statement in the contract file.