

Everything You Need to Know about Purchasing – as a Virginia Public Official



Legal Elements of a Contract

The essential elements necessary to form a binding contract are:

- **Offer**
- **Acceptance (in strict compliance with the terms of the offer)**
- **Legal Purpose**
- **Mutuality of Obligation – also known as the “meeting of the minds”**
- **Consideration**
- **Competent Parties**

Two Sections of Virginia Code :

Title 8.2 - COMMERCIAL CODE – SALES

§ 8.2-201. Formal requirements; statute of frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of **\$500 or more** is not enforceable by way of action or defense **unless there is some writing** sufficient to indicate that a contract for sale has been made between the parties and **signed by the party against whom enforcement is sought or by his authorized agent or broker**. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

Title 2.2 - ADMINISTRATION OF GOVERNMENT **Chapter 43 - Virginia Public Procurement Act**

Provides public policies pertaining to governmental procurement from nongovernmental sources

Includes governmental procurement that may or may not result in monetary consideration for either party

Intent of the Virginia Public Procurement Act

- **Public Bodies obtain high quality goods and services at reasonable cost**
- **Procurements conducted in fair and impartial manner**
- **Avoidance of impropriety or appearance of impropriety**
- **All qualified vendors have access to public business**
- **No offeror be arbitrarily or capriciously excluded**
- **Competition sought to the maximum feasible degree**
- **Procedures involve openness and administrative efficiency**
- **Public Bodies enjoy broad flexibility in fashioning details of competition**
- **Rules governing contract awards be made clear in advance of competition**
- **Specifications reflect needs of the Public Body rather than favoring a vendor**
- **Purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered**

Virginia Public Procurement Act (VPPA) defines two methods of purchase

- **Competitive Sealed Bidding**
 - Issue written Invitation to Bid (ITB)
 - Public opening and announcement of all bids received
 - Evaluation of bids based on requirements in the ITB
 - Award to the lowest responsive and responsible bidder
- **Competitive Negotiation (Request for Proposal (RFP))**
 - Issue written RFP
 - Selection of 2 or more offerors deemed fully qualified & best suited
 - After negotiations with each, public body makes award to the offeror which has made the best proposal
 - Must publish notice in newspaper
- **Public Notice – at least 10 days before closing date for either method**
- **Closing date and time – not an informality that can be waived**

Small Purchase Thresholds

- **§2.2-4303.G. – Public Body may establish small purchase procedures**
 - **Written**
 - **Not expected to exceed \$50,000 (\$30,000 for Professional Svcs)**
 - **Purchases expected to exceed \$30,000 require written informal solicitation of minimum of four offerors**

Professional Services

- Accounting, Actuarial Services, Architecture, Land Surveying, Landscape Architecture, Law, Dentistry, Medicine, Optometry, Pharmacy, or Professional Engineering
- Must be procured by Competitive Negotiation (RFP)
- RFP cannot request costs for services or estimated man-hours
- Select on order of preference; then negotiate in that order

Multiple Project A&E Contracts

- For Local Public Bodies, Contract Term limited to 1 year with 4 additional 1-year options
- Sum of all projects cannot exceed \$1 million; except localities with population > 80,000, limit is \$5 million
- Can be multiple awards

Construction Contracts – the big bucks!



- Construction may be procured only by Competitive Sealed Bidding, except:
 - When the cost is anticipated to be < \$1 million
 - When the construction is for highways or grading of real property
 - Design/Build projects (requires Review Board approval)
- Bid Bond required for construction > \$100,000 (\$250,000 for transportation)
- Performance and Payment Bonds required for construction > \$100,000 (\$250,000 for transportation)
- Retainage cannot exceed 5%
- Option on procedure to withdraw a bid:
 - Bidder gives notice within 2 days after bid opening and submits working papers
 - Bidder submits work papers prior to bid opening (scheduled 1 day after closing); requests withdrawal within 2 hours after bid opening

Contract Exceptions

- 1. Sole Source – upon determination in writing that there is only one source practicably available for that which is to be procured**
- 2. Emergency Purchase – in case of emergency, a contract may be awarded without competition; however, such procurement shall be made with such competition as is practicable under the circumstances**
- 3. Except in case of emergency affecting the public health, safety, or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost**

Exemptions to VPPA

- 1. Contracts for Real Property (land, buildings)**
- 2. Legal Services**
- 3. Purchases from other government organizations**
- 4. Purchases from persons under the supervision of the Virginia Department for the Blind and Vision Impaired**
- 5. Purchases from nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped**
- 6. A number of organizations – by name**

Prompt Payment of Bills by Localities

The required payment date shall be either:

- (i) The date on which payment is due under the terms of the contract; or**
- (ii) If a date is not established by contract, not more than 45 days after goods or services are received or not more than 45 days after the invoice is rendered, whichever is later**

Protests

- **Protest must be submitted in writing to the public body no later than ten days after the award or the announcement of the decision to award, whichever occurs first.**
- **The protest shall include the basis for the protest and the relief sought. The public body shall issue a decision in writing within ten days. This decision shall be final unless the bidder appeals within ten days by invoking administrative procedures, if available, or by instituting legal action.**

Ethics in Public Contracting

- **No public employee having official responsibility for a procurement transaction shall accept or agree to accept from a contractor any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal or minimal value.**
- **“official responsibility” is defined as authority to initiate, approve, disapprove or otherwise affect a procurement transaction**
- **Any person convicted of any provision shall be guilty of a Class I misdemeanor. In addition to any other penalty, the public employee shall forfeit his employment.**