

Chapter 23. Qualification of a Vendor

Summary

This chapter establishes the procedures to be used to determine whether a vendor is qualified to fully participate in the procurement process. The three procedures are: (1) determining whether a vendor is responsible; (2) prequalifying prospective vendors prior to commencing the competitive sealed bidding or competitive negotiation procedures; and (3) debaring a vendor.

Essential Information in this Chapter	
<ul style="list-style-type: none">• A responsible vendor is one who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance.• The purchasing agent may, and at the request of the using department or the selection committee shall, require that vendors be prequalified.• The purchasing agent is authorized to debar a prospective vendor from participating in a procurement under the procedures set forth in this chapter.• Determinations as to whether a vendor is not responsible, not qualified, or should be debarred shall be in writing, based upon a consideration of all available information, and be made only after the vendor has had an opportunity to rebut or respond to the purchasing agent's preliminary determination.	
Key References to the Code of Virginia Applicable to this Chapter	
Section 2.2-4301: Definition of responsible bidder or offeror Section 2.2-4317: Prequalification of a vendor Section 2.2-4321: Debarment of a vendor Section 2.2-4357: Notice to vendor of ineligibility; rights and remedies Section 2.2-4359: Notice to vendor of nonresponsibility; rights and remedies	

23-1 General

It is the goal of the County to procure goods or services only from responsible vendors. This chapter establishes the procedures to be used to determine whether a vendor is qualified to participate in the procurement process. These procedures provide mechanisms for dealing with vendors who are not responsible, and are exercised at different times in the procurement process.

In the competitive negotiation procedure, responsibility must be determined prior to the commencement of negotiations. In the competitive sealed bidding process, responsibility need not be determined at bid opening, but must be determined after bid opening but before award. Therefore, the determination of whether a vendor is not responsible need only be made for the apparent low bidder.

23-2 Determining Whether a Vendor is Responsible

A responsible vendor is one who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will ensure good faith performance. Put another way, responsibility includes the capacity to perform, the financial ability to perform, and the integrity, perseverance, and tenacity of the vendor to perform.

23-2.1 Criteria to Consider

In determining whether a vendor is responsible, the purchasing agent ~~or the selection committee, as the case may be,~~ shall consider, but not be limited to, the following criteria:

- Sufficient financial ability: Whether the vendor has sufficient financial ability to perform the contract. If a bond is required to ensure performance of the contract, evidence that the vendor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of the vendor to perform the contract.
- Experience: Whether the vendor has appropriate experience to perform the contract.
- Judgments against the vendor for breach of contract: Whether the vendor or any officer, director, or owner thereof has had a judgment entered against him within the past ten ~~(10)~~ years for breach of either a governmental or nongovernmental contract.
- Noncompliance with terms and conditions of previous contracts: Whether the vendor has been in substantial noncompliance with the terms and conditions of any prior contract with the County or any other public body, without good cause. This criterion shall apply only if the facts underlying the prior substantial noncompliance were documented in writing in the prior contract file and the information related thereto was given to the vendor at that time, with the opportunity to respond.
- Criminal conviction arising from contracting: Whether the vendor or any officer, director, owner, project manager, procurement manager, or chief financial officer has been convicted within the past ten ~~(10)~~ years of a crime related to governmental or nongovernmental contracting, including but not limited to, a violation of: (1) *Virginia Code* § 2.2-4367 et seq. (Ethics in Public Contracting); (2) *Virginia Code* § 18.2-498.1 et seq. (Virginia Governmental Frauds Act); (3) *Virginia Code* § 59.1-68.6

(Conspiracy to Rig Bids in Government); or (4) any substantially similar law of the United States or another state.

- Debarred: Whether the vendor or any officer, director, or owner thereof is currently debarred from bidding or contracting by any public body or agency of any state, or by an agency of the federal government, pursuant to an established debarment procedure.
- ~~Failure to provide information: Whether the vendor has failed to provide the purchasing agent or the selection committee, as the case may be, any information relevant to the other criteria identified in this section that is required by the purchasing agent or the selection committee, as the case may be, or by the invitation for bids or request for proposals.~~

An affirmative answer to any of the criteria identified in this section, or otherwise set forth in the applicable invitation for bids or request for proposals, ~~shall~~may be cause to determine that a vendor is not responsible. ~~The purchasing agent is authorized to require a vendor to provide any additional assurances of responsibility, including but not limited to, requiring the vendor to provide a guarantee by a financially stronger parent company, requiring the County's prior approval of all subcontractors used, requiring the County's prior approval or designation of a particular project manager or superintendent, and requiring a guarantee from the vendor that management will be present at the job site during specified times. Only the purchasing agent, in consultation with the county attorney's office, is authorized to make a determination that a vendor is nonresponsible.~~

23-2.2 Conducting the Investigation

The purchasing agent shall obtain all information reasonably relevant to conducting an inquiry as to whether a vendor is responsible. Of course, comprehensive information relevant to a vendor's responsibility should be solicited in the invitation for bids or request for proposals. Nevertheless, additional information may be required from a vendor in a particular case.

The investigation may include the following:

- Vendor qualifications: The purchasing agent may require a vendor to submit suchany evidence of its qualifications as deemed necessary.
- Consider all information available: The purchasing agent should consider any and all evidence available concerning the financial, technical, and other qualifications and abilities of a vendor. The purchasing agent should obtain all information reasonably relevant

to the inquiry, and not only information that is adverse to the vendor.

- Require assurances from the vendor: The purchasing agent should ask the vendor to give the County additional assurances as to its responsibility. These assurances may include, but are not limited to, a guarantee by a financially stronger parent company, the approval of subcontractors used, the designation of a particular project manager or superintendent, and a guarantee that management will be present at the job site during specified times.
- Qualification questionnaire: The purchasing agent may require the vendor to complete a qualification questionnaire, which should request information such as the names of officers and partners, experience and equipment, current contracts and future work, association memberships, trade union relationships, list of subcontractors utilized, resumes of key personnel, and the latest financial statement. If the review of the questionnaire of the vendor ~~suggests~~~~discloses~~ that it may not be ~~qualified~~~~responsible~~, the vendor should be invited to meet with the purchasing agent ~~or the selection committee~~ to resolve or to explain the deficiencies. If a satisfactory explanation is not secured, the purchasing agent may determine the vendor to be ~~not qualified~~~~nonresponsible~~.

After receipt of the additional information from the vendor and other sources, the purchasing agent shall determine whether the vendor is responsible.

23-2.3 Procedure if Vendor Determined to be not Responsible

If the purchasing agent ~~or the selection committee, as the case may be,~~ makes a preliminary determination that a vendor is not responsible, the following procedure shall apply:

- Preliminary notice: Prior to issuing a written determination of nonresponsibility, the purchasing agent shall: (1) notify the vendor in writing of the results of the investigation and evaluation; (2) disclose the factual support for the determination of nonresponsibility; and (3) allow the vendor an opportunity to inspect any documents which relate to the determination, if so requested by the vendor, within five ~~(5)~~ business days after receipt of the notice.
- Challenge to evaluation: ~~Within ten (10) business days after receipt of the notice, t~~The vendor may submit rebuttal information challenging the evaluation within ten business days after receipt of the notice.

- Written determination of nonresponsibility: The purchasing agent shall issue a written determination of nonresponsibility based on all of the information in the possession of the County, including any rebuttal information. The written determination shall state the basis for the determination. The written determination shall be hand-delivered or sent by certified mail, return receipt requested, to the vendor. The written determination shall not otherwise be distributed to any other persons or vendors.
- Timing of determination of responsibility: The purchasing agent shall issue the written determination of nonresponsibility within five ~~(5)~~ business days following the date the purchasing agent received the rebuttal information. If the purchasing agent does not receive rebuttal information, the purchasing agent shall issue the written determination of nonresponsibility at any time after the ten ~~(10)~~ business day period following the date the vendor was notified by the purchasing agent of the results of the investigation and evaluation, but prior to the purchasing agent issuing a notice of intent to award.
- Finality of written determination: The written determination of nonresponsibility shall be final unless the vendor institutes a legal action within ten ~~(10)~~ calendar days of receipt of the written determination, as provided by law.

In making a determination as to whether a vendor is responsible, the purchasing agent may consult with the using department and the county attorney.

23-3 Prequalifying a Vendor

The procedure set forth in this section is intended to qualify prospective vendors as qualified~~responsible~~ vendors prior to the date established for the submittal of bids or proposals. The purchasing agent may, ~~and at the request of the using department or the selection committee shall,~~ require that vendors be prequalified.

23-3.1 Procedure

The purchasing agent shall prequalify vendors as follows:

- Notice of prequalification: The purchasing agent shall include in the invitation for bids or the request for proposals a provision that prequalification shall be required, and include a prequalification application form in the invitation for bids or request for proposal documents.

- Application due date: The invitation for bids or the request for proposals shall require that each application form be received in the office of the purchasing agent ~~sixtyforty (460)~~ days prior to the date established for the receipt of bids or proposals.
- Receipt of applications: Each application must be received by the purchasing agent. A prospective vendor whose prequalification application is not received by the application due date shall not be eligible to participate in the procurement.
- Determination and notice thereof: At least ~~forty-fivethirty (3045)~~ days prior to the date established for the receipt of bids or proposals, the purchasing agent shall provide a written preliminary determination to each prospective vendor as to whether it is qualified.

23-3.2 Procedure if Vendor Determined to be not Qualified

If the purchasing agent makes a preliminary determination that a vendor is not qualified, the following procedure shall apply:

- Preliminary notice: Prior to issuing a written determination that a vendor is not qualified, the purchasing agent shall: (1) notify the vendor in writing of the results of the evaluation; (2) disclose the factual support for the determination; and (3) allow the vendor an opportunity to inspect any documents which relate to the determination, if so requested by the vendor, within five ~~(5)~~ business days after receipt of the notice.
- Challenge to evaluation: Within ten ~~(10)~~ business days after receipt of the notice, the vendor may submit rebuttal information challenging the evaluation. If the purchasing agent determines that the rebuttal information reveals that the vendor should be allowed to participate in the procurement, he shall cancel the preliminary determination that the vendor is not qualified.
- Written determination that vendor not qualified: ~~If the rebuttal information, if any, is insufficient to change the preliminary determination that a vendor is not qualified,~~ the purchasing agent shall issue a written determination that a vendor is not qualified based on all of the information in the possession of the County, including any rebuttal information. The written determination shall state the basis for the determination. The written determination shall be mailed or hand-delivered to the vendor, but shall otherwise not be distributed to any other persons or vendors.
- Timing of determination that vendor not qualified: The purchasing agent shall issue a written determination that a vendor is not

qualified within five ~~(5)~~ business days following the date the purchasing agent received the rebuttal information. If the purchasing agent does not receive rebuttal information, he shall issue the written determination that the vendor is not qualified at any time after the ten ~~(10)~~ business day period following the date the vendor was notified by the purchasing agent of the results of the investigation and evaluation, but prior to the purchasing agent issuing a notice of intent to award.

- Finality of written determination: The written determination shall be final unless the vendor institutes a legal action within ten ~~(10)~~ calendar days of receipt of the notice, as provided by law.

~~In making a determination as to whether a vendor is qualified, the purchasing agent may consult with the using department or the county attorney.~~

23-4 Debarring a Vendor

The purchasing agent is authorized to debar a prospective vendor from participating in a procurement pursuant to the procedures set forth in this section.

23-4.1 Criteria to Consider

In determining whether a vendor should be debarred, the purchasing agent shall consider the following criteria:

- Fraud: Conviction of, or civil judgment arising from the commission of, fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract.
- Embezzlement, theft and other acts: Conviction of, or civil judgment arising from the commission of, embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements or receiving stolen property.
- Antitrust violations: Violation of federal or state antitrust statutes relating to the submission of offers.
- Acts indicating lack of integrity or honesty: Commission of any other offense or documented practices indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the vendor.
- Violation of contract terms: Violation of the terms of a government contract or subcontract so serious as to justify debarment, such as willful failure to perform in accordance with the terms of one or

more contracts, ~~or~~ a history of failure to perform, or ~~of~~ unsatisfactory performance of, one or more contracts.

- Other acts: Any other act that is of so serious or compelling a nature that it affects the present responsibility of the vendor.

An affirmative answer to any of the criteria identified in this section shall be cause to determine that a vendor is not responsible. However, the existence of any of the criteria listed above shall not necessarily require that a vendor be debarred.

23-4.2 Debarment Procedure

The procedures for the prompt reporting, investigating, and referral of matters appropriate for consideration of debarment by the purchasing agent are as follows:

- Notice to prospective vendor: The debarment procedure is initiated when the purchasing agent notifies the prospective vendor, ~~and~~ any specifically named affiliate, the county attorney, and the county executive that debarment is being considered. The notice shall be in writing and state the reasons for the proposed debarment in terms sufficient to apprise the vendor of the conduct or transaction upon which it is based. The notice shall be hand-delivered or sent by certified mail, return receipt requested, to the vendor.
- Response to proposed debarment: The prospective vendor may submit to the purchasing agent a written response to the proposed debarment. The response may include both information and argument. If the proposed debarment is based upon a cause other than one based upon a conviction or civil judgment, the proposed vendor may request in the response that an informal hearing be conducted by the purchasing agent. The response shall be received, if at all, within thirty ~~(30)~~ calendar days after the date the notice of the proposed debarment was mailed.
- Hearing, if requested: If an informal hearing before the purchasing agent is requested by the prospective vendor, it shall be held within thirty ~~(30)~~ calendar days of the receipt of the proposed vendor's response. At the hearing, witnesses may be questioned by the purchasing agent and the prospective vendor ~~examined and cross-examined~~.
- Decision: If an informal hearing is not requested, the purchasing agent shall render a decision on the proposed debarment within fifteen ~~(15)~~ calendar days after receipt of the proposed vendor's response. ~~If an informal hearing was conducted, the purchasing agent shall render a written decision within fifteen (15) calendar~~

days after the conclusion of the hearing. The decision shall state the grounds for the decision and, if the proposed vendor is debarred, shall state the duration of the debarment. The purchasing agent may consider the seriousness of the vendor's acts or omissions and any mitigating factors in making a debarment decision.

~~In making a determination as to whether a vendor should be debarred, the purchasing agent may consult with the using department or the county attorney.~~

23-4.3 Procedure if Vendor is Debarred

The debarment shall be for a period ~~of ninety (90) days to three (3) years commensurate with the seriousness of the cause~~, as determined by the purchasing agent in his sole discretion. Notwithstanding the prescribed duration of the debarment, at the sole discretion of the purchasing agent, a debarment may be lifted or suspended at any time if it is in the best interest of the County. A debarred individual or firm can apply for reinstatement at any time in writing to the purchasing agent, citing actions taken to remedy the reason for debarment or prevent future recurrence of the situation that caused the debarment action to be taken and otherwise indicating that lifting or suspension of the debarment would be in the best interest of the County.

The decision of the purchasing agent debarring a prospective vendor shall be final unless the proposed vendor commences a legal action as provided by law.

Chapter 24. Security

Summary

This chapter identifies the various forms of security that may be required as part of a procurement, when they are required, what form they must be in, and when they may be released. The forms of security considered in this section are bid bonds, performance bonds, payment bonds, and alternative forms of security such as certified checks, cash escrows, and letters of credit.

Essential Information in this Chapter

- A bid bond is required for all construction contracts whose cost is expected to exceed \$100,000, and may be required for any other procurement. A bid bond promises that the vendor and its surety are jointly and severally liable for the amount of the bond if the vendor refuses to honor the bid or proposal upon being tendered the contract.
- A performance bond is required for all construction contracts exceeding \$100,000, and may be required for any other procurement. A performance bond is a promise by the vendor and the surety to pay up to the sum of the bond unless there is satisfactory performance of the contract.
- A payment bond is required for all construction contracts exceeding \$100,000, and may be required for any other procurement. A payment bond protects subcontractors, materialmen, and suppliers because it is an agreement by the vendor and the surety to pay for material and labor supplied in the performance of the work.
- In lieu of a bid, performance, or payment bond, a vendor may furnish a certified check, cash escrow, or a bank or saving's institution's letter of credit, in the face amount required for the bond.

Key References to the Code of Virginia Applicable to this Chapter

Section 2.2-4336: Bid bonds
Section 2.2-4337: Performance and payment bonds
Section 2.2-4338: Alternative forms of security
Section 2.2-4339: Bonds on other than construction contracts
Section 2.2-4340: Action on performance bonds
Section 2.2-4341: Action on payment bonds

24-1 General

This chapter identifies the requirements for bid bonds, performance bonds, payment bonds, and alternative forms of security such as certified checks, cash escrows, and letters of credit.

24-2 Bid Bonds

A bid bond may be required to be submitted with a bid or proposal. A bid bond ensures that the vendor, if offered the contract: (1) will not withdraw its bid within the period specified for acceptance; (2) will execute a written contract; and (3)

will furnish other security such as performance and payment bonds, the certificate of insurance, or any other documents which are required by the invitation for bids or the request for proposals. A bid bond promises that the vendor and its surety are jointly and severally liable for the amount of the bond if the vendor refuses to honor the bid or proposal upon being tendered the contract. The bid bond contributes to the sanctity of the procurement process and leads to the certainty and reliability of bids and proposals.

24-2.1 When Required

Except in cases of emergency, all bids or proposals for construction contracts in excess of \$100,000 shall be accompanied by a bid bond.

The purchasing agent may require in the invitation for bids or request for proposals that any bid or proposal not expected to exceed \$100,000 be accompanied by a bid bond. In exercising ~~such~~this discretion, the purchasing agent shall consider the nature of the goods or services being procured and, where the competitive sealed bidding procedure is used, ~~and~~ the likelihood of an apparent low bidder not being willing to execute a written contract.

24-2.2 The Form and Amount of the Bond

Each bid bond shall be in the form and amount as follows:

- Issuer: The bid bond shall be executed by a surety company selected by the vendor. The surety company shall be authorized to do business in the Commonwealth of Virginia, ~~shall be registered with the Virginia State Corporation Commission Bureau of Insurance, and shall have a registered agent in Virginia.~~
- Attorney-in-fact: The bid bond shall identify the name and address of an attorney-in-fact who is appointed to act on behalf of the surety ~~within the Commonwealth of Virginia. The address of the attorney-in-fact shall be within the Commonwealth of Virginia.~~ The attorney-in-fact shall affix to the bond a certified and current copy of the power of attorney.
- Amount: The bid bond shall be written in an amount sufficient to cover the anticipated differential costs between the lowest and next lowest bidder, as well as the administrative costs associated with a possible re-advertisement of the invitation for bids or request for proposals. However, the amount of the bid bond shall not exceed five percent ~~(5%)~~ of the amount of the bid or proposal.
- Obligee: The obligee of a bid bond shall be either the "County of Albemarle, Virginia" or the "~~County~~ School Board of Albemarle County, Virginia." as the case may be.

In lieu of a bid bond and with the express permission of the purchasing agent, a vendor may submit an alternative form of security as provided in sSection 24-5.

24-2.3 Amount of Forfeiture

The amount of a bid bond forfeiture shall not exceed the lesser of: (1) the difference between the bid or proposal for which the bond was written and the next low bid or proposal; or (2) the face amount of the bid bond.

24-3 Performance Bonds

A performance bond may be required to be submitted by the vendor upon the award of the contract. A performance bond is a promise by the vendor and the surety to pay up to the sum of the bond unless there is satisfactory performance of the contract.

24-3.1 When Required

Upon the award of a construction contract exceeding \$100,000 to any prime contractor, the contractor shall furnish to the County a performance bond.

For any other contract, regardless of cost, the purchasing agent may require in the invitation for bids or request for proposals that the vendor to whom the contract is awarded furnish a performance bond. In exercising such~~this~~ discretion, the purchasing agent shall consider the nature of the goods or services being procured.

If required, the performance bond shall be filed in the office of the purchasing agent.

24-3.2 The Form and Amount of the Bond

Each performance bond shall be in the form and amount as follows:

- Form of the bond: The performance bond shall be on the form prepared and approved by the county attorney's office or as otherwise approved an approved AIA form, or be determined by the county attorney to be substantially equivalent thereto.
- Original bond: The vendor shall provide an original bond.
- Delivery: Upon award of the contract, the vendor shall submit to the purchasing agent a sample performance bond. The original performance bond shall be submitted by the vendor and received by the purchasing agent with in ten ~~(10)~~ days after the contract is

executed by the County.

- Issuer: The performance bond shall be executed by a surety company selected by the vendor. The surety company shall be authorized to do business in the Commonwealth of Virginia, shall be registered with the Virginia State Corporation Commission Bureau of Insurance, and shall have a registered agent in Virginia.
- Identify parties or contract: The performance bond shall refer to the contract to which it pertains, either by referring to the contract number or procurement number, or by identifying the parties to the contract.
- Attorney-in-fact: The performance bond shall identify the name and address of an attorney-in-fact who is appointed to act on behalf of the surety ~~within the Commonwealth of Virginia. The address of the attorney-in-fact shall be within the Commonwealth of Virginia.~~ The attorney-in-fact shall affix to the bond a certified and current copy of the power of attorney.
- Signature of bond company representative: The performance bond shall be signed by an authorized representative of the bond company.
- Date of bond: The performance bond shall be executed and dated the same date the vendor ~~signsexecutes~~ the contract, unless the purchasing agent, in consultation with the county attorney's office, permits submission after execution of the contract by the County.
- Term of bond: The performance bond shall have force and effect during the entire term of the contract, including any changes to the term pursuant to change orders, and until it is released upon determination that the vendor has acceptably completed performance under the terms of the contract.
- Condition: The performance bond shall be conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications, and conditions of the contract.
- Amount: The performance bond shall be written in the sum of the contract. If change orders are issued on a construction contract or amendments made to a non-construction contract, the bonds should be reviewed and, if determined by the purchasing agent to be necessary, reexecuted to reflect the changed amount.
- Obligee: The obligee of a performance bond shall be either the "County of Albemarle, Virginia" or the "~~County~~ School Board of Albemarle County, Virginia," as the case may be.

In lieu of a performance bond and with the express permission of the purchasing agent, a vendor may submit an alternative form of security as provided in ~~s~~Section 24-5.

24-4 Payment Bonds

A payment bond may be required to be submitted by the vendor upon the award of the contract. In the private sector, a subcontractor, materialman, or supplier can recover the cost of work or goods in a project even if the prime contractor goes bankrupt or refuses to pay. This is done by placing a lien upon the owner's property which is benefited by the goods or labor. Because a lien may not be placed on public property in Virginia, the payment bond is required instead. A payment bond protects subcontractors, materialmen, and suppliers because it is an agreement by the vendor and the surety to pay for material and labor supplied in the performance of the work.

24-4.1 When Required

Upon the award of a construction contract exceeding \$100,000 to any prime contractor, the contractor shall furnish to the county a payment bond.

For any other contract, regardless of cost, the purchasing agent may require in the invitation for bids or request for proposals that the vendor to whom the contract is awarded furnish a payment bond. In exercising such~~this~~ discretion, the purchasing agent shall consider the nature of the goods or services being procured.

If required, the payment bond shall be filed in the office of the purchasing agent.

24-4.2 The Form and Amount of the Bond

Each payment bond shall be in the form and amount as follows:

- Form of the bond: The payment bond shall be on the form prepared and approved by the county attorney's office or as otherwise approved an approved AIA form, or by the county attorney to be substantially equivalent thereto.
- Original bond: The vendor shall provide an original bond.
- Delivery: Upon award of the contract, the vendor shall submit to the purchasing agent a sample performance bond. The original performance bond shall be submitted by the vendor and received by the purchasing agent within ten (10) days after the contract is executed by the County.

- Issuer: The payment bond shall be executed by a surety company selected by the vendor. The surety company shall be authorized to do business in the Commonwealth of Virginia, shall be registered with the Virginia State Corporation Commission Bureau of Insurance, and shall have a registered agent in Virginia.
- Identify parties or contract: The payment bond shall refer to the contract to which it pertains, either by referring to the contract number or procurement number, or by identifying the parties to the contract.
- Attorney-in-fact: The payment bond shall identify the name and address of an attorney-in-fact who is appointed to act on behalf of the surety ~~within the Commonwealth of Virginia. The address of the attorney-in-fact shall be within the Commonwealth of Virginia.~~ The attorney-in-fact shall affix to the bond a certified and current copy of the power of attorney.
- Signature of bond company representative: The payment bond shall be signed by an authorized representative of the bond company.
- Date of bond: The payment bond shall be executed and dated the same date the vendor ~~executes~~ signs the contract, unless the purchasing agent, in consultation with the county attorney's office, permits submission after execution of the contract by the County.
- Term of bond: The payment bond shall have force and effect during the entire term of the contract, including term extensions created by change order or by contract amendment, and until it is released upon determination that the vendor has acceptably completed performance under the terms of the contract.
- Condition: The payment bond shall be conditioned upon the prompt payment for all ~~such~~ material furnished or labor supplied or performed in the prosecution of the work.
- Amount: The payment bond shall be written in the sum of the contract. . If change orders are issued on a construction contract or amendments made to a non-construction contract, the bonds should be reviewed and, if determined by the purchasing agent to be necessary, reexecuted to reflect the changed amount.
- Obligee: The obligee of a performance bond shall be either the "County of Albemarle, Virginia" or the "~~County~~ School Board of Albemarle County, Virginia", as the case may be.

In lieu of a payment bond and with the express permission of the purchasing agent, a vendor may submit an alternative form of security as provided in ~~s~~Section 24-5.

24-5 Alternative Forms of Security

In lieu of a bid, performance, or payment bond, a vendor may furnish a certified check or cash escrow in the face amount required for the bond, or a bank or savings institution's letter of credit on certain funds in the face amount required for the bond. A letter of credit shall be in a form and substance that complies with provisions of the Uniform Commercial Code, as codified in the Code of Virginia, pertaining to letters of credit, and satisfy the following minimum requirements:

- Equivalent protection: The letter of credit shall afford protection to the County that is equivalent to or greater than a corporate surety's bond.
- Identify parties or contract: The letter of credit shall identify the contract to which it pertains by the names of the parties to the contract or by the contract number.
- Original letter of credit: The vendor shall provide an original letter of credit.
- Amount: The letter of credit shall be in an amount equal to the sum of the contract. If change orders are issued on a construction contract or amendments made to a non-construction contract, the alternative form of security should be reviewed and, if determined by the purchasing agent to be necessary, reexecuted to reflect the changed amount.
- Nominated person: The letter of credit shall designate as the nominated person the "County of Albemarle, Virginia" or the "~~County~~ School Board of Albemarle County, Virginia," as the case may be.
- Consent required to revoke, amend or cancel: The letter of credit shall not contain any provisions that make it revocable, or that allow it to be amended or canceled without the prior written consent of the County.
- Date of letter: The letter of credit shall be executed and dated the same date the vendor executes the contract, unless the purchasing agent, in consultation with the county attorney's office, permits submission after execution of the contract by the County.
- Expiration and renewal: The letter of credit shall not have an expiration date of less than one year, and shall provide that it shall be automatically renewed for at least an additional year.
- Form of demand document: The letter of credit shall specify the document by which a demand may be presented to the issuer.

The letter of credit shall be reviewed and approved by the county attorney before it is accepted as an alternative form of security.

Chapter 25. Protests

Summary

This section establishes the procedure for addressing protests by vendors.

Essential Information in this Chapter	
<ul style="list-style-type: none"> • The protest procedure provides a possible remedy in any procurement when a prospective vendor desires to challenge the award of a contract to another vendor. • A protest must be received in the purchasing office within ten (10) calendar days of the public posting of the notice of intent to award or the notice of award. • The purchasing agent may award a contract during the period allowed to protest under certain circumstances. • A protest must be in writing and shall include the basis for the protest and the relief sought. • The purchasing agent must issue a written response to the protest within ten (10) calendar days of the receipt of the protest. The response must state the reasons for either denying or upholding the protest. • No protest lies for a claim that the selected vendor is not responsible, or that challenges the terms and conditions of the invitation for bids or request for proposals. • If the protest is upheld, the purchasing agent shall grant appropriate relief. 	
Key References to the Code of Virginia Applicable to this Chapter	
<p>Section 2.2-4360: Protest of award or decision to award</p> <p>Section 2.2-4362: Stay of award during protest</p> <p>Section 2.2-4364: Legal actions challenging decision to award contract</p>	

25-1 General

The protest procedure set forth herein provides a possible remedy in any procurement when a prospective vendor desires to challenge the award of a contract to another vendor.

25-2 Competitive Sealed Bidding: Typical Grounds for Protest and Strategies to Prevent Protests

A protest in the competitive sealed bidding procedure typically will be based on one of the following grounds: (1) the vendor claims its low bid was erroneously determined to be nonresponsive; (2) the vendor claims that it was erroneously determined to be not responsible; or (3) the vendor who submitted higher bid claims low bidder's bid was not responsive.

No protest shall lie for a claim that the selected vendor is not responsible. Thus, vendor qualifications including, but not limited to, minimum prior experience,

expertise, or minimum bonding capacity, are not the proper subject of a protest because those issues pertain to vendor responsibility. No protest shall lie to challenge the terms and conditions of the invitation for bids.

Following are some strategies to prevent protests when the competitive sealed bidding procedure is used:

- Confirm the correctness of determination that low bidder was nonresponsive.
- Confirm the correctness of determination that low bidder was not responsible.
- Confirm that the apparent low bidder is responsive.
- Confirm that any deviation from the terms of the invitation for bids were minor informalities, not material deviations.

25-3 Competitive Negotiation: Typical Grounds for Protest and Strategies to Prevent Protests

A protest in the competitive negotiation procedure typically will be based on one of the following grounds: (1) arbitrariness in the process or in a substantive decision, such as the finding required in order to use the competitive negotiation process for the procurement of goods or nonprofessional services; (2) failure to follow the request for proposals or its evaluation criteria; (3) misleading discussions; (4) failure to avoid the appearance of impropriety; (5) failure to obtain high quality goods and services at reasonable costs; (6) failure to include qualified vendors; or (7) failure to conduct the process in a fair and impartial manner.

Following are some grounds for protesting a competitive negotiation award that are questionable and should be considered with skepticism: (1) the County's decision was erroneous; (2) the County arbitrarily appointed people without technical knowledge to the selection committee; (3) the County failed to retain certain documents; (4) the County failed to timely reply to a Freedom of Information Act request; (5) the selected vendor's proposal infringes on some other vendor's copyrighted work; (6) the requirements of the request for proposals were such that the vendor selected had a major advantage; and (7) the County did not negotiate enough with a particular vendor.

No protest shall lie for a claim that the selected vendor is not responsible. Thus, vendor qualifications including, but not limited to, minimum prior experience, expertise, or minimum bonding capacity, are not the proper subject of a protest because these issues pertain to vendor responsibility. No protest shall lie which challenges the terms and conditions of the request for proposals.

Following are some strategies to prevent protests when a competitive negotiation procedure is used:

- Confirm that the selection was based only upon the factors in the request for proposals.
- Confirm that neither the process nor the decision was arbitrary.
- ~~As~~Ensure that no verbal statements were made during the process that may have misled vendors.
- Confirm that the successful vendor satisfies all requirements of the request for proposals.
- ~~As~~Ensure that the requirements do not change without fair notice to all vendors.
- ~~As~~Ensure that complex methods for evaluating proposals are accurately and objectively performed.

25-4 Effect of Protest on Contract Award

The purchasing agent may award a contract during the period allowed to protest. However, if a timely protest is received or timely legal action is commenced, the purchasing agent shall take no further action to award the contract unless he makes a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

25-5 Procedure for Making a Protest

A protest shall be in writing and shall include the basis for the protest and the relief sought. A protest must be received in the purchasing office within the periods identified below:

- Competitive sealed bidding procurement: Within ten ~~(10)~~ calendar days ~~of the posting of~~after the notice of intent to award or the notice of award ~~is~~posted, whichever occurs first.
- Competitive negotiation procurement: Within ten ~~(10)~~ calendar days ~~of the posting of~~after the notice of intent to award or the notice of award ~~is~~posted, whichever occurs first.
- Sole source procurement: Within ten ~~(10)~~ calendar days ~~of~~after the ~~posting of the~~ notice of award ~~is~~posted.
- Emergency procurement: Within ten ~~(10)~~ calendar days ~~of~~after the ~~posting of~~ the notice of award ~~is~~posted.

- Any type of procurement, where the protest depends on public records pertaining to the procurement: Within ten ~~(10)~~ calendar days after the records are available for inspection.

Except as otherwise provided herein, the purchasing agent shall reject any protest that is either untimely received or fails to state the basis for the protest and the relief sought. However, the purchasing agent may, in his discretion, consider any protest that is untimely, and may grant any remedy authorized by ~~s~~Section 25-7, if the protest is determined to be meritorious and the remedy granted is determined to be in the best interests of the County.

25-6 Response to Protest; Denial

The purchasing agent shall issue a response to the protest within ten ~~(10)~~ calendar days after receipt of the protest. The response shall be in writing and shall state the reasons for either denying or upholding the protest. In making his decision, the purchasing agent shall consider the following factors:

- Whether, based on the evidence presented in the protest or discovered by the purchasing agent as part of his investigation, it is more likely than not that the grounds stated in the protest are true.
- If the grounds stated in the protest are true, whether ~~such~~those grounds are a violation of a criminal law, the Virginia Public Procurement Act or this manual; or, whether ~~such~~those grounds render the decision to award arbitrary or capricious.

~~The purchasing agent may consult with the county attorney as to any matter pertaining to the decision to deny or uphold a protest.~~

The purchasing agent shall either hand deliver or mail the response to the vendor. If the response is hand delivered, the purchasing agent shall prepare a certificate stating the date of ~~such~~ delivery to retain in the contract file. If the response is mailed, it shall be mailed by certified mail, return receipt requested. The decision of the purchasing agent shall be final unless the protesting vendor then invokes the judicial appeals process as provided by law within ten ~~(10)~~ calendar days ~~of~~after receipt of the response.

25-7 Remedies if Protest Upheld

If the protest is upheld and the decision to award the contract was, therefore, arbitrary or capricious, the purchasing agent shall grant the following relief:

- Prior to contract award: The award shall be canceled or revised to comply with the law.
- After contract award, prior to contract performance: The performance of the contract by the vendor may be enjoined.

- Contract performance begun: The contract may be declared void upon finding that the action is in the best interest of the public.

If, after a hearing held by the purchasing agent following reasonable notice to all vendors who submitted bids or proposals, there is probable cause to believe that a decision to award the contract was based on fraud, corruption, or an act in violation of the ethics provisions of the Virginia Public Procurement Act, the purchasing agent shall enjoin the award of the contract to the particular vendor.

Chapter 26. The Contract

Summary

This chapter identifies, in general terms, the required elements of a contract entered into for the procurement of goods or services. The specific elements of a contract are set forth in model contracts in ~~the~~ Appendix A. This chapter also identifies the procedure for resolving contractual claims. Finally, this chapter establishes the procedure for reviewing and executing contracts.

Essential Information in this Chapter

- After a contract is awarded, a contract shall be prepared and circulated for review and signature by the vendor and county officers.
- Before forwarding a contract to the county attorney for review, the contract preparer shall confirm that all contract documents are included and that the certificate of insurance and all bonds or other forms of surety are provided and satisfy the requirements of the invitation for bids or request for proposals.
- The contract shall be in a form approved by the county attorney.
- ~~Although a vendor's standard contract may be used if provided for in the invitation for bids or request for proposals, such a contract should be avoided.~~

Key References to the Code of Virginia Applicable to this Chapter

Section 2.2-4309: Modification of the contract
Section 2.2-4311: Employment discrimination by contractor prohibited
Section 2.2-4311.1: Compliance with federal, state, and local laws and federal immigration law; required contract provisions
Section 2.2-4311.2: Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth
Section 2.2-4312: Contractor required to maintain a drug-free workplace
Section 2.2-4331: Contract pricing arrangements
Section 2.2-4332: Workers' compensation for construction contractors and subcontractors
Section 2.2-4333: Retainage on construction contracts
Section 2.2-4334: Deposit of certain retained funds
Section 2.2-4335: Construction contract provisions barring damages for unreasonable delays void
Section 2.2-4350(B): Separate payment dates
Section 2.2-4354: Payment clauses
Section 2.2-4363: Contractual disputes
Section 18.2-498.1: Certificate of no collusion
Section 22.1-296.1(C): Certification of Crimes Against Children

26-1 General

After a contract is awarded, a contract shall be prepared and circulated for review and signature by the vendor and eCounty officers. The contract shall be created using the templates maintained by the purchasing agent and approved by the county attorney or otherwise in a form approved by the county attorney. (See Appendix A; contact purchasing agent for current in-use templates); and All contracts shall contain the terms and conditions required by this chapter and by law. In no event shall a contract contain clauses requiring mandatory arbitration, indemnification of the vendor by the County, vendor ownership or security interest in property of the County, or broad powers of decision granted to the vendor.

The contract may be a short form contract. This contract specifies the procurement number, the date of execution, the parties to the contract, the contract term, the contract amount, and payment terms. The contract documents, incorporated by reference, include the original invitation for bids or request for proposals, with all addenda, and the vendor's proposal.

~~Although a vendor's standard contract may be used if provided for in the invitation for bids or request for proposals, such a contract should be avoided. These contracts will likely contain clauses favoring the vendor. If such a contract is used, beware of clauses that govern mandatory arbitration, indemnification of the vendor by the County, the vendor's ownership of materials produced pursuant to the contract and delivered to the County, and the granting of broad powers of decision to the vendor.~~

26-2 Review of Contract and Contract Documents by County Attorney

Before forwarding a contract to the county attorney for review, the contract preparer shall confirm that all contract documents are included and that the certificate of insurance and all bonds or other forms of surety are provided and satisfy the requirements of the invitation for bids or request for proposals.

The county attorney shall review a contract for the following matters, and any other matters identified during review:

26-2.1 The Contract

—The contract shall be reviewed by the county attorney for the following:

- Form and substance: The contract shall be in a form approved by the county attorney, ~~except when the invitation for bids provides that the contract may be provided by the vendor, in which case the county attorney shall review the substance and the form of the contract.~~

- Identification of the parties: The County shall be identified as the “County of Albemarle, Virginia.” The school division shall be identified as the “~~County~~ School Board of Albemarle County, Virginia.” The vendor shall be identified by its legal name.
- Legal status of the parties: The County ~~and the school division~~ ~~each~~ shall be identified as being “a political subdivision of the Commonwealth of Virginia.” The School Board shall be identified as “a body corporate under the laws of the Commonwealth of Virginia.” The legal status of the vendor shall be also stated (e.g., “a Virginia corporation”).
- Term of the agreement: The term of the contract shall not commence prior to the date of the County’s or School Board’s properly authorized representative~~vendor’s~~ signature. Terms of contracts, including renewals, in excess of five (5) years are generally disfavored but may be approved by the purchasing agent if circumstances warrant.
- Included documents: All of the documents listed in the “contract documents” section of the contract shall be included in the contract package.

26-2.2 Required Provisions

State law requires the inclusion of certain provisions in public contracts. Those required provisions currently include:

- Employment discrimination by contractor prohibited (Virginia Code § 2.2-4311) (contracts exceeding \$10,000 in value)
- Compliance with federal, state, and local laws and federal immigration law (Virginia Code § 2.2-4311.1)
- Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth (Virginia Code § 2.2-4311.2)
- Drug-free workplace to be maintained by contractor (Virginia Code § 2.2-4312) (contracts exceeding \$10,000 in value)
- Statement that the County or the School Board, as applicable, does not discriminate against faith-based organizations (Virginia Code § 2.2-4343.1)
- Payments to subcontractors (Virginia Code § 2.2-4354)

All County and School Board contracts shall include all provisions required by and in the *Virginia Code*, and shall be subject to, and follow the required form of, subsequent amendment(s) to state law.:

The following provisions are required by this purchasing manual to be included in all public contracts:

- Non-appropriation: ~~4~~The continuation of contract past the end of any fiscal year is subject to appropriations by the Board of Supervisors or School Board, as applicable.
- Albemarle County business license requirement.
- Contract interpretation under the laws of the Commonwealth of Virginia.
- Venue in Albemarle County, Virginia.
- Payment and performance bonds (if construction project is \$100,000 or more).
- Compliance with local, state, and federal laws.
- Termination with cause.

The following provisions are recommended by this purchasing manual to be included in all public contracts:

- Non-assignment of contract by either party.
- Termination without ~~c~~Cause.
- Hold harmless, indemnification (vendor indemnification of the County, NOT the County indemnifying the vendor).
- Independent ~~c~~Contractor.
- Submission and disposition of contract claims.
- Payments to subcontractors.
- Insurance.
- Cooperative procurement, if applicable and approved by the purchasing agent.

The following provisions are PROHIBITED by law and this purchasing manual:

- Dispute resolution by arbitration.
- Indemnification of vendor by the County.
- Payment of vendor's attorney's fees.

26-2.3 Certificate of Insurance

If the invitation for bids or the request for proposals requires that the vendor have insurance during its performance of the contract, the certificate of insurance shall be reviewed for the following:

- Correct type of coverage: The certificate shall identify all of the types of insurance coverage (e.g., general liability, property damage, automobile liability, workers' compensation) required by the invitation for bids or the request for proposals.
- Correct amount of coverage: The certificate shall identify the amount of each type of insurance coverage, which must meet or exceed the amount for that type required by the invitation for bids or the request for proposals. The amount of coverage may be satisfied by combining the amount of insurance for the particular type of coverage with the amount of excess liability or umbrella insurance identified on the certificate of insurance, but only if the insurer provides a written statement that the coverage and the eligibility requirements for the excess liability or umbrella insurance is the same as the primary insurance.
- Term of coverage: The term of the insurance coverage shall begin on or prior to the date of the term of the contract, and shall continue during the full term of the contract. A certificate of insurance that indicates that an insurance policy will expire prior to the end of the contract term may be approved, but the vendor must provide a new certificate of insurance prior to the expiration of that policy.
- County or ~~s~~School Board

division

 named as an additional insured: The County or the ~~s~~School Board

division

, as the case may be, must be identified on the certificate of insurance as an additional insured for all types of insurance coverage except for workers' compensation and professional liability. The County shall be identified as the "County of Albemarle, Virginia." The school division shall be identified as the "~~County~~ School Board of Albemarle County, Virginia."

- Form of the certificate: The certificate shall be on a form approved by the County risk manager, such as the standard Acord 25 form.~~substantially similar to the sample certificate in the Appendix.~~
- Original certificate: The vendor shall provide an duplicate original certificate of insurance. An original certificate shall be provided upon request of the purchasing agent.~~photocopy or facsimile of the certificate may be accepted when prompt review and approval of the contract is necessary and the vendor assures the County that the original certificate is forthcoming.~~
- Signature of insurance agent: The certificate of insurance shall be signed by an insurance agent licensed to do business in Virginia and registered with the Virginia State Corporation Commission Bureau of Insurance.

26-2.4 Bonds and Other Forms of Security

Security such as performance bonds, payment bonds, or other forms of security shall be reviewed to ensure that they comply with the requirements for ~~such~~ security as set forth in ~~s~~Sections 24-3.2, 24-4.2 and 24-5.

26-2.5 Signature of Vendor

The signature of the vendor shall be reviewed for the following:

- Signatory must be authorized to bind the vendor: The contract shall be signed on behalf of the vendor only by a person who is authorized to contractually bind the vendor. The vendor may be required to provide proof of ~~such~~the signatory's authority prior to approving the contract.
- Title or office of signatory must be identified: The title or office of the signatory shall be identified on a line immediately below his or her signature.
- Signature must be notarized: The signature of the ~~vendor~~signatory shall be notarized by a notary public in the state in which the contract is executed by the signatory.

26-2.6 Authorized County/School Board Signatories

The following officers are authorized to sign contracts on behalf of the County and/or School Board:

Tier	Maximum Amount	Authorized Signatories
------	----------------	------------------------

I	\$5,000	<u>Tier III & IV signatories, School Principals</u> <u>Employees specifically designated by their Department Head or Tier III signatory and who have completed mandatory training*</u>
II	\$25,000	<u>Tier III & IV signatories, County Department and School Division Heads, School Principals*</u>
III	\$5 100,000	<u>Tier IV signatories, County Executive,** School Superintendent** and Chief Operating Officer</u>
IV	N/A	<u>Purchasing Agent, Chief of Financial Management, Chief Financial Officer and Director of Finance</u>

*School Principals are authorized to sign only form contracts prepared and approved by the County Attorney. Any modification of standard contract terms requires the separate review of the County Attorney and signature by a Tier III or IV signatory, depending on the amount.

**The Deputy County Executive and Deputy Superintendent are authorized in the absence or unavailability of the County Executive and Superintendent, respectively.

26-3 **Contractual Claims and Dispute Resolution**

A contractual claim shall be made pursuant to the following procedure:

- Time to submit notice of intention to file a claim: The vendor shall submit to the purchasing agent written notice of its intention to file a claim within ~~twentyfive~~ ~~(1520)~~ calendar days after the date of the occurrence of the event on which the claim is based, or within ~~twentyfive~~ ~~(1520)~~ calendar days after the date of the beginning of the work upon which the claim is based, as the case may be. However, if damage is deemed certain in the opinion of the vendor to result from its acting on an order from the County, it shall immediately take written exception to the order.
- Time to submit claim: A contractual claim, whether for money or other relief, shall be received in the purchasing office no later than sixty ~~(60)~~ calendar days after final payment. An untimely notice will be insufficient to satisfy the requirements here, and no claim shall be recognized.
- Form and substance of claim: A claim shall be in writing, shall identify the date of the occurrence or the date of the beginning of the work upon which the claim is based, shall state the basis for the claim, and shall identify the relief sought. An oral notice or statement will be insufficient to satisfy the requirements herein, and no claim shall be recognized.
- Investigation of claim: Upon receipt of a claim, the purchasing agent shall conduct an investigation and evaluation of the claim. As part of his investigation, the purchasing agent may request that the vendor submit additional information to support his claim, and may request the vendor, or a representative thereof, to appear before the purchasing agent to provide

additional information. The purchasing agent also may consult the using department and the county attorney.

- Resolution of claim: The purchasing agent, with the advice and consent of the county attorney, may settle and resolve a claim by mutual agreement of the vendor and the County. If resolution of the claim requires that the County pay additional money to the vendor, the purchasing agent's authority to settle a claim is limited to an amount not exceeding twenty-five ~~(25)~~ percent of the amount of the contract, or ~~fifty thousand dollars (\$50,000)~~, whichever is greater. If resolution of the claim requires that the County pay an amount exceeding twenty-five ~~(25)~~ percent of the amount of the contract, or ~~fifty thousand dollars (\$50,000)~~, whichever is greater, the purchasing agent shall present the proposed settlement to the ~~b~~Board of ~~s~~Supervisors or the Board's designee as defined in Section 26-4 for its determination.
- Written decision by purchasing agent if claim not resolved: If a claim is not resolved by mutual agreement of the vendor and the County within thirty ~~(30)~~ calendar days of receipt of the claim, the purchasing agent shall notify the vendor in writing of his decision, which shall set forth the reasons for the action taken. The decision of the purchasing agent shall be final and conclusive ~~to the fullest extent provided by law, unless the vendor timely appeals the decision as provided by law. Denial of a vendor's claim under a construction contract based on the vendor's alleged unreasonable delay requires the County to pay a penalty that is a percentage of the vendor's costs to investigate, analyze, negotiate, litigate and arbitrate the claim.~~ A vendor may not institute legal action on the claim prior to receipt of the purchasing agent's written decision, unless the purchasing agent fails to render his decision within thirty ~~(30)~~ calendar days ~~of~~after receipt of the claim.
- Payment during pendency of claim: The pendency of a claim shall not delay payment of amounts agreed due in the final payment, provided that the goods or services contracted for have been provided and accepted. The acceptance of the final payment by the vendor shall not constitute a waiver of the vendor's right to timely submit a claim.

The purchasing agent may consult the using department and the county attorney during any stage of the claim process.

26-4 Change Orders

Virginia Code § 2.2-4309(A) provides in part: “[N]o fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of . . . the governing body, in the case of political subdivisions.” The ~~C~~ounty ~~E~~xecutive, ~~D~~eputy ~~C~~ounty ~~E~~xecutive, or ~~A~~ssistant ~~C~~ounty ~~E~~xecutive’s Office shall act as the designee of the ~~B~~oard of ~~S~~upervisors for purposes of this review and approval. Approval shall be documented in writing on a form prepared by the purchasing agent or by other verifiable means. Proposed change orders shall receive this review whenever the cumulative total of proposed changes first exceeds ~~twenty-five percent 25%~~ of the amount of the contract or any multiple of ~~twenty-five percent 25%~~ thereafter (such as 50%, 75%, etc.). Modifications that fail to comply with this section are voidable at the discretion of the ~~B~~oard of ~~S~~upervisors or its designee, and the unauthorized approval of a modification cannot be the basis of a contractual claim.

26-5 Contract Administration and Record Retention

Unless otherwise determined by the purchasing agent, the using department shall be responsible for the administration of all of the contracts for which it is responsible. ~~Such a~~ Administration begins at the creation of a solicitation and continues from the time of the award of a contract through the completed performance of the work under the contract and acceptance by the County of ~~such~~the work. Administration also includes resolution of disputes through final payment.

Each County department shall designate a person or persons who shall be responsible for contract administration. Designated persons are strongly encouraged to attend any contract administration training provided by the purchasing agent.

Documentation regarding the negotiation, execution, performance, and resolution of a contract should be uniformly and securely maintained in conformity with the Library of Virginia retention schedules. Timely destruction of ~~such~~these records should be made only pursuant to the applicable retention schedules and in the manner proscribed. Documentation of ~~such~~records destruction shall also be appropriately maintained.

Any and all records regarding a procurement shall be delivered to the purchasing agent upon request.