

Chapter 1. Introduction

Summary

This chapter identifies the purposes of this manual, provides an overview of the principal features and requirements of the Virginia Public Procurement Act, and identifies the types of procurements subject to this manual and the Act. This chapter also defines key terms used⁷ and provides a summary of the essential information⁷ in this manual.

Essential Information in this Chapter
• This manual identifies the applicable policies and procedures for the procurement of goods and services⁷ and is to be followed by all County agencies and departments. • The primary goal and purpose of the procedures set forth in this manual is to <u>as</u>ensure that goods and services are procured in a competitive process which is fair, impartial, administratively efficient², and accessible to all qualified vendors. • This manual applies to the County and to the County Schools, and their boards, commissions, agencies, offices, departments, committees, and authorities when they procure goods or services from nongovernmental vendors.
Key References to the Code of Virginia Applicable to this Chapter
Section 2.2-4300(B): Purpose of the Virginia Public Procurement Act Section 2.2-4300(C): Policies and principles of the Virginia Public Procurement Act Section 2.2-4301: Definitions used in the Virginia Public Procurement Act Section 2.2-4303: Methods of procurement Section 2.2-4344: Exceptions to the requirement for competitive procurement

1-1 General

This manual sets forth the policies and procedures of the County of Albemarle and the Albemarle County School Board (hereinafter collectively referred to as the “County”; “School Board” is, from time to time, expressly identified for additional clarity and emphasis) for the procurement of goods and services, and is to be followed by all County agencies and departments.

The information contained in this manual is intended for the use and guidance of all officers and employees in the performance of their official duties. Thus, it sets forth not only what officers and employees must or should do, but also explains how those requirements or recommendations should be performed.

The purchasing office or the county attorney’s office may, from time to time, issue memoranda and opinions pertaining to procurement that are effective until they are included in a revision to this manual or until rescinded. Likewise, the purchasing agent, in consultation with the county attorney’s office, may make changes to the contract and solicitation documents in the Appendix without the necessity of presenting saidthe changes to the Board of Supervisors for approval

prior to implementation. This edition of the manual is effective November 14, 2001 and it supersedes all previous editions. Comments, suggestions, and questions of interpretation should be provided to the purchasing office or the county attorney's office.

This manual is not intended to create, and shall not be construed to create, any benefit for, or expectation in, any third party.

1-2 The Purposes of this Manual

This manual is based upon, and should be read in conjunction with, the Virginia Public Procurement Act (hereinafter sometimes referred to as the "Act"), which is located at *Virginia Code* §§ 2.2-4300 et seq. The County has not adopted alternative procedures to the competitive sealed bidding and competitive negotiation procedures authorized under the Act.

In addition to stating the policies and procedures of the County for the procurement of goods and services, this manual:

- Establishes procedures that promote competition affording every qualified vendor with a fair opportunity to obtain County business.
- Provides an understanding of the responsibilities, objectives, limitations, and duties of the purchasing agent and the using departments.
- Conveys to employees, and through them, to vendors, a clear understanding of the County's purchasing policies and objectives.
- Establishes reasonable standards against which internal and external auditors can measure the performance of the purchasing office's functions.

1-3 Overview of the Virginia Public Procurement Act

The principal features and requirements of the Virginia Public Procurement Act are as follows:

- Purpose of the Act: The Act enunciates the policies and procedures pertaining to the procurement of goods and services by the County from nongovernmental vendors to include governmental procurement that may or may not result in monetary consideration for either party and regardless of whether the County, the contractor, or some party is providing the consideration.
- To whom the Act applies: The Act applies to, among others, the County, the County ~~S~~schools, and their boards, commissions, agencies, offices, departments, committees, authorities, and institutions.

- What the Act requires: The Act requires that goods and services be procured in a competitive process that is fair, impartial, and accessible to all qualified vendors. Factors to be considered in determining whether competitive principles are being satisfied include cost, quality, and capability, but does not include non-work related factors.

1-4 **Overview of the Procurements Subject to this Manual and the Act**

This manual and the Act have broad application to the purchase of goods and services by the County from nongovernmental vendors.

- General: This manual and the Act apply to all public contracts with nongovernmental vendors for the purchase or lease of goods, or the purchase of services, insurance, or construction, each of which must be awarded after competitive sealed bidding or competitive negotiation, unless specifically exempted under the Act.
- Procurements using nongovernmental funds are subject to manual: This manual and the Act apply to the procurement of goods and services by the County even though private funds are used for the procurement.
- Procurements by lease are subject to manual: This manual and the Act apply to the procurement of goods and services acquired pursuant to a lease if the predominant purpose of the lease is to secure goods or services from a vendor.
- Procurements by which the County is paid for allowing a service are subject to manual: This manual and the Act apply to the procurement of services by which the County is paid by the vendor for allowing a service to be provided ~~(e.g., the County allows the installation of a pay phone on County property at no cost to the County, and the vendor offers to pay the County for allowing the service).~~
- Procurement that may or may not result in monetary consideration for either party.
- Other law authorizes procurement subject to manual: This manual and the Act may apply if another statute grants procurement authority to the County. Whether this manual and the Act apply shall be determined on a case-by-case basis.

Neither this manual nor the Act apply to the purchase, lease, and sale of real property.

1-5 **Definitions**

The following words and terms used in this manual and the Act are defined below:

- Bidder means a person who submits a bid in response to an invitation for bids.
- Competitive negotiation means a method of vendor selection described in ~~p~~Part 3 of this manual, which includes issuance of a request for proposals, public notice of the request for proposals, negotiation with selected offerors, and award.
- Competitive sealed bidding means a method of vendor selection described in ~~p~~Part 2 of this manual, which includes issuance of an invitation for bids, public notice of the invitation for bids, a public opening and announcement of the bids received, evaluation of the bids, and award.
- Construction means building, altering, repairing, improving, or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading, or similar work upon real property.
- Construction management contract means a contract in which a party is retained by the County to coordinate and administer contracts for construction services for the benefit of the County, and may also include, if provided in the contract, ~~the~~ furnishing ~~of~~ construction services to the County.
- County attorney means the county attorney or his deputy or assistant.
- Day means a calendar day, unless otherwise indicated.
- Dependent means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if ~~such~~that person receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.
- Design-build contract means a contract between the County and a vendor in which the vendor agrees to both design and build the structure, roadway or other item specified in the contract.
- Goods means all material, equipment, supplies, printing and automated data processing hardware and software.
- Immediate family means: (1) a spouse; and (2) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.
- Informality means a minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids or the request for proposals, which does not affect the price, quality, quantity or delivery schedule for

the goods, services or construction being procured.

- Invitation for bids means a document issued by the purchasing agent as part of the competitive sealed bidding procedure which solicits bids for goods or services, and which contains or incorporates by reference the specifications and contractual terms and conditions applicable to the procurement, and other information and requirements.
- Multiphase professional services contract means a contract for the providing of professional services where the total scope of the work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.
- Nonprofessional service means those services not specifically identified as a professional service.
- Offeror means a person who submits a proposal in response to a request for proposals.
- Official responsibility means the administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove, or otherwise affect a procurement transaction, or any claim resulting therefrom.
- Pecuniary interest arising from the procurement means a personal interest in a contract, whether due to being a party to the contract or due to a personal interest in a business which is a party to the contract, where the interest exists by one or more of the following:
 - (1)– Ownership in a business if the ownership interest exceeds three (3) percent of the total equity of the business.
 - (2)– Annual income that exceeds, or may reasonably be anticipated to exceed, ten thousand dollars (\$105,000) from ownership in real or personal property or a business.
 - (3)– Salary, or other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or government entity that exceeds, or may reasonably be expected to exceed, ten thousand dollars (\$105,000) annually.
 - (4)– Ownership of real or personal property if the interest exceeds \$105,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property.
 - (5)– Personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business.
 - (6) An option for ownership of a business or real or personal property if

the ownership interest will consist of clause (1) or (4).

- Personal interest means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. ~~Such~~A personal interest shall exist by reason of: (1) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (2) annual income that exceeds, or may reasonably be anticipated to exceed, \$~~105~~,000 from ownership in real or personal property or a business; (3) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be anticipated to exceed, \$~~105~~,000 annually; (4) ownership of real or personal property if the interest exceeds \$~~105~~,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; ~~or~~ (5) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (6) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (1) or (4).
- Personal interest in a contract means a personal interest which an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract.
- Procurement transaction means all functions that pertain to the obtaining of any goods, services, insurance or construction, including the description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
- Professional services means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering.
- Public employee means any person employed by the County, including elected officials and appointed members of governing bodies.
- Purchasing agent means the director of finance, or his designee, or another person designated by the Board of Supervisors to serve as the purchasing agent.
- Request for proposals means a document issued by the purchasing agent as part of the competitive negotiation procedure which solicits proposals for goods or services, and which indicates in general terms what is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other

contractual terms and conditions applicable to the procurement, including any unique capabilities or qualifications which will be required of the contractor.

- Responsible bidder or offeror means a vendor who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will [asense](#) sure good faith performance, and who has been prequalified, if required.
- Responsive bidder means a vendor who has submitted a bid which conforms in all material respects to the invitation for bids.
- Services means any work performed by an independent contractor wherein the service rendered does not consist primarily of the acquisition of equipment or materials, or the rental of equipment of materials and supplies.
- Service disabled veteran means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.
- Using department means the department, agency or division seeking to procure goods or services through the purchasing agent.
- Vendor means a natural person, corporation, partnership, sole proprietorship, joint venture or other entity, other than a governmental entity, who has goods or services for sale, and a faith-based organization who has goods or services for sale for programs funded by a block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law § 104-193), and participates in the procurement processes identified in this manual. A vendor includes, in the appropriate context, a bidder, offeror or contractor.

Any term used in this manual which is not defined in this section shall be given its common and ordinary meaning unless the term has been defined elsewhere in the Albemarle County Code or by statute, regulation, or by the Virginia Supreme Court or the Virginia Court of Appeals, and the definition is applicable to the context in which the term is used.

Chapter 2. The Powers and Duties of the Participants in the Procurement Process

Summary

This section describes the powers and duties of the purchasing agent, the using departments, and the county attorney in the procurement of goods and services. This chapter also identifies unauthorized purchases and the consequences thereof.

Essential Information in this Chapter	
• The purchasing agent is responsible for the procurement of all goods, services, insurance and construction, unless another County officer or employee is expressly authorized to do so by the Code of Virginia and this manual. • The using department is responsible for anticipating procurement needs, cooperating with the purchasing agent in the procurement process, and otherwise complying with the requirements of this manual. • The county attorney is responsible for asensuring that the procurement process complies with applicable laws and policies, and for reviewing all procurement contracts as to form. • The County is not bound by an unauthorized procurement; the individual who makes an unauthorized procurement is personally liable unless the procurement is ratified by the bBoard.	
Key References to the Code of Virginia Applicable to this Chapter	
Section 15.2-524: Powers and duties of the purchasing agent Section 15.2-1237: Review of contracts by the county attorney	

2-1 The Purchasing Agent

The County is organized under the county executive form of government. In this form of government, the director of finance acts as the purchasing agent for the County.

The purchasing agent is responsible for the procurement of all goods, services, insurance and construction (except, for example, certain small purchases; see chapter 22); the management and disposal of [surplus](#) goods; and the award of designated contracts on behalf of the County in accordance with the provisions of this manual and the Virginia Public Procurement Act.

2-1.1 The Powers and Duties of the Purchasing Agent

The purchasing agent has the following powers and duties:

- Purchases: The power and duty to make all purchases of goods, services, insurance and construction, in a manner that is consistent with the requirements and the purposes of this manual and the Act. The power of the purchasing agent is subject to any exceptions established by the ~~h~~Board of ~~s~~Supervisors.
- Transfers: The power and duty to make transfers of supplies, materials and equipment between departments and officers.
- Sales: The power and duty to sell any surplus supplies, materials, or equipment, and to make ~~such~~ other sales as may be authorized by the ~~h~~Board of ~~s~~Supervisors. Before making any sale, the purchasing agent shall invite competitive bids under rules and regulations established by ordinance or resolution.
- Specifications or standards: The power to establish suitable specifications or standards for all supplies, materials and equipment to be purchased for the County; the duty to establish and maintain programs for specifications' development, contract administration, inspection and acceptance of goods, services, insurance and construction in cooperation with the using departments.
- Inspections: The power and duty to inspect, or to oversee the inspection of, all goods delivered to determine their compliance with the applicable specifications and standards.
- Source lists: The power and duty to establish sources of supply and to maintain a current file of sources of goods, services, insurance and construction to which vendors can request to be included.
- Shipments: The duty to expedite the shipment of orders.
- Delegation of authority: the power and duty to delegate limited purchasing authority to qualified designees by letters of appointment.

The purchasing agent also has all powers and duties necessary and incidental to those provided above.

2-1.2 Promoting Vendor Relations

In addition to the powers and duties set forth above, the purchasing agent should also promote vendor relations by:

- Giving each vendor a full, fair, prompt and courteous consultation.
- Freely exchanging information.
- AsEnsuring that competition is open and fair.
- AsEnsuring that small businesses, businesses owned by minorities, women, and service-disabled veterans, and employment services organizations have the maximum practicable opportunity in County procurement competition.
- AsEnsuring that specifications reflect the needs of the County.
- Applying the County's procurement policies and principles in a consistent manner.
- Observing strict truthfulness in all transactions and in all correspondence.
- Respecting the confidence of the vendor as to confidential information.
- Communicating with the vendors concerning feedback from the using agency about complaints about delivery, failure to meet specifications or modifying terms of the contract.

2-2 The Using Department

Although a using department procures its goods or services through the purchasing agent (except, for example, certain small purchases; see chapter 22), it is an important participant in the procurement process.

The department head and those persons designated by the department head and approved by the purchasing agent to sign purchase requisitions shall be responsible for the following:

- Anticipate needs: Anticipate the using department's needs and determine the quantity, general type or character of supplies, materials, or equipment required.
- Develop standards and specifications: Cooperate with the purchasing office and assist in the development of standards and specifications.

- Prepare and submit requisitions: Prepare and submit purchase requisitions through the purchasing office in sufficient time to make the necessary purchases.
- Monitor receipt of orders: Notify the purchasing office of any orders that have not been received.
- Inspect goods received: Inspect goods received for compliance with the quantity ordered and the specifications, and notify the purchasing office of any discrepancies.
- Contract administration: Provide contract administration for all contracts for goods and services. Monitor performance and delivery and document vendor performance under the contract. Notify the purchasing office of instances of non-compliance with contract requirements and cooperate with the purchasing agent in the conduct of remedial actions. Each department shall designate an employee responsible for contract administration. Each ~~such~~ designated employee should attend at least one applicable class or training opportunity annually on contract administration sponsored by the purchasing agent.
- Procurement training: Prior to any purchasing action or actions, any individual initiating ~~such~~the action or actions shall have attended mandatory purchasing procedures training. ~~Such~~The training shall be made available by the purchasing agent on a periodic basis and as needed. To allow for compliance with mandatory training and to ensure continuity in purchasing operations, enforcement of ~~the~~ mandatory training ~~requirement~~provision shall be delayed for a period not to exceed six months ~~of~~after adoption of this 2018 manual revision.

2-3 **The County Attorney**

The county attorney is also an important participant in the procurement process, and should be consulted by the purchasing agent or the using department whenever a legal question arises.

2-3.1 **Duties**

The county attorney shall:

- As~~En~~sure compliance with applicable law and policies: The county attorney shall ~~A~~assist the purchasing agent and the using departments to ~~asen~~sure that the provisions of this manual, County ordinances, policies and practices, the Act, and all other applicable laws are complied with in the procurement of goods and services.
- Review contracts as to form: The county attorney shall review as to form all contracts for the procurement of goods and services

presented to the county attorney's office and shall approve any changes to contract templates.

2-3.2 Assistance to the Purchasing Agent and Using Department

The purchasing agent and the using department are encouraged to solicit the assistance of the county attorney in other circumstances, including but not limited to, the following matters:

- Review invitations for bids and requests for proposals: The county attorney should assist the purchasing agent and the using department in the development of invitations for bids and requests for proposals, particularly when the goods or services are not commonly procured by the County, the expected cost of the procurement is substantial, or whenever the invitations or requests may deviate from the format or content previously reviewed and approved by the county attorney.
- Consider legal issues that arise during the procurement process: The county attorney should be consulted if any legal issues arise during the procurement process.
- Review contracts as to content: The county attorney should review for content and comment on any contract for the procurement of goods or services, when it deems ~~such~~ review to be necessary or appropriate.

2-4 Unauthorized Procurements

Except as otherwise provided in this manual or the Code of Virginia, no County or School Board official elected or appointed, or any County or School Board employee, shall purchase or contract for any goods, services, insurance, or construction within the purview of this manual or the Code of Virginia other than by and through the purchasing agent.

2-4.1 County Not Bound by Unauthorized Procurement

Any purchase order or contract made contrary to the provisions of this manual is not approved and the County or School Board, as applicable, shall not be bound thereby. However, the ~~b~~Board of ~~s~~Supervisors and the ~~s~~School ~~b~~Board each reserve the right to ratify ~~such~~ an unauthorized procurement.

2-4.2 Individual Personally Liable for Unauthorized Procurement

Any person responsible for an unauthorized procurement shall be personally liable for ~~such~~the purchase and, if already paid for out of County funds, the amount may be recovered in the name of the County in an appropriate action instituted therefor. Ratification of the procurement by the ~~the~~the Board of ~~the~~the Supervisors or the school board shall relieve the individual of personal liability for the unauthorized procurement.

Chapter 3. General Requirements and Policies Applicable to All Procurements: Nondiscrimination, Drug-free Workplace, Public Records, Ethics and Conflicts of Interest

Summary

This section sets forth certain requirements and policies that apply to all procurements: the prohibition of discrimination; a vendor's agreement to maintain a drug-free workplace; the encouragement of small businesses and businesses owned by women and minorities; the public nature of certain procurement records, ethics, and conflicts of interest.

Essential Information in this Chapter	
•	In the procurement of goods and services, the County shall not discriminate against a vendor because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or other basis prohibited by state law relating to discrimination in employment.
•	The County welcomes and encourages the participation of small businesses and businesses owned by women and minorities in procurement transactions.
•	With limited exceptions, all proceedings, records, contracts and other public records relating to procurement transactions are open for inspection by the public.
•	All County officers and employees who have official responsibility for the procurement of goods, services, insurance or construction must comply with ethics requirements of the Virginia Public Procurement Act and the State and Local Government Conflict of Interests Act.
Key References to the Code of Virginia Applicable to this Chapter	
Section 2.2-3101: Definitions used in the State and Local Government Conflict of Interests Act Section 2.2-3105 <u>et seq.</u> : Prohibited conduct regarding contracts Section 2.2-4343.1: Discrimination against faith-based organizations prohibited Section 2.2-4310(A): Discrimination prohibited in procurement process Section 2.2-4310(B): Participation in procurement process by small businesses and businesses owned by women and minorities Section 2.2-4311: Employment discrimination by vendor prohibited Section 2.2-4312: Vendor required to maintain drug-free workplace Section 2.2-4342: Public inspection of certain procurement records Section 2.2-4367 <u>et seq.</u> : Ethics in public contracting	

3-1 Discrimination Prohibited

In the procurement of goods and services, the County shall not discriminate against a vendor because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or other basis prohibited by state law relating to discrimination in employment. Each invitation for bids and request

for proposals must contain a statement of nondiscrimination consistent with the declaration above. The statement shall be in a form approved by the county attorney. In addition, each contract over \$10,000 must include a provision in which the vendor agrees not to discriminate during the performance of the contract.

In the procurement of goods and services for programs funded by a block grant provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the County shall not: (1) discriminate against faith-based organizations on the basis of their religious character; (2) impose conditions that restrict the religious character of the faith-based organizations; or (3) impair, diminish, or discourage the exercise of religious freedom by the recipients of the goods, services, or disbursements. Each invitation for bids, request for proposals, contract and purchase order shall prominently display a nondiscrimination statement indicating that the County does not discriminate against faith-based organizations.

Whenever the County makes a solicitation to specific potential vendors, the purchasing agent shall include businesses selected from a list provided by the State~~Virginia~~ Department of Small Business and Supplier Diversity~~Minority Business Enterprise~~.

3-2 Maintaining a Drug-free Workplace

Each contract over \$10,000 must include a provision in which the vendor agrees to maintain a drug-free workplace during the performance of the contract.

3-3 Participation of Small Businesses and Businesses Owned by Women, Minorities, or Service Disabled Veterans

The County welcomes and encourages the participation of small businesses and businesses owned by women, minorities, or service disabled veterans in procurement transactions.

The purchasing agent shall use and maintain the list of businesses owned by minorities, women, or service disabled veterans available for solicitation provided by the State~~Virginia~~ Department of Small Business and Supplier Diversity~~Minority Business Enterprise~~.

~~The purchasing agent must register small businesses and businesses owned by minorities, women, or service disabled veterans and shall maintain such list in the purchasing office.~~

3-4 Public Inspection of Certain Records

Subject to the exceptions set forth in section 3-4.1, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to inspection by any citizen of the Commonwealth, other entity described in Virginia Code § 2.2-3704, or any interested person, firm, or corporation that

~~made a submission in the interested solicitation (collectively, “eligible persons”); in accordance with the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq.).~~ The purchasing agent shall not make available as public

information any materials properly designated as a trade secret or as proprietary information.

3-4.1 Procurement Records not Available for Public Inspection

There are two classes of procurement records exempt from public inspection:

- Cost estimates: Cost estimates relating to a proposed procurement transaction prepared by or for the County are not subject to inspection.
- Trade secrets or proprietary information: Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction are not subject to inspection, subject to the procedures in ~~s~~Section 3-4.2.

3-4.2 Procedure to Protect Disclosure of Trade Secrets or Proprietary Information

In order for trade secrets or proprietary information to be protected from disclosure, the vendor must comply with the following procedure:

- Protection must be timely invoked: The vendor must invoke the protections of this section prior to or upon submission of the data or other materials to the County, and must designate the data or other materials to be protected and state the reasons why protection is necessary.
- Designation must be valid: If a vendor identifies all materials as a trade secret or as proprietary information, the purchasing agent may contact the vendor and request that the vendor further explain in writing why all of the materials are, in fact, trade secrets or proprietary information. Otherwise, the purchasing agent may not evaluate the merits of the designation of information as a trade secret or as proprietary information.

3-4.3 Timing of Public Inspection

The timing of the public inspection of procurement records is as follows:

- Competitive sealed bidding bidders: Upon request, a bidder may inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides to reject all bids and to reopen the procurement process.

- Competitive negotiation offerors: Upon request, an offeror may inspect proposal records within a reasonable time after the evaluation and negotiation of proposals are completed, but prior to award, except in the event that the County decides to reject all proposals and to reopen the procurement process.
- All eligible persons: Procurement transaction records are available for public inspection, including inspection by competitive sealed bidding bidders and competitive negotiation offerors, after the award of the contract.

3-4.4 Ensuring the Security and Integrity of Procurement Records

An inspection of procurement records is subject to reasonable restrictions imposed by the purchasing agent to ensure the security and integrity of the records.

3-5 Ethics in Public Contracting

Each County officer or employee (collectively “employee”) who has official responsibility for the procurement of goods, services, insurance, or construction must be familiar with *Virginia Code* §§ 2.2-4367 through 2.2-4377 (Ethics in Public Contracting). Following is a general summary of those sections. Certain key terms used in this section are defined in §Section 1-5.

A willful violation of any provision listed below in Virginia Code § 2.2-4367, et seq., as described in this section, is a Class 1 misdemeanor, and, upon conviction, ean employee must forfeit his employment, in addition to any other fine or penalty provided by law. The purchasing agent may require employees having official responsibility for procurement transactions in which they participated to annually submit for these transactions a written certification that they complied with *Virginia Code* § 2.2-4367 et seq. A knowingly false statement in a certification is punishable as described above.

3-5.1 Prohibited Participation by Employees in Procurement Transactions (Virginia Code § 2.2-4369)

Except as otherwise may be allowed by law, no employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the County when the employee knows one or more of the following conditions exist:

- Contemporaneous employment: The employee is contemporaneously employed by a vendor involved in the procurement transaction.
- Holding of position: The employee, the employee’s partner, or any member of the employee’s immediate family holds a position with a

vendor, such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five (5) percent.

- Pecuniary interest in the procurement transaction: The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction.
- Prospective employment: The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a vendor.

3-5.2 Solicitation or Acceptance of Gifts Prohibited (Virginia Code § 2.2-4371)

No employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a vendor or subcontractor any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The County may recover the value of anything conveyed in violation of this section.

3-5.3 Subsequent Employment with Vendor Prohibited (Virginia Code § 2.2-4370)

No public employee or former employee having official responsibility for procurement transactions shall accept any employment with any vendor with whom the employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment with the County unless the employee provides written notification to the County, or a public official if designated by the County, or both, prior to commencement of employment by that vendor.

3-5.4. Gifts by Vendors (Virginia Code § 2.2-4371)

No vendor, including a subcontractor, shall confer upon any employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

3-5.5. Kickbacks (Virginia Code § 2.2-4372)

Kickbacks are prohibited as follows:

- No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
- No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
- If a subcontractor or supplier makes a kickback or other prohibited payment as described herein, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the County and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

3-5.6 Submittal of Bid or Proposal, Disclosure of Non-Public Information to Vendor, Prohibited (Virginia Code § 2.2-4373)

No person who, for compensation prepares an invitation for bids or request for proposals for or on behalf of the County shall: (1) submit a bid or proposal for that procurement or any portion thereof; or (2) disclose to any vendor information concerning the procurement which is not available to the public. However, the purchasing agent, with concurrence of the county attorney, may permit the person to submit a bid or proposal for that procurement or any part thereof, if it is determined that exclusion of the person would limit the number of potential vendors in a manner contrary to the best interests of the County.

3-5.7. Purchase of Materials from Architect or Engineer Prohibited (Virginia Code § 2.2-4374)

No building materials, supplies, or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for ~~such~~^{the} building or structure or from any partnership, association or corporation in which the architect or engineer has a persona interest as defined in ~~s~~Section 1-5.

No building materials, supplies, or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any

person which has provided or is currently providing design services specifying a sole source for ~~such~~the materials, supplies or equipment to be used in ~~such~~the building or structure to the independent contractor, employed by the County to furnish architectural or engineering services in which ~~such~~the person has a personal interest as defined in ~~s~~Section 1-5.

3-5.8 Misrepresentations Prohibited (Virginia Code § 2.2-4376)

No employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

3-6 Conflicts of Interest

Following is a general summary of the laws pertaining to conflicts of interest in public contracting. These laws generally prohibit officers or employees from having personal interests in the contracts.

3-6.1 Members of the Board of Supervisors (Virginia Code § 2.2-3107)

This section applies only to members of the Board of Supervisors.

No Board member shall have a personal interest in: (1) any contract with the Board; (2) any contract with any County agency which is a component part of the County and which is subject to the ultimate control of the Board; or (3) any contract other than a contract of employment with any other County agency if the Board appoints a majority of the members of the Board of the second agency.

This section does not apply to:

- Employment: A Board member's personal interest in a contract of employment; provided: (1) the officer or employee was employed by the County prior to July 1, 1983, in accordance with the provisions of the Conflict of Interests Act, as it existed on June 30, 1983; or (2) the employment first began prior to the member becoming a member of the Board.
- Uniform prices: Contracts for the sale by a County agency of services or goods at uniform prices available to the public.
- Competitive sealed bidding: A contract awarded to a Board member as a result of competitive sealed bidding where the Board has established a need for the same or substantially similar goods through purchases prior to the member's election or appointment to the Board. However, the member shall have no involvement in the preparation of the specifications for the contract, and the remaining

members of the Board, by written resolution, must state that it is in the public interest for the member to bid on the contract.

3-6.2 Members of the School Board (Virginia Code § 2.2-3108)

This section applies only to members of the School Board.

No School Board member shall have a personal interest in: (1) any contract with the School Board; or (2) any contract with any County agency which is subject to the ultimate control of the School Board.

This section does not apply to:

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

3-6.3 Other County Officers and Employees (Virginia Code § 2.2-3109)

This section pertains to officers and employees other than members of the Board of Supervisors and the School Board.

No other officer or employee of any County agency shall have a personal interest in a contract with the agency of which he is an officer or employee other than his own contract of employment.

In addition, no officer or employee of any County agency shall have a personal interest in a contract with any other County agency unless the contract is: (1) awarded as a result of competitive sealed bidding or competitive negotiation; or (2) is awarded after a finding, in writing, by the county executive or the superintendent of schools, as applicable, that competitive bidding or negotiation is contrary to the best interest of the public.

This section does not apply to:

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

3-6.4 Exceptions (*Virginia Code § 2.2-3110*)

In addition to the exceptions set forth in ~~s~~Sections 3-6.1 through 3-6.3, the following exceptions also apply:

- Real property: The sale, lease, or exchange of real property between an officer or employee and a County agency; provided the officer or employee does not participate in any way as an officer or employee in the sale, lease, or exchange, and this fact is set forth as a matter of public record by the Board, the School Board, the county executive or the superintendent of schools, as applicable.
- Official notices: The publication of official notices.
- Sole interest is income: An officer or employee whose sole personal interest in a contract with the County is by reason of income from the vendor or the County in excess of \$~~105~~105,000 per year; provided the officer or employee or a member of his immediate family does not participate and has no authority to participate in the procurement or letting of the contract on behalf of the vendor, and the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of the County, or he disqualifies himself as a matter of

public record and does not participate on behalf of the County in negotiating the contract or in approving the contract.

- Contracts with public service corporations, financial institutions, public utilities: Contracts between the County and a public service corporation, financial institution, or company furnishing public utilities in which the officer or employee has a personal interest, provided the officer or employee disqualifies himself as a matter of public record and does not participate on behalf of the County in negotiating the contract or in approving the contract.
- Small contracts: Contracts for the purchase of goods or services when the contract does not exceed \$500.
- Grants and similar payments: Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency.
- Personal interest in contract arising from marriage: An officer or employee whose sole personal interest in a contract with the County is by reason of his marriage to his spouse who is also employed by the County, if the spouse was employed by the County for five or more years prior to marrying the officer or employee.
- Employment contracts: Employment contracts or renewals thereof or to any other contracts entered into prior to August 1, 1987, which were in compliance with prior conflict of interest laws (*Virginia Code* § 2.1-347 et seq. or § 2.1-599 et seq.) at the time of their formation and thereafter. Those contracts shall continue to be governed by the prior laws, except that notwithstanding former *Virginia Code* § 2.1-348(f)(4) (in effect prior to July 1, 1983), the employment of an officer or employee and spouse or any other relative residing in the same household by the County is not be deemed to create a material financial interest except when one of those persons is employed in a direct supervisory or administrative position, or both, with respect to the spouse or other relative residing in his household and the annual salary of the subordinate is \$35,000 or more.

3-6.5 Consequences of Violation (*Virginia Code* § 2.2-3123)

A contract made in violation of the foregoing sections (*Virginia Code* § 2.2-3106 through § 2.2-3109) or *Virginia Code* § 2.2-3103 may be declared void and may be rescinded by the Board of Supervisors or School Board within five years of the date of such the contract. In cases in which the contract is invalidated, the vendor shall retain or receive only the reasonable value, with no increment for profit or commission, of the

property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of ~~recission~~rescission of a contract of sale, any refund or restitution shall be made to the County or School Board, whether it is contracting or selling.

Any purchase by an officer or employee made in violation of the foregoing sections (*Virginia Code* § 2.2-3106 through § 2.2-3109) or Virginia Code § 2.2-3103 may be rescinded by the Board of Supervisors or School Board within five years of the date of purchase.

Chapter 4. Determining Which Procedure Applies

Summary

This section briefly examines the several procedures available for the procurement of goods and services and establishes the methodology to be used to determine which procedure applies to a particular procurement.

Essential Information in this Chapter

- Generally, the procurement of goods or **nonprofessional** services requires using the competitive sealed bidding or competitive negotiation procedure if the costs are expected to exceed \$**5100**,000. If the costs are not expected to exceed \$**5100**,000, one of the **three** small purchase procedures applies.
- **If the expected costs of professional services are expected to exceed \$80,000, the procurement will require a competitive negotiation procedure. If the costs are not expected to exceed \$80,000, a small purchase procedure may apply.**
- If there is only a sole source, an emergency exists, or if the goods may be procured at public auction, the competitive sealed bidding or competitive negotiation procedure need not be followed even if the costs are expected to exceed \$**5100**,000.
- There are several types of goods and services that are exempt from the competitive sealed bidding or competitive negotiation procedure even if the costs are expected to exceed \$**5100**,000. Legal services are the most notable goods or services in this exempt class.
- When determining which procedure applies, begin by assuming that the competitive sealed bidding procedure applies, and then determine the expected cost of the goods or services, classify what is being procured, and determine whether an excuse or exemption applies.

Key References to the Code of Virginia Applicable to this Chapter

Section 2.2-4301: Definitions used in the Virginia Public Procurement Act
Section 2.2-4343(B): Compliance with conditions on federal grants or contracts
Section 2.2-4304: Cooperative procurement
Section 2.2-4303(A): When competitive sealed bidding and competitive negotiation required, generally
Section 2.2-4303(B): Competitive negotiation required for procurement of professional services
Section 2.2-4303(D): When competitive negotiation available in lieu of competitive sealed bidding
Section 2.2-4303(E): Procurement from a sole source
Section 2.2-4303(F): Procurement in an emergency
Section 2.2-4303(**HG**): Small purchases
Section 2.2-4303(**J**): Reverse auctioning
Section 2.2-4305: Competitive bidding on state-aid projects
Section 2.2-4344: Exceptions to the requirement for competitive procurement

4-1 General

There are several possible procedures that may apply to a particular procurement. If the expected costs of the goods or **nonprofessional** services are expected to exceed \$**5100**,000, most procurements require a competitive

procedure such as the competitive sealed bidding procedure or the competitive negotiation procedure. If the expected costs of professional services are expected to exceed \$80,000, the procurement will require a competitive negotiation procedure. The small purchase procedures set forth in [eC](#)hapter 22 apply when the expected costs of the goods or **nonprofessional** services are expected to be \$[5100](#),000 or less, or when the costs of professional services are expected to be \$80,000 or less.

There are certain circumstances, such as emergencies, and certain goods or services, such as legal services, which are excused or exempted from these competitive procedures.

4-2 The Formal Competitive Procedures

There are three formal competitive procedures available: competitive sealed bidding, competitive negotiation for professional services, and competitive negotiation for goods or nonprofessional services. Each are briefly described below, and discussed in more detail in [pP](#)arts 2 and 3.

4-2.1 Competitive Sealed Bidding for Goods or Nonprofessional Services

Competitive sealed bidding is a method of vendor selection that is used when the cost of the goods or nonprofessional services is expected to exceed \$[5100](#),000. This procedure has five elements: (1) the issuance of an invitation for bids; (2) public notice; (3) public opening of sealed bids; (4) evaluations of bids; and (5) award. This procedure is described in more detail in [pP](#)art 2, beginning with [eC](#)hapter 5.

4-2.2 Competitive Negotiation for Professional Services

Competitive negotiation for professional services is the method of vendor selection used only for the procurement of services within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering where the cost of the services is expected to exceed \$[580](#),000. This procedure has four elements: (1) the issuance of a request for proposals; (2) public notice; (3) negotiations; and (4) award. These elements are described in more detail in [pP](#)art 3, beginning with [eC](#)hapter 11.

4-2.3 Competitive Negotiation for Goods or Nonprofessional Services

Competitive negotiation for goods or nonprofessional services is the method of vendor selection that may be used in lieu of the competitive sealed bidding procedure for the procurement of goods or services, other than professional services, where the cost of the goods or services is expected to exceed \$[5100](#),000. This procedure has four elements: (1) the issuance of a request for proposals; (2) public notice; (3) negotiations; and

(4) award. These elements are described in more detail in [pPart 3](#), beginning with [eChapter 11](#).

Table 4-1

Thresholds for Applicability of the Competitive Sealed Bidding And Competitive Negotiation Procedures	
Competitive Sealed Bidding	Competitive Negotiation
Goods or nonprofessional services, including insurance, expected to exceed \$5100,000	Professional services expected to exceed \$580,000
Construction expected to exceed \$5100,000	Goods or nonprofessional services, including insurance, expected to exceed \$5100,000
	The construction of highways and any draining, dredging, excavation, grading or similar work on real property

4-3 Procurements Excused from Formal Competitive Procedures

There are three circumstances when compliance with the competitive sealed bidding or competitive negotiation procedure is excused, even though the cost of the goods or services are expected to exceed [\\$5100,000](#).

4-3.1 Sole Source

The sole source procedure may be used in lieu of either the competitive sealed bidding or the competitive negotiation procedure when there is only one source practicably available for that which is to be procured. This procedure is described in more detail in [eChapter 19](#).

4-3.2 Public Auction

Goods, products, and commodities may be procured at a public auction if the purchasing agent determines in advance and in writing that the procurement by public auction is in the best interests of the County. The public auction procedure is described in more detail in [eChapter 20](#).

4-3.3 Emergency

The emergency procedure may be used in lieu of either the competitive sealed bidding or the competitive negotiation procedure when there is an emergency. Emergencies include, but are not limited to, natural disasters and situations when goods or services are needed immediately, ~~even when the emergency is self-created by the using department~~. The emergency procurement procedure is described in more detail in [eChapter 21](#).

4-4 Goods and Services Exempt from Formal Competitive Procedures

The Virginia Public Procurement Act exempts several goods and services from the competitive sealed bidding and competitive negotiation procedures, even though the expected cost of the goods or services may exceed \$~~5~~100,000. These exempt goods and services are:

- Legal services: Legal services, provided that the pertinent provisions of *Virginia Code* § 2.2-500 et seq. (pertaining to the legal services of the Attorney General) remain applicable.
- Litigation related services: Expert witnesses and other services associated with litigation or regulatory proceedings.
- Insurance purchased through an association: If insurance is purchased through an association of which the County is a member, if the association was formed and is maintained for the purpose of promoting the interest and welfare of, and developing close relationships with, similar public bodies. The association must obtain the insurance using competitive principles. The purchasing agent must make a determination in advance after reasonable notice to the public and state in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall ~~and~~ document the basis for this determination.
- Goods produced or services performed by the disabled: Goods produced or services performed by the disabled, if produced or performed by persons, or in schools or workshops under the supervision of the Virginia Department for the Visually Handicapped or by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.
- Goods or services for recipients of certain public welfare programs: Goods or services for an individual recipient of a public assistance program defined in *Virginia Code* § 63.~~2-1001-87~~, ~~the fuel assistance program~~, a person receiving services from a community services board as defined in *Virginia Code* § 37.~~2-1001-1~~, ~~or if the County is purchasing for~~ services under the ~~Children's Services Act~~Comprehensive Services Act for At-Risk Youth and Families under (*Virginia Code* § 2.2-5200 et seq.), or the Virginia Juvenile Community Crime Control Act (*Virginia Code* § 16.1-309.2 et seq.) may be procured without using a competitive procedure. However, the bulk procurement of goods or services for use by ~~such~~the described recipients must be competitively procured.
- Extension of an existing contract: The purchasing agent may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

Legislation may also exempt some goods and services from the Act (e.g., *Virginia Code* §2.2-4343(A)(12) (school boards that make purchases through educational technology foundation exempt from certain provisions of Procurement Act); *Virginia Code* § 2.2-4346(A) (certain election materials), *Virginia Code* § 2.2-4343(A)(4) (vehicles purchased by the local department of social services for TANF recipients)) ~~or makes the exemption optional (e.g., *Virginia Code* § 46.2-1217 (police requested towing services)).~~

4-5 Determining Which Procedure Applies

The following steps should be taken to determine which procurement procedure applies:

4-5.1 Determine the Expected Cost of the Goods or Services

The first step is to identify the expected cost of the goods or services to be procured. If the cost of the goods or services is expected to exceed \$5100,000, then a formal competitive procedure applies unless the procurement is otherwise excused or exempted. If the expected cost of the goods or services is \$5100,000 or less, then one of the small purchase procedures apply.

- Cost estimated by the using department: The using department shall determine the expected cost of the goods or services to be procured, and ~~document such the present that~~ determination ~~to the purchasing agent~~ in writing.
- Review of cost estimate by the purchasing agent: The purchasing agent ~~shall~~may review the determination of expected cost made by the using department ~~and may if the expected cost is determined to be greater than \$15,000, and may review any other determination of expected cost made by the using department. The purchasing agent should~~ independently determine the expected cost of the goods or services.

4-5.2 Classify What is Being Procured

The second step requires that the purchasing agent classify what goods or services are sought to be procured, and identify whether professional services are sought. ~~When determining which procedure applies, the purchasing agent should assume that the competitive sealed bidding procedure applies, and then identify the basis, if any, for another procedure, an excuse, or exemption, to apply.~~

- Goods: Goods are generally procured by the competitive sealed bidding procedure. However, when other factors, such as delivery time, service availability, or other factors unrelated to price are required to meet County needs, goods may be procured by the

competitive negotiation procedure for goods or nonprofessional services, ~~if the purchasing agent determines in advance and in writing that the competitive sealed bidding procedure is either not practicable or not fiscally advantageous to the public. (See Table 4-2, below)~~

- Nonprofessional services: Nonprofessional services are generally procured by the competitive sealed bidding procedure. However, other than most construction services, nonprofessional services may be procured by the competitive negotiation procedure for goods or nonprofessional services, ~~if the purchasing agent determines in advance and in writing that the competitive sealed bidding procedure is either not practicable or not fiscally advantageous to the public. (See Table 4-2, below)~~

Table 4-2

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

- Professional services: Services to be performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering, must be procured by the competitive negotiation procedure for professional services, unless otherwise exempted by law.
- Construction: Construction is procured by the competitive sealed bidding procedure, except for non-transportation-related construction in which the estimated value does not exceed \$100,000. However, ~~except that~~ the construction of highways and any draining, dredging, excavation, grading or similar work upon real property may be procured by the competitive negotiation procedure for goods or nonprofessional services if the purchasing agent determines in advance and in writing that the competitive

sealed bidding procedure is either not practicable or not fiscally advantageous to the public by considering the factors in Table 4-2 above. ~~Such~~The writing shall document the basis for the determination.

Table 4-3

Comparison of the Competitive Negotiation and Competitive Sealed Bidding Procedures	
Competitive Negotiation	Competitive Sealed Bidding
Advantages Evaluation, interview and negotiation processes allow in-depth analysis of every offeror's qualifications and capabilities If the price is too high, the scope of work or the specifications and price may be negotiated to meet the County's needs The ability to negotiate the price is an effective technique to offset potential inflated prices in a market with little or no competition Disadvantages Evaluation and award process can be lengthy and complicated Vendors evaluated by proposals and negotiations; the process must be managed carefully to as<u>en</u>sure objective selection process County staff can be at a disadvantage in negotiations, particularly when dealing with experienced vendors with trained negotiators	Disadvantages Only the lowest responsive and responsible bidder may be considered for award, regardless of the qualifications of the other bidders or how close their price may be to that of the lowest bidder If the price is too high, the County may either negotiate with the low bidder to reduce the price to the amount budgeted, or cancel the procurement The inability to negotiate the price, except when the bid price exceeds the amount budgeted, may result in paying inflated prices in a market with little or no competition Advantages Evaluation and award process is simple; determination of lowest responsive and responsible bidder generally quickly determined, contract applying objective criteria Vendors evaluated by contents of bids only No negotiations except with lowest responsive and responsible bidder when the low bid exceeds available funds

- Insurance: Insurance shall be procured by the competitive sealed bidding procedure. However, insurance may be procured by the competitive negotiation procedure for goods or nonprofessional

~~services~~ if the purchasing agent determines in advance and in writing that the competitive sealed bidding procedure is either not practicable or not fiscally advantageous to the public. Procurement of insurance through an association to which the County is a member is exempted from competitive sealed bidding and competitive negotiation procedures. See 4-4, infra, and Virginia Code § 2.2-4345(A)(13).

4-5.3 Determine Whether an Excuse Applies

The third step requires that the purchasing agent determine whether compliance with the competitive sealed bidding or competitive negotiation procedure may be excused as follows:

- Goods: Goods may be procured without complying with the competitive sealed bidding or competitive negotiation procedures if there is only a sole source, an emergency exists, or if it is determined to be in the best interests of the public to procure the goods at a public auction sale.
- Services, construction, and insurance: Services, construction and insurance may be procured without complying with the competitive sealed bidding or competitive negotiation procedures if there is only a sole source or an emergency exists.

These excuses are described in more detail in sSection 4-3.

4-5.4 Determine Whether an Exemption Applies

The final step requires that the purchasing agent determine whether compliance with the competitive sealed bidding or competitive negotiation procedure may be exempted as follows:

- Goods: Goods produced by certain disabled persons, schools, and workshops and goods for an individual recipient of certain public welfare programs may be procured without using a competitive procedure.
- Services: Services performed by certain disabled persons, schools, and workshops; legal services; litigation related services; and the extension of existing contracts for services may be procured without using a competitive procedure.
- Insurance: Insurance purchased through an association to which the County is a member may be procured without using a competitive procedure.
- Other: Enabling legislation for the procurement of particular goods

or services may authorize the goods or services to be procured without using a competitive procedure.

These exemptions are described in more detail in [Section 4-4](#).

Table 4-4

Circumstances When the Competitive Sealed Bid and Competitive Negotiation Procedures may be Excused	
Circumstances	Procedural Requirements
Insurance	Determine in writing in advance that competitive sealed bidding and competitive negotiation processes not practicable or fiscally advantageous; procure through broker or agent selected through competitive negotiation process; or purchase through an association of which the County is a member.
Sole source	Determine in writing that only one source practicably available; post public notice or publish notice in newspaper.
Emergency	Determine in writing the basis for the emergency and the selection of the contractor; post public notice or publish notice in newspaper.
Single-term contract less than or equal to \$ 5100,000	Establish written small purchase procedures which so provide (See Chapter 22) .
Goods, products or commodities purchased at public auction	Determine in writing in advance that the purchase is in the best interests of the public.

4-6 Cooperative Procurements and Procurements Using Federal or State Money

The County may procure goods or services in cooperation with other public bodies, and may procure goods or services with the assistance of federal grants or contracts, or state-aid, as set forth below:

4-6.1 Cooperative Procurements

The purchasing agent may enter into a procurement agreement with one or more public bodies or agencies of the United States for the cooperative procurement of goods or services. The procedures of the Virginia Public Procurement Act and this manual or the procurement manual of another party public body shall apply.

4-6.2 Procurements Funded by Federal Grants or Contracts

The purchasing agent may procure goods or services that involve the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations inconsistent with the Virginia Public Procurement Act and this manual.

Prior to issuing a notice of the invitation for bids or request for proposals, the purchasing agent shall obtain from the Board of Supervisors or the [County](#) School Board, as applicable, a written determination: (1) that acceptance of the grant or contract funds under the applicable conditions is in the public interest; and (2) identifying the specific provisions of the Virginia Public Procurement Act that are in conflict with the conditions of the grant or contract.

4-6.3 State-Aid Projects

The purchasing agent may procure the construction of any building or for an addition to or improvement of an existing building for which state funds of \$50,000 or [lessmore](#), either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction, using either the competitive sealed bidding procedure or the competitive negotiation procedure for goods or nonprofessional services. The Virginia Public Procurement Act and this manual apply to these procurements.

4.7 Reverse Auctioning

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

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

[The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and](#)

[maintenance and aggregates shall not be made by reverse auctioning.](#)