

Region 2000 Local Government Council

Procurement Policy

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Chapter 1. General Provisions

1.1 Introduction

This policy sets forth specific policies and procedures of the Council for the procurement of goods, services, and construction.

The purpose of this manual is to ensure that:

- The Council obtains high quality goods and services at reasonable cost;
- All procurement procedures are conducted in a fair and impartial manner without impropriety or appearance of impropriety;
- Competition is maximized and specifications reflect the procurement needs of the Council and are not perceived to favor a particular vendor;
- All qualified vendors are given access to Council business;
- No offeror is arbitrarily or capriciously excluded;
- The rules governing procurement are made clear in advance of the competition;
- The Council and vendors freely exchange information concerning what is sought to be procured and what is offered;
- Guidance for understanding specific responsibilities, objectives, limitations and duties of the staff is provided;
- Employees obtain a clear understanding of the Council's purchasing policies and objectives; and
- Reasonable standards are established, against which internal and external auditors can measure the performance of the appropriated funds.

1.2 Overview of the Policy

The policy sets forth the Council's specific policies and procedures in compliance with the Virginia Public Procurement Act (VPPA).

1.3 Overview of the VPPA

The VPPA enunciates the policies and procedures pertaining to the procurement of goods and services by the Council from nongovernmental vendors. The VPPA applies generally to every "public body" in the Commonwealth, and requires that goods and services be procured in a competitive process that is fair, impartial, and accessible to all qualified vendors.

1.4 Contracts or Purchases Made in Violation of Policy

No Council official nor any Council employee shall purchase or contract for any goods, services, insurance or construction except as provided in this policy. Any purchase or contract made contrary to the provisions of this policy shall be voidable at the option of the Executive Director.

1.5 Division of Procurements

Procurements and contracts shall not be divided into separate tasks or parts with the intent of avoiding any dollar amount limitations set forth in this policy.

1.6 **Posting**

- All decisions relating to procurement matters, except determinations of non-responsibility or ineligibility of a bidder, shall be publicly posted on the Council's Bulletin Board. All solicitations and Intent to Award or Award notices may also be posted on the Council's website.
- Posting shall occur when records and documents related to the procurement are available for public inspection, as required by the provisions of this policy.

Chapter 2 **Definitions**

The words defined in this chapter shall have the meaning set forth below throughout this manual:

Council: The Region 2000 Local Government Council.

Construction: Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

Contract: All types of agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.

Contractor: Any person having a contract with the Council or a using agency thereof.

Days: Calendar days.

Executive Director. The chief administrative officer of the Council.

Goods: All material, equipment, supplies, printing, and automated data processing hardware and software.

Informality: means a minor defect or variation in a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

Professional services: Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, dentistry, architecture, land surveying, landscape architecture, law, medicine, optometry, pharmacy, professional engineering or the services of an economist.

Posting: A written notice placed upon the Council Bulletin Board, or electronic notice placed on the Council's web site.

Procurement Coordinator: The Council's principal purchasing official. Until the Council authorizes the hiring of a Procurement Coordinator, the Executive Director shall be designated as the Procurement Coordinator.

Services: Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

Chapter 3. Participants in the Procurement Process

3.1.1 Executive Director

- The Executive Director has expressed authority upon the adoption of this Policy by the Board to sign all contracts on behalf of the Council without approval from the Board if sufficient funds have been budgeted to cover such contract.
- The Executive Director has overall responsibility for the appropriate procurement of goods and services.
- The Executive Director may delegate, in writing, some or all of the responsibilities for procurement to qualified individuals.
- The Executive Director is the only individual authorized to declare an emergency.

3.2.1 The Procurement Coordinator

The Procurement Coordinator shall serve as the principal public purchasing official for the Council and shall be responsible for the procurement of all goods, services, insurance and construction. The Procurement Coordinator is also responsible for the management and disposal of Council owned surplus goods.

3.3.1 Duties

- 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.
- Prepare forms and regulations for the purpose of implementing the provisions of this policy. A summary of any changes to this policy shall be submitted to the Executive Director for approval.
- Authorize and ensure all procurements are made in a manner that is consistent with the requirements and the purposes of this policy and the VPPA.
- Authorize the sale of any surplus supplies, materials or equipment and make any other sales as authorized by the Executive Director. The Procurement Coordinator ensures the sale is by

competitive bids or electronic competition under rules and regulations established by ordinance or resolution.

- Establish suitable specifications or standards for all supplies, materials and equipment, construction or insurance to be purchased for the Council, the establishment and maintenance of programs for specifications' development, contract administration, inspection and acceptance of goods, services, insurance and construction in cooperation with Council Departments.
- Establish (for his or her own use) 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. Notwithstanding anything contained in this section, the Procurement Coordinator is not obligated to notify any vendor appearing on such lists of Council's solicitations.
- Ensure each vendor a full, fair, prompt and courteous consultation; freely exchange information; assure that competition is open and fair; assure that specifications reflect the needs of the Council; apply the Council's procurement policies and principles in a consistent manner; observe strict truthfulness in all transactions and in all correspondence; respect the confidence of the vendor as to confidential information; maintain vendor performance and complaint records and communicate with the vendors concerning feedback from the Council's Departments regarding nonperformance, nondelivery, failure to meet specifications or modifying terms of a contract; provide for dispute resolution between the Council and vendors in the event of a disagreement.

3.3.2 Council Departments and Agencies

The Department Directors and those persons designated to directly purchase, specify, influence the purchase of, or approve payments shall be responsible for the following:

- Anticipate the department's needs and determine the quantity, general type or character of supplies, materials, services or equipment required.
- Directly generate and or oversee the generation by others, of written specifications or scopes of work that accurately describe the Council's needs. Cooperate and assist in the development of standards and supplemental specifications or requirements.
- Notify the Procurement Coordinator of any order or services received that are not in compliance with a contract, purchase order or applicable terms and conditions.
- Inspect goods received and confirm compliance with the purchase order or contract.
- Prepare payment requests and submit to Financial Services - Accounts/Payable in accordance with the terms and condition of the contract or purchase order.

Chapter 4. Qualification of a Vendor

4.1 General

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 may be exercised at different times in the procurement process.

In the competitive negotiation procedure, responsibility, as defined below, must be determined prior to the commencement of negotiations. In the competitive sealed bidding process, responsibility of the apparent low bidder need not be determined at bid opening, but must be determined prior to award.

4.2 Determining Whether a Vendor is Responsible

Responsible vendors must have the capacity, the financial ability, integrity, perseverance and tenacity to perform.

4.2.1 Criteria to Consider

In determining whether a vendor is responsible, the Procurement Coordinator or a selection committee, shall consider (but not be limited to) the following criteria:

- 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 Council shall be sufficient to establish the financial ability of the vendor to perform the contract.
- Whether the vendor has appropriate experience to perform the 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.
- Whether the vendor has been in substantial noncompliance with the terms and conditions of any prior contract with the Council 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.
- 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.

- 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.
- Whether the vendor has failed to provide the Procurement Coordinator or the selection committee any information relevant to the other criteria identified in this section that is required by the Procurement Coordinator or the selection committee, as the case may be, or by the invitation for bids or request for proposals.

Failure to meet the above criteria or any other criteria set forth in the applicable invitation for bids or request for proposal may be cause to determine that a vendor is not responsible. The Procurement Coordinator 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 Council's prior approval of all subcontractors used, requiring the Council'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.

4.3 Determining Whether a Vendor is Responsive

A responsive bid is one that is in substantial conformance with the requirements of the invitation for bids. The determination of whether a bid is responsive is made at the time the bid is reviewed; there is no opportunity for the vendor to provide information after the bid is opened in order to make the bid responsive. The Procurement Coordinator or designee may announce any obvious discrepancies, such as omission of a bid bond or no acknowledgement of addenda in the public opening with a final determination of responsiveness to follow in a timely manner. If a determination cannot be announced in the public opening, a full disclosure of the discrepancy shall be announced and a decision rendered to all bidders submitting a bid.

The Procurement Coordinator or designee and the selection committee, if one is established for the procurement, shall evaluate each bid received to determine whether it contains all of the information and supporting documentation required by the invitation for bids. This evaluation shall consist of the following:

- The Procurement Coordinator or designee determines whether all information required by the invitation for bids has been submitted. This information includes, to the extent required for a particular procurement, a completed bid form, a certificate of non-collusion, and a bid security.
- The Procurement Coordinator or designee determines whether documents submitted with the bid are properly signed by the vendor or by an authorized agent thereof.
- The Procurement Coordinator or designee in collaboration with the department, determines whether the goods or services offered by the vendor generally comply with the specifications in the invitation for bids. Written recommendations from consultants may be considered however, the Council's determination shall be final.

- The Procurement Coordinator shall identify all exceptions and qualifications to the Council's procurement requirements identified in the invitation for bids, as well as all errors or omissions.

4.4 State Licensing

All bidders and offerors whose occupation is regulated by the Department of Professional and Occupational Regulation shall meet the requirements of Article I, Chapter 11, of Title 54.1 of the Code of Virginia prior to submitting any bid or offer to the Council. Any invitation for bids or request for proposals shall announce the terms contained in Subsection (a) of this section and require that bidders and offerors provide a state license number in each bid and proposal submitted to the Council.

4.5 Business License

The successful bidder for construction projects must currently have or must obtain a business license in the jurisdiction(s) of the project prior to award of a contract.

Chapter 5: Procurements Excused from Formal Competitive Procedures

There are some circumstances when compliance with the competitive sealed bidding or competitive negotiation procedure is excused, even though the cost of the goods or services is expected to exceed stated thresholds.

5.1 Annual Construction Contracts

Construction projects where cost estimates are not expected to exceed \$100,000 may be completed under an annual construction contract. When multiple pre-qualified term contracts exist for a particular discipline (i.e. electrical contractors) and costs are expected to exceed \$5,000, multiple quotes shall be obtained and submitted to the Procurement Coordinator as documentation for purchase order approval. The Executive Director may determine it is in the Council's best interest to allow a project exceeding the \$100,000 threshold to be completed under an annual contract.

Upon initiation of a project, the project manager shall have an annual contract change order completed with the estimated budget of each project. These change orders shall be sent to the Procurement Coordinator, and a line item will be added to the purchase order. Upon completion of each project, the project manager shall notify the Procurement Coordinator, so the project's line item can be completed. If the project exceeds the initial estimate, additional funds will be encumbered for that project.

5.2 Council Charge Cards

Authorized charge cards may be used for small purchases and authorized travel and telephone expenses as prescribed by the Council's charge card policy. A supplemental policy regarding charge cards will be developed.

5.3 Cooperative Procurement.

The Council may purchase any items through cooperative procurement to the extent allowed by the Virginia Public Procurement Act.

Chapter 6. Small Purchases

6.1 General

This chapter establishes the procedures to be used for single or term contracts when the aggregate or the sum of all phases is not expected to exceed \$50,000. The small purchase procedures are intended to provide for competition whenever practicable, and shall be applied to further this intent.

The following procedures apply to all procurements made pursuant to this chapter:

- **\$1 - \$500** – Purchase directly and pay with charge card or petty cash (under \$50). A purchase order is not required unless the vendor requests it. If a charge card or petty case is not used, payment requests shall be submitted to Finance Accounts/Payable once invoices are received. If a purchase order was issued, the purchase order number should be referenced on the payment request form. Competitive quotes are recommended but not required.
- **\$500 - \$10,000** - Obtain verbal or written quotes directly from suppliers and pay with charge card (if accepted) or enter a requisition and receive a purchase order. Quotes may be obtained verbally, telephoned, faxed or obtained via eVA or other online method.
- **\$10,000-\$50,000 - Non-Emergency**: Contact the Procurement Coordinator regarding the item or service. Procurement staff will advise the best method of purchasing based on what goods or services are being procured and the circumstances, as well as provide templates and forms for convenience and to satisfy legal and insurance requirements. Formal solicitation threshold is \$30,000 for professional services.
- **\$10,000-\$50,000 - Emergency**: Purchase required goods or services and contact the Procurement Coordinator at the earliest opportunity. At this level of expenditure, forms that satisfy legal requirements must be completed and must become part of the final procurement file.
- **\$50,000 – and above**- The Small Purchases provisions of this chapter are not applicable to purchases above this level of expenditure.

6.2 Additional Considerations for Small Purchases

The following requirements or procedures apply when making a small purchase.

- The receipt of written quotations is always preferred, even if verbal or telephone quotations are authorized. In the event that a dispute arises after the order is placed regarding terms or pricing, these written confirmations provide a record of the purchase. Ask that the quoting party sign and date any quotation and include the position and or title of the individual providing the quote.
- If quotes are obtained via the Commonwealth of Virginia portal (eVA) or from competitively established contracts by other government entities, the department may proceed with the order.

eVA orders above the small dollar threshold may be placed within the system, however, orders above \$10,000 will be electronically sent to the Procurement Coordinator or designee for approval.

- If the cost is expected to be between \$10,000 and \$30,000 the department shall obtain written quotes from a minimum of three vendors if practical. From \$30,000 to \$50,000, four written quotes shall be obtained. Quotes shall consist of identifying the services desired, the date by which performance is expected to be made, and the cost for such services.

Chapter 7. Competitive Sealed Bidding

7.1 Develop Specifications

The using department has the primary responsibility for writing specifications. All specifications must be written in clear, simple language, free of vague terms or those subject to variation in interpretation. Specifications describe the proper quality level of the goods or services. The use of abbreviations should be restricted to those in common usage and not subject to possible misunderstanding.

There are three types of specifications:

- Performance specifications describe the capabilities that the goods or services must satisfy, and is the preferred type of specification.
- Design specifications describe the physical and other characteristics of the goods or services.
- Brand name specifications cite a brand name, a model number, or some other designation that identifies a specific product of a manufacturer as an example of the quality level desired, and goods equaling or surpassing the quality level are understood to be acceptable. Departments should use brand name specifications with caution because they lessen objectivity in the process of evaluation and award, may reduce equality of opportunity among bidders, and may discourage competition. Instead, use several brand names, if available.

7.2 Preparation of the Invitation for Bids

The departments or authorized consultants will be responsible for developing the invitation for bids or requests for proposals. The Procurement Coordinator or designee will review and approve the invitation for bids which incorporate the technical specifications prepared by departments or authorized consultant.

The invitation for bids should be as comprehensive as possible because the more complete it is, the better the chances are that the vendors will understand what the Council desires to procure and what relevant experience and qualifications it should include in its bid. The contractual terms and conditions should also be specified as well as any requisite qualifications.

7.3 Establish a Procurement Schedule

The Procurement Coordinator and the using department will work together in advance of soliciting bids to establish a schedule that will assure that the procurement is completed on or before the date the goods or services are required. To do so, all parties involved must concur on the desired completion date and identify the milestones and the dates by which each milestone should be achieved in order to assure that the procurement is timely.

7.4 Vendor List

The Procurement Coordinator may maintain a database of registered vendors by commodity code (work or product category) for use by the Council at its discretion and makes use of other electronic vendor databases like eVA and BlueBook to ensure wide exposure of Council solicitations. Departments are encouraged to submit the names of any vendors who have indicated an interest in the solicitation to ensure the vendor receives all pertinent information regarding the solicitation, such as pre-bid conference location and any addenda.

7.5 Issuance of the Invitation for Bids and Posting of Public Notice

The Procurement Coordinator or designee shall post public notice of an invitation for bids by posting in a designated public area, publication in a newspaper of general circulation, electronic posting on eVA, BlueBook, or the Council's website, or a combination of the above. In addition, a written notice that bids are available by electronic access from the Council's website may be mailed or faxed to any bidder recommended by the department and vendors selected from the Council's Vendor file.

The notice shall contain, at a minimum, the following information: (1) a brief description of the goods or services to be procured; (2) the location where bid documents can be obtained; (3) the date and time of the pre-bid conference, if applicable; (4) the date and time of the bid opening; (5) the requisite qualifications for bidders, if applicable; and (6) the name of the person to contact with questions.

7.6 Conduct Pre-bid Conferences or Site Visits, if Warranted

A pre-bid conference is a meeting among the Procurement Coordinator or designee, the department and prospective vendors during which the Procurement Coordinator or designee and the using department review the specifications in detail, explain the scope, objectives and techniques of the procurement, emphasize critical elements of the invitation for bids, and encourage input from the vendors. A site visit allows the vendors to observe physical characteristics of the land or of structures that are relevant to the procurement.

- If a pre-bid conference is conducted, the invitation for bids must provide the time, date and location of the conference. The conference should be held as soon as possible after the invitation for bids is issued.
- Attendance of vendors at pre-bid conferences should be optional in order to assure that qualified vendors who are unable to attend are not excluded from bidding. If the procurement is highly

technical or complex, and attendance is declared to be mandatory, only those bids from vendors represented at the pre-bid conference shall be accepted.

- The Procurement Coordinator or designee should make a written note of all inquiries and points of contention raised by the prospective bidders. Clarification may be provided at the pre-bid conference as long as the specifications or conditions are not altered. Oral representations made at the pre-bid conference shall not be binding on the Council. All material clarifications of any provision of the invitation for bids, or the amendment of a specification or condition of the invitation for bids, shall be in writing as an addendum, as provided herein.

7.7 Amending an Invitation for Bids by Addendum

If, after the invitation for bids is issued but prior to the receipt of bids, the invitation must be amended or clarified, the Procurement Coordinator or designee may issue an addendum which modifies the solicitation. The following procedures shall apply:

- An addendum may be initiated by the Procurement Coordinator or designee upon determination of the need, upon the request of the department, or upon the request of a prospective bidder who requests clarification of a provision of the invitation for bids.
- Any addenda shall be issued no later than five days prior to the deadline for bid submittal. Addenda extending the date for the receipt of bids or withdrawing the invitation for bids may be issued any time prior to the date bids must be received. Procurement staff shall consider the effect on the time for prospective bidders to prepare their bids when issuing addenda. If additional preparation time is likely to be required by potential bidders, the deadline for bids should be extended.
- Access to addenda shall be provided to all potential bidders who were provided an invitation for bids. Acceptable means of providing addenda to potential bidders are hand delivery, first class mail, fax with telephone confirmation of receipt, posting to the Council's website or other means designed to assure receipt of the addenda as soon as possible.

7.8 Modifying or Withdrawing a Bid Prior to Bid Receipt Date and Time

A bid may be modified or withdrawn by the vendor, subject to the following requirements:

- The vendor shall notify the Procurement Coordinator or designee in writing of its intentions to modify or withdraw its bid prior to the deadline for receipt of bids.
- If the vendor modifies its bid, it must be resubmitted to the Procurement Coordinator or designee prior to the deadline for receipt of bids.
- A vendor who withdraws or modifies a bid shall not reveal the amount of the bid. If the amount of the bid is revealed by the vendor, the bid shall be invalid. An attempt to modify a bid by writing on the exterior of the bid envelope may render the bid invalid.

7.9 The Submittal of Bids

Bids submitted shall comply with the following:

- All bidders shall use the bid form included in the invitations for bids when submitting their bid.
- The bid form must be signed in order to be considered. If the bidder is a corporation, the bid must be submitted in the name of the corporation, not the corporation's trade name. The bidder must indicate the corporate title of the individual signing the bid.
- The bid form and all other documents required to be submitted as part of the bid shall be enclosed in a sealed opaque envelope. The envelope containing the bid should be sealed and marked with the invitation for bids number, the hour and date upon which the bid must be received and the bidder's Virginia contractor registration number (if required).
- All erasures, interpolations, and other changes in the bid form shall be signed or initialed by the bidder. Bids containing conditions, omissions, alterations, or items not called for in the bid may be rejected by the Council for being unresponsive.
- The Procurement staff will not accept oral bids or bids received by telephone, fax, or other form of electronic transmission, unless otherwise allowed by this manual or so stated in the solicitation for bids.

7.10 The Receipt of Bids

The Procurement Coordinator or designee shall receive bids only as follows:

- All sealed bids shall be received in person, through the mail, or by parcel service, in the Local Government Council offices, until, but no later than, the time and date set for the receipt of bids in the invitation for bids.
- It shall be the sole responsibility of the vendor under all circumstances to assure that its bid is received by the deadline. The Council assumes no responsibility for assuring that bids and proposals sent by mail or parcel service are delivered to the Procurement office by the deadline. Late bids shall not be considered under any circumstances, and shall be returned unopened to the sender.

The time for the receipt of bids shall be determined by the time clock in the Local Government Council offices. The clock in the LGC office shall be the sole clock used to determine whether a bid is received prior to the deadline. All bids received and time stamped will be kept in a secure location in the Procurement office until the time and date set for the opening of bids.

- If a bid envelope does not contain the proper identification, and is inadvertently opened in advance of the prescribed bid opening, the Procurement staff must write an explanation of the inadvertent opening on the envelope, with the invitation number, time and date of opening. The envelope will be resealed and deposited with the other bids.
- Prior to the time and date of opening, the identity of the vendors submitting bids and the number of bids received is confidential, and may be disclosed only to Council officials when disclosure is considered necessary for the proper conduct of the bidding process.

7.11 The Opening of Bids

The Procurement Division shall open bids according to the following procedure:

- All bids received in the Procurement office prior to the deadline shall be opened and publicly read aloud at the time and date established for such opening in the invitation for bids.
- The Procurement Coordinator or designee shall record the following information for each competitive sealed bid received and opened: (1) name of vendor; (2) bid prices, delivery, and payment terms; (3) acknowledgment of addenda, if any; (4) bid security received or not, if required; (5) contractor registration number, if required; (6) exceptions taken by the vendor, if allowed; and (7) any other information the Procurement Coordinator or designee deems pertinent.
- Bid tabulations shall be promptly transmitted to the department inclusive of the recorded information for each bid. The Procurement Coordinator or designee should schedule a time to review bids with the department.

7.12 The Evaluation of Bids

Bids are evaluated to determine the lowest responsive and responsible bidder. The evaluation is based upon the criteria set forth in the invitation for bids, which may include special qualifications of potential vendors, best value concepts, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

Bids shall be examined by the Procurement Coordinator or designee for compliance with the requirements set forth in the invitation for bids, ensuring each bid has no deficiencies that preclude it from being further considered, i.e., not signed, required information not submitted, debarred, etc.

7.14 Non-responsive Bids

If the Procurement Coordinator or designee determines that a bid does not satisfy all of the requirements stated in section 4.3, the bid shall be determined to be non-responsive unless the defect is waived as an informality as provided in section 7.15. The following are examples of defects in a bid that may render the bid non-responsive:

- The vendor substitutes its standard terms and conditions for the Council's, unless the Council reserves the right in the invitation for bids to consider such terms and conditions.
- The vendor fails to meet the Council's required delivery schedule.
- The vendor qualifies its prices in such a manner that its bid price cannot be determined, e.g., "the price in effect at time of delivery"; or the price is not stated in conformance with the required bid format, or the vendor qualifies the price to protect the vendor from unknown future market conditions.

- The vendor makes its bid contingent upon it receiving an award on another bid currently under consideration.
- There is a reasonable basis to suspect either a conflict of interest or collusion among vendors.
- The bid contains a condition that requires payment in advance.
- The bid proposes an alternate item when alternate items are not authorized by the invitation for bids.

7.15 Informalities

An informality is a minor defect or variation of a bid from the exact requirements of the invitation for bids that does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured, unless the requirement was expressly required by the invitation for bids. The Procurement Coordinator or designee may waive or allow the Bidder to correct informalities in bids.

Following are examples of informalities that the Procurement Coordinator or designee may waive or allow the bidder to correct, depending on the particular circumstances of the procurement:

- Failure to furnish with the bid required information regarding the vendor's qualifications to perform the contract.
- Failure to submit descriptive information on the goods or services offered.
- Failure to properly sign a bid bond.
- Failure to properly notarize signatures.
- Inclusion of a separate, but inapplicable, tax charge.

7.16 Determining the Low Bidder, Generally

In determining the apparent low bidder, the Procurement Coordinator or designee shall first review each bid for clerical errors in the calculation of the bid price. The Procurement Coordinator or designee then determines which bid will require the least expenditure of funds, considering not only initial costs, but also the following:

- Evaluation the operational costs for the goods being purchased.
- The Council may at its discretion, consider prompt payment discounts offered by the vendor, but only if the vendor allows at least twenty days for the prompt payment after the goods or services are received or after the invoice is received, whichever is later.
- If the destination of the goods is other than the F.O.B. Destination, the Procurement Coordinator or designee may consider the shipping costs and related transportation logistics such as possible claim filings in the event of damages in shipment, in the evaluation.

- If the invitation for bids provided that awards could be made to more than one vendor, the Procurement Coordinator or designee may consider the expenses associated with the administration of multiple contracts.

7.17 Determining the Low Bidder, Special Situations

7.17.1 Single Bid Received

An invitation for bids that yields only a single bid from a responsive and responsible bidder may be caused by one or more reasons:

- The goods or services to be procured are a sole source item.
- The specifications were too restrictive and could be met by only one vendor.
- The availability of the goods or services to be procured is controlled through territorial franchising arrangements controlled by the manufacturer.
- A poor selection was made of potential vendors.
- Current market conditions affecting raw materials or fuel or labor.

If a single bid is received, the Procurement Coordinator or designee should question those potential vendors who failed to respond to ascertain their reasons for not submitting a bid. If the specifications are determined to be the cause, the Procurement Coordinator or designee should consider rejecting the sole bid received and renew the procurement with revised specifications. If the cause for the sole bid was a poor selection of potential vendors, the Procurement Coordinator or designee should reject the bid and renew the procurement process with a concentrated search for possible qualified vendors.

7.17.2 Alternate Items Bid

A vendor who does not have the goods or services that meet the specifications of the invitation for bids, but who has goods or services that the vendor thinks are reasonably acceptable, may offer those goods or services as an alternate. Alternate items may be considered because:

- The Council's specifications are obsolete.
- The vendor's policies allow it to accept only the contracts that conform to their own corporate terms and conditions.
- The Council had no prior knowledge of the alternates existence

If an alternate item functionally meets or exceeds the specifications, and alternate items are authorized by the invitation for bids, the Procurement Coordinator or designee may consider the alternate item. If the alternate item bid is selected, the Procurement Coordinator or designee shall

make a written determination justifying the acceptance of the alternate item bid. This provision is allowed under “Best Value” concepts approved by the Virginia Public Procurement Act.

7.17.3 All or None Bids

The all or none bid is one in which the vendor and not the Council qualifies the bid by stipulating that it will only accept a contract for all items on the bid. If all or none bids are to be accepted, the invitation for bids must expressly so state. The Procurement Coordinator or designee should consider the following factors before determining to accept an all or none bid:

- Whether the total for all of the individual vendor’s low-bid items amount to less than the total for the all or none bidder.
- Whether it is to the Council’s advantage to avoid the excessive administrative costs associated with making multiple awards.
- Whether all other vendors would be treated fairly if the award was made to the lower all or none bidder.

7.17.4 Tie Bids

In the event of tie bids, the Procurement Coordinator or designee shall break the tie using the following three-step procedure:

- Preference shall be given to the vendor who bids goods, services and construction produced within the Council’s region or provided by persons, firms or corporations having principal places of business in the Council’s region.
- If granting a preference to a local business as provided in the paragraph above does not break the tie, then preference shall be given to the vendor who bids goods, services or construction produced within Virginia or provided by persons, firms or corporations having principal places of business in Virginia.
- If granting a preference to a state business as provided in the paragraph above does not break the tie, then the tie shall be broken by flipping a coin.

7.17.5 Procedure if All Bids Exceed Available Funds

If the bid from the low bidder exceeds available funds, the Procurement Coordinator or designee may negotiate with the bidder to obtain a contract price within available funds, using the following procedure:

- The using department shall provide the Procurement Coordinator or designee with a written determination that the apparent low bid exceeds available funds. The department shall also provide the Procurement Coordinator or designee with a suggested reduction in scope for the proposed purchase.

- The Procurement Coordinator or designee shall advise the apparent low bidder in writing that its bid exceeds available funds. The Procurement Coordinator or designee shall also suggest a reduction in scope for the proposed procurement and invite the apparent low bidder to amend its bid/ proposal based upon the proposed reduction in scope.
- The apparent low bidder may submit an addendum to its bid, which shall include the change in scope, the reduction in price, and the new contract value.
- The Procurement Coordinator or designee may conduct informal discussions with the apparent low bidder for purposes of obtaining a contract within the available funds.
- If the proposed addendum is acceptable, the contract may be awarded within the funds available to the apparent low bidder.
- If the Council and the apparent low bidder cannot negotiate a contract within available funds, then the Procurement Coordinator or designee shall reject all bids.

7.17.6 Cancellation or Rejection

Cancellation or rejection of a solicitation may be done when it is discovered that the specifications are too narrowly written, contain ambiguous instructions or omission, there is the opportunity for more bids or proposals, or that there has been a mistake made in the procurement process. Solicitations may also be rejected if all responses exceed available funds or there is reasonable suspicion of collusive bidding.

The Procurement Coordinator or designee shall not cancel an invitation for bids or reject all bids solely to avoid awarding a contract to a particular responsive and responsible bidder.

7.21.9 The Contract Award

After the bids have been evaluated or a new scope of work is negotiated the contract is awarded according to the following procedure:

- The Procurement Coordinator or designee shall post in a public place the "Intent to Award" or "Award" notice for a period of ten days to allow any vendor submitting a bid to protest the award. Protests shall be filed with the Executive Director, who shall make the decision as to the protest.
- After the protest period has expired, if no vendor has protested the decision to award, the Procurement staff shall award the contract if not previously awarded.
- If a written bid protest is received prior to award, the Procurement staff shall take no further action to award the contract unless, upon consultation with the Executive Director, the Procurement Coordinator determines in writing that proceeding without delay is necessary to protect the public interest or the bid would expire. The written determination shall be placed in the contract file.

- The Procurement Coordinator or Executive Director may consult with the Council's Attorney as to any matter pertaining to the decision to award a contract.

Chapter 8. Competitive Negotiation: Procedure

8.1 General

The competitive negotiation procedure must be used for professional services if the cost of the goods or services is expected to exceed \$30,000 or when competitive sealed bidding is determined by the Procurement Coordinator or designee to be either not practicable, such as when cost is not the most important issue, when specifications are difficult to draft, or when the competitive sealed bidding procedure is not fiscally advantageous to the public. A written statement must be placed in the file indicating the reasons for using competitive negotiation for other than professional services.

8.2 Issue the RFP and Provide Public Notice Thereof

The Procurement Coordinator or designee shall provide public notice of an RFP by posting in a designated public area and publication in a newspaper of general circulation. Notice may also be placed on the Council's website or publication to the eVA website. In addition, the Procurement Coordinator or designee may solicit proposals directly from potential vendors, and shall include businesses selected from a list made available by the Department of Minority Business Enterprise. Public notice shall be given at least ten days prior to the date set for receipt of proposals.

The notice shall contain, at a minimum, the following information: (1) a brief description of the goods or services to be procured; (2) the location where RFP documents can be obtained; (3) the date, time, and location of the pre-proposal conference, if applicable; (4) the date, time and location set for receipt of proposals; and (5) the name and contact information of the Procurement Coordinator.

8.3 Conduct Pre-proposal Conferences or Site Visits, if Warranted

A pre-proposal conference is a meeting led by the Procurement Coordinator or designee which includes potential vendors and members of the evaluation committee. During the meeting, the Procurement Coordinator or designee will review the specifications and the scope of work, review objectives and techniques of the procurement, emphasize critical elements of the RFP, and encourage input from prospective vendors. If necessary, a site visit may be conducted to allow prospective vendors to observe physical characteristics of the land or of structures that are relevant to the procurement.

Attendance of prospective vendors at most pre-proposal conferences should be optional in order to assure that qualified vendors who are unable to attend are not excluded from submitting a proposal. If the procurement is highly technical or complex and it is determined that attendance shall be mandatory, only those proposals from prospective vendors represented at the pre-proposal conference shall be accepted.

The department or consultant (if applicable) shall make a written note of all inquiries and points of contention raised by the prospective vendors. Clarification may be provided at the pre-proposal conference so long as the specifications, conditions or Scope of Work are not altered. Oral representations made at the pre-proposal conference by the Procurement Coordinator or designee or any member of the selection committee shall not be binding on the Council. All material

clarifications of any provision of the RFP, or the amendment of a specification or condition of the RFP, shall only be in writing as an addendum, as provided herein.

8.4 The Submittal of Proposals

A proposal must be signed by an authorized representative of the vendor in order to be considered. If the vendor is a corporation, the proposal must be submitted in the name of the corporation, not the corporation's trade name. The vendor must indicate the corporate title of the individual signing the proposal.

Proposals and all other documents required to be submitted as part of the proposal shall be enclosed in a sealed opaque envelope and marked with the RFP number, the hour and date upon which the offer must be received. If an envelope does not contain the proper identification and is inadvertently opened in advance of the prescribed date and time for which the proposals are to be received, the Procurement staff shall write an explanation of the inadvertent opening on the envelope, with the RFP number, time and date of opening. The envelope should be resealed and deposited with the other proposals.

Oral proposals or proposals received by telephone, fax, or other form of electronic transmission will not be accepted. All erasures, interpolations and other changes in a proposal shall be signed or initialed by an authorized representative of the vendor.

8.5 The Receipt of Proposals

All proposals shall be sent to the Procurement office either in person, through the mail, or by parcel service, and received no later than the time and date set in the RFP. The clock in the Procurement office shall be the sole clock used to determine whether a proposal is received by this time. Vendors are responsible for assuring that their proposals are stamped by the time and date for which proposals are to be received. The Council shall assume no responsibility for assuring that proposals sent by mail or by parcel service are delivered to the Procurement office prior to this deadline. Late proposals shall not be considered under any circumstances, and shall be returned unopened to the sender. Proposals may be withdrawn by written notice at any time before award.

All proposals received will be kept in a secure location in the Procurement office until the time and date for their receipt has passed. Prior to this time, the identity of the vendors and the number of proposals received is confidential, and may be disclosed only to Council officials when disclosure is considered necessary for the proper conduct of the RFP process.

8.6 The Evaluation of Proposals; Development of a Negotiation List

Proposals shall be examined by the Procurement Coordinator or designee to identify each vendor, document the names of all vendors, and all originals set aside. Proposals shall be distributed to each member of the selection committee, and each shall review and score each proposal based on the evaluation criteria specified in the RFP. The initial evaluation procedure should consist of feature-by-feature comparisons of the proposals, the evaluation of trade-offs among competing proposals, and, if goods or nonprofessional services are being procured, cost comparisons. All findings should be shared among the committee members. During this step, the selection committee should also check references. The committee should check references other than those listed by the vendor.

After the committee reviews the proposals, a short-list is created of at least two vendors who are qualified, responsible and suitable. If only one vendor is deemed qualified or clearly the most qualified, the committee may choose a single vendor. The Procurement Coordinator or designee must document the justification for this selection and include it in the project file.

8.7 Conduct Negotiations

After proposals for goods or nonprofessional services are evaluated, the Procurement Coordinator or designee begins negotiations with all of those vendors deemed by the selection committee to be fully qualified and best suited based on the factors in the RFP. Offerors are not ranked. Price may be considered, but need not be the sole determining factor. The Council shall award to the offeror who, in the Council's opinion, has made the best proposal. The Council may determine only one offeror fully qualified or clearly more highly qualified, and may negotiate and award contract to that offeror.

After proposals for professional services are evaluated and before negotiations are conducted, the selection committee ranks offerors by qualifications and proposed services in accordance with the criteria outlined in the RFP. The shortlisted vendors are invited for an interview, and the evaluation committee may discuss nonbinding estimates of total project costs with these vendors. Negotiations for professional service vendors are then conducted with the top-ranked vendor first, emphasizing professional competence to provide the required services. If a contract satisfactory and advantageous to the Council cannot be negotiated at a price considered fair and reasonable, the Council eliminates that firm and the selection committee then moves to the second-ranked vendor and attempts to negotiate a contract with that vendor, and so on until an agreement is reached. The Project Coordinator or designee may determine only one offeror fully qualified or clearly more qualified than the other vendors, and may negotiate and award a contract to that offeror.

8.12 Contract Award

After the negotiations are completed, the Procurement Coordinator or designee publicly posts the Intent to Award notice (ITA) or Award. The ITA or Award shall notify the public that records pertaining to the procurement have been and are available for inspection by those vendors participating in the procurement process. The Procurement Coordinator or designee is not required to provide individual notice of the ITA or Award to any participating vendors; rather, it is each vendor's duty to ascertain when this notice is issued and posted.

This posting shall commence the ten day period in which any vendor participating in the procurement who desires to protest the decision to award a contract may do so. Protests shall be filed with the Executive Director, who shall make the decision as to the protest. The contract shall not be awarded until the protest period has expired. After the protest period has expired, and if no vendor has protested the decision to award, the contract shall be awarded the contract to the vendor identified in the notice of intent to award.

If a written protest is received within the five days, the Procurement Coordinator shall take no further action to award the contract unless, upon consultation with the Executive Director, the Procurement Coordinator determines in writing that proceeding without delay is necessary to protect the public interest or unless the offer would expire. The written determination shall be placed in the contract file.

If a legal action is brought by a vendor, actual or prospective, as provided in Virginia Code § 2.2-4364, the Procurement Coordinator shall take no further action to award the contract unless, upon prior consultation with the Executive Director, the Procurement Coordinator determines in writing that proceeding without delay is necessary to protect the public interest or unless the offer would expire. The written determination shall be placed in the contract file.

Chapter 9. The Contract

9.1 General

After “Intent to Award” or Award is posted, the Procurement staff will prepare a contract and forward to the successful bidder or offeror for signature.

If the contract documents were included as part of the solicitation package, the Procurement staff will notify the contractor to execute the contract upon receipt of the “Notice of Award” or Award and return it to the Procurement Coordinator or designee. The contract specifies the procurement or project numbers, the date of execution, the parties to the contract, the contract term, the contract amount and payment terms. The contract documents include, incorporated by reference, the original invitation for bids or request for proposals, with all addenda, and the vendor’s bid/proposal. In either case, upon receipt of the signed forms from the vendor, the Procurement Coordinator or designee will review the contract and assemble a complete package of documents associated with the contract. The completed package must be reviewed by the director of the using department and acceptance acknowledged by initialing the routing form attached to the contract documents package and returned to the Procurement Coordinator or designee.

Although a vendor’s standard contract may be used if provided in the invitation for bids or request for proposals, such a contract should be avoided. Such 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 Council, the vendor’s ownership of materials produced pursuant to the contract and delivered to the Council, the granting of broad powers of decision to the vendor, and provisions that cover the vendor under the Council’s insurance and provisions that waive the Council’s rights to recover damages. The Procurement Coordinator will review all such language and seek the council of the Council’s Attorney in amending the vendor’s contract.

9.1.1 Signature of Vendor

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

- Only a person who is authorized to contractually bind the vendor shall sign the contract on behalf of the vendor. The Procurement Coordinator may require the vendor to provide proof of such authority prior to approving the contract.
- The title or office of the signing party shall be identified on a line immediately below his or her signature.
- The signature of the signatory shall be notarized by a notary public in the state in which the contract is executed by the signatory.

9.2 Change Orders

Contracts are modified by issuing Change Orders. Change orders may modify the contract scope of services or work, the contract amount, and contract time. Change orders must be related to the original scope of work and are required for additional work, betterments, unforeseen conditions, errors and omissions, project overages, reduction of work, incentive pay, and liquidated damages.

The Executive Director may approve change orders up to \$50,000. Change orders above \$50,000 or 25% of the contract, whichever is greater, must be approved by the authorizing Board or the Council.

Chapter 10. Sole Source

10.1 Determination of a Sole Source

The sole source procedure may be used when there is only one source practicably available for that which is to be procured.

If a department desires to procure goods or services that it believes are available only from a sole source, it shall state in writing provided to the Procurement Coordinator: (1) a description of the goods or services, in the form of the proposed specifications or a work statement; (2) the reasons why it believes that the goods or services may be procured only from a single vendor; and (3) an explanation of the efforts made to reach its conclusion that the goods or services may be procured only from a single vendor.

The determination of whether the goods or services may be procured only from a single vendor shall be made by the Procurement Coordinator. In making this determination, the Procurement Coordinator shall conduct the necessary research to support the department's determination, and shall document the procurement record to such findings. In making such determination the Procurement Coordinator shall determine whether there is only one vendor practicably available to provide the goods and services, ensuring that the specifications or work statement has been so narrowly written so as to preclude multiple bidders or vendors from eligibility or to thwart competition.

10.3 Procedure if it is Determined There is a Sole Source

If the Procurement Coordinator determines that the goods or services may be procured only from a single vendor, the following procedure shall apply prior to the actual procurement:

- The Procurement Coordinator shall make a written determination that only one vendor is practicably available to provide the goods or services, and state the basis for the determination. This written determination shall be placed in the contract file.
- The Procurement Coordinator shall post public notice of sole source determination for at least ten (10) days. This notice shall: (1) state that only one vendor was determined to be practicably available; (2) identify the goods or services that will be procured; (3) identify the vendor

selected; and (4) state the date on which the contract will be awarded and the dollar amount of this contract.

10.4 Procedure if Sole Source does not Apply

If the Procurement Coordinator determines that the sole source procedure does not apply because there are other vendors practicably available, the department will be notified of the determination. Depending on the size of the procurement, either quotes will be obtained, or a formal solicitation will be done.

Chapter 11. Emergencies

11.1 Determination of an Emergency

An emergency is an occurrence of serious or urgent nature that demands immediate action. Emergencies include, but are not limited to, natural disasters and situations which may endanger public health and welfare.

In case of an emergency, the Council may award a contract without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with as much competition as is practical under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be written and included in the contract file. It shall include: (1) a description of the goods or services; (2) the reasons why the department believes that an emergency exists necessitating the goods or services; (3) an explanation of the basis of the emergency; and (4) identification of at least three vendors who may provide the goods or services; if fewer than three vendors are practicably available, it shall identify only such vendors and state why it believes other vendors are not practicably available.

The determination of whether goods or services may be procured using the emergency procedure shall be made by the Executive Director. In making this determination, the Executive Director determines whether an emergency exists, considering the following:

- An emergency may include, but is not limited to, natural disasters and situations when goods or services are needed immediately.
- If it is demonstrated that the procurement of the goods or services is necessary to protect the public health of citizens.
- When it is demonstrated that major immediate repair is necessary to prevent further damage to public property, machinery or equipment.
- When it is demonstrated that a breakdown in an essential service is imminent or has occurred.
- When it is demonstrated that supplies are needed for immediate use in work that may vitally affect the public health, safety or welfare.

An emergency should not be claimed to exist if the need for the goods or services is not immediate. Prior to making a determination and at his discretion, the Executive Director may conduct his own

investigation, request additional information from the using department, and consult with the Council's Attorney or Procurement Coordinator.

11.2 Procedure if it is Determined That an Emergency Exists

Upon approval of the Executive Director, the Procurement Coordinator shall issue a written notice detailing the contract awarded on an emergency basis, including what is being procured, the vendor selected, the amount of the award, and the date which the contract was or will be awarded. This notice shall be publicly posted on the Council bulletin board and may be posted on the Council's website on the day the Council awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as possible.

The selection of the vendor shall be made as competitively as practicable under the circumstances. Such procurements shall be confirmed by purchase order.

11.3 Procedure if an Emergency Exists Outside of Normal Business Hours

The procedure specified above shall be carried out at the earliest time possible on the first Council business day following the apparent emergency.

Chapter 12. Purchasing at Public Auction

Goods, products and commodities may be purchased at a public auction if the Procurement Coordinator determines in advance, and in writing, that the procurement by public auction is in the best interests of the Council.

If a using department desires to procure goods at a public auction, it shall request such in writing to the Procurement Coordinator. Such request shall state: (1) a description of the goods; (2) the reasons why the using department believes that it is in the best interests of the public to procure the goods at public auction; and (3) the time, place and organizer of the public auction.

If the Procurement Coordinator approves the purchase, the Procurement Coordinator or designee shall attend the public auction sale and procure the goods.

Adopted Local Government Council: June 12, 2008