

The Virginia Public Procurement Act

Guide for Local Government Leaders

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Virginia Municipal League
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Preface

THE PURPOSE OF THIS PUBLICATION is to give an overview of the Virginia Public Procurement Act and its application to local governments, and to supply a set of documents developed in Virginia localities that may be of use in the procurement process. In addition, the publication covers the topic of ethics in public purchasing and the interconnection between the state procurement act and the state conflict of interests act. Finally, a brief overview of authority regarding public-private partnerships for projects is included.

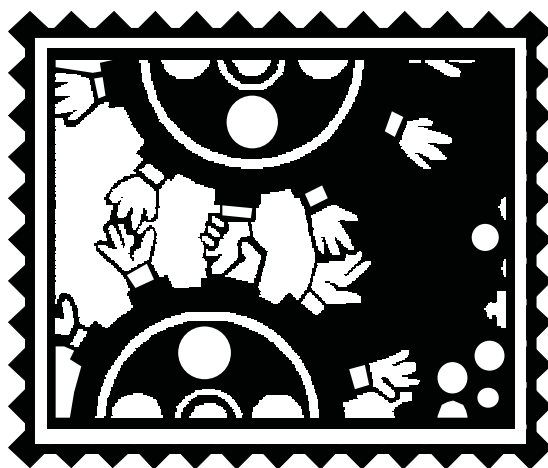
The bulk of this publication is based on the chapter on procurement in the 2004 edition of the *Virginia Handbook for Mayors and Council Members*. William H. Hefty of the Richmond law firm of Hefty & Wiley wrote this chapter, and therefore most of the credit for this publication belongs to him. Hefty & Wiley specializes in representation of local governments and other public bodies in Virginia; Bill Hefty is also a former city attorney. Roger Wiley, legislative counsel to the Virginia Municipal League, is also with Hefty & Wiley. He wrote the sections on claims and on ethical standards for officials involved in public purchasing. He also updated Mr. Hefty's chapter to reflect the actions of the 2005 session of the General Assembly.

The town of Blacksburg supplied the example of the purchasing policies and procedures contained in Appendix A as well as the handy chart of purchasing "hoops" included as Table 1; grateful acknowledgement is given to Blacksburg Purchasing Manager Bonnie Preas for allowing us to use these documents.

The chart covering the comparison between the Invitation to Bid process and the Request for Proposals process in Appendix B is taken from a 2000 publication of the league, *Application of the Virginia Public Procurement Act to Local Government*. Clay Wirt, who was at that time a legislative consultant to the league, and Steve Pearson, an attorney in Richmond, wrote this publication.

Paul Proto, Director of the General Services Department of Henrico County, furnished the examples of contracting documents in Appendix C and Appendix D. Mr. Proto has consistently made himself available through the years to help answer procurement questions put to the league, and is widely respected as an expert on procurement.

We hope that this publication will prove useful to elected and appointed officials alike.



The Virginia Public Procurement Act

Public procurement in Virginia is guided primarily by the Virginia Public Procurement Act (VPPA), enacted by the Virginia General Assembly in 1981 in an attempt to standardize the purchase of goods and services by state agencies and local governments (Virginia Code, §§2.2-4300 and following). The VPPA was researched and drafted following a study by a committee predominately composed of local and state public purchasing officials. Therefore, the act was written with the needs of state and local governments in mind; many of its provisions, such as the 10-day period for a disappointed bidder or offeror to file a protest, take into account the practical problems localities face in purchasing goods and services.

While the VPPA has been amended fairly often over the last 20 years, the amendments have been relatively minor, and the act has stood the test of time remarkably well. Given the thousands of procurement transactions that occur each year at the local and state level, a relatively small number of lawsuits have been filed challenging the local government's procurement decisions.

A reference chart outlining general procedures for procurement appears in Table 1.

Who is Covered

The VPPA applies to all cities, counties and to other public bodies, such as authorities. Towns under 3,500 are exempt from most of the VPPA's requirements; however, some requirements, such as bonding and retainage for construction projects as well as the ethical standards, apply to all towns. Even though small towns are exempt from many of the requirements, it is still advisable to get as much competition as possible whenever a town makes a purchase.

What is Covered

The VPPA applies to four types of procurements:

1. Goods (purchase or lease)
2. Services
3. Insurance
4. Construction

The purchase or sale of real estate is not covered by the act, although other ordinances or statutes may apply. In addition, the VPPA applies even though the locality is actually receiving money, rather than spending it, as long as there is a benefit to the locality. Thus, for example, a landfill that receives money from

a vendor to take certain kinds of recyclables from a landfill must go through a procurement process.

It is important to note that the VPPA does not require the municipal council or county board of supervisors actually to make the decision of who is awarded a contract. As long as sufficient funds have been appropriated for the purchase, the act allows the local governing body to delegate all of the actual decision making to the administration. Different localities have varying rules about what contracts the council actually will vote to approve, depending on the size of the locality and how much the council wishes to get involved in the process.

Small Purchase Procedure

The VPPA allows each municipal council or board of supervisors to establish a small purchase procedure for its locality. While the original limit was \$10,000, it now has been increased to \$50,000 for goods and non-professional services and \$30,000 for professional services (for example, architects and engineers). The individual locality can craft its own small purchase rules, with one exception: if the expected cost is between \$30,000 and \$50,000, at least four written quotations must be received. Most small purchase procedures require at least three written quotations above a certain amount (e.g., \$5,000). These limits are based on the amount that can be spent over the life of the contract, not necessarily just in the first year.

Having a small purchase procedure allows the locality to request quotations and purchase something in one day, rather than putting out a more formal Request for Proposals or Invitation to Bid (see discussion below), waiting at least 10 days for a response, and then evaluating the responses and making a decision. Quotations can be faxed, and the paperwork is obviously less extensive. Also, the winner does not have to be the vendor who submits the lowest price—the locality may give the contract to the vendor it feels makes the best proposal (assuming that you can justify why the vendor with the lowest price was not chosen).

Again, the question of whether to use a small purchase procedure is not the same as deciding who has the ability actually to make the decision to award the contract. It is possible to have a small purchase procedure with a \$50,000 limit, which makes the procedure easier and quicker, and still have a policy that the municipal council or county board approves every

Continues on page 6

Table 1
PURCHASING HOOPS
 Quick Reference Chart
 Town of Blacksburg - February 2001

ESTIMATED COST	GENERAL PROCEDURE
\$1,000 or Less	Delegated to the departmental level. No competition is required. This level may be purchased by the use of your Visa Purchasing Card or by a local supply order.
\$1,000.01 - \$10,000	Requires at least 2 attempted telephone, catalog or electronic or written quotes to be obtained by the department. Forward your quotes to Purchasing with your requisition or enter them as quotes in the HTE Purchasing/Inventory system.
\$10,000.01 - \$30,000	Requires at least 3 attempted electronic or written quotes to be obtained by the department. Enter your quotes with your requisition and then forward quotes to Purchasing.
\$30,000.01 - \$50,000	Requires at least 4 attempted written quotations. The Purchasing Office will issue the quotes based upon the requisition submitted to our office. Please forward specifications/descriptions with your request.
\$30,000.01 and Over – For Professional Services Only	Requires a formal Request for Proposals. The Purchasing Office will issue a formal request and advertise in the local newspapers. Forward or enter your requisition and send all specifications or your scope of work to the Purchasing Office. Estimated preparation time is 10-15 days.
\$50,000.01 and Over	Requires a formal Invitation for Bid or Request for Proposals. The Purchasing Office will issue a formal request and advertise in the local newspapers. Forward or enter your requisition and send all specifications or your scope of work to the Purchasing Office. Estimated preparation time is 7 to 10 days. All bids and RFPs must remain "on the street" for a minimum of 10 days as required by law. A good rule of thumb is to allow bids and RFPs a timeframe of 3 weeks "on the street."
EXCEPTIONS TO ABOVE	
Emergency Purchases	Health or safety of the public or operation of equipment is in jeopardy. Competition is not required. During working hours, contact Purchasing prior to purchase. Written justification is required either on your requisition form or in the comments section of the electronic requisition. Emergency purchases must be approved by the Town Manager or his designee and posted in a public place for 10 days.
Sole Source	Contact Purchasing prior to purchase. Written justification is also required either on your requisition or in the comments section of the electronic requisition. Sole source purchases must be approved by the Town Manager or his designee and posted in a public place for 10 days.
State Contracts	No competition is required on items purchased from a state contract. Be sure to enter the contract number on your requisition.
Professional Services up to \$15,000	No competition is required for a professional service (defined as within the realm of accounting, architecture, land surveying, landscape architecture, law, medicine, actuarial services, optometry or professional engineering) when service is practicably available from only one source.
Sheltered Workshop	No competition required for items produced or performed by a nonprofit sheltered workshop serving the handicapped or by persons, etc. under the supervision of the VA Department for the Visually Handicapped.
Legal Services	No competition is required for legal services or expert witnesses or other services associated with litigation or regulatory proceedings.
Training	Published books, maps, periodicals and audio visual material related to training under \$30,000.

contract over, say, \$15,000 or \$25,000.

An example of a small purchase procedure (section C of the purchasing division policies for the town of Blacksburg) is included in Appendix A.

Emergency, Sole Source, & Cooperative Procurement

A locality may make an emergency purchase without competition as long as an emergency truly exists. A locality also may purchase directly from one vendor if it is the sole source for the purchase. However, it has to be clearly determined and put in writing that the vendor really is the only source for the goods or services that the locality needs.

A locality can also go in with other local governments and use what is called cooperative procurement to buy goods and services. If another locality puts language in its bid documents stating that any other local government can buy through its contract, then a locality can buy directly from that vendor at the stated price without using a separate procurement. Localities can also use this procedure to buy through various contracts that the Commonwealth or federal government have; e.g., for automobiles. (Virginia Municipal League members also have access to national cooperative purchasing programs.)

Competitive Sealed Bids and Competitive Negotiations

The VPPA establishes two main types of procurement processes: competitive sealed bidding and competitive negotiations. Further, a special set of rules applies to the competitive negotiation process for procurement of professional services. Appendix B outlines the differences in the procedures for each of these processes.

Competitive Sealed Bids

When a locality is buying goods, non-professional services, insurance, or construction above the small purchase limits, the locality normally has to use competitive sealed bidding and issue an Invitation to Bid.

An example of an Invitation to Bid and a bid checklist are included in Appendix C.

Invitation to Bid. An Invitation to Bid is a written document that indicates exactly what the locality wants to purchase and sets forth the contract terms and other specifications that the locality desires.

The Invitation to Bid has to be posted for at 10 calendar days before bids are received. It does not

have to be published, although if the locality wants to get more bids, it is a good idea to publish it as well. The bids are received and then read aloud. The locality is required to award the contract to the lowest responsive and responsible bidder.

Lowest Responsive & Responsible Bidder. The lowest bidder does not automatically win, because the lowest bidder must also be “responsive” as well as “responsible.” To be “responsive,” the low bidder must have met all of the requirements of the Invitation to Bid. While the public body may waive informalities in the bid (e.g., an insurance form that was not submitted with the bid, but can easily be obtained), the low bidder must have substantially complied with all of the bid requirements.

In addition, the low bidder must be “responsible.” This means that the low bidder has the capability in all respects to do the work or furnish the goods and services under the contract. If, for example, the locality has evidence that the low bidder has performed substandard work either for it or another locality, or if the low bidder in a school construction bid has never built a school, then the locality can determine that the low bidder is non-responsible. In that case, the reasons must be given to the contractor, who has the right to appeal the decision to court. While the decision to declare a low bidder “non-responsible” must not be taken lightly, it is a way to avoid giving a contract to a low bidder who you are certain cannot actually perform the contract.

In the 2005 session, the General Assembly for the first time created a mandatory preference for Virginia bidders on public contracts. Whenever the lowest responsive and responsible bidder is a resident of any other state and that state’s law allows a resident contractor of that state a preference, the Virginia contracting locality or agency must give the same preference to the lowest responsible bidder who is a resident of Virginia. If the lowest bidder is a resident of another state with an absolute preference, that bid shall not be considered. The bill further requires the state Department of General Services to post and maintain information on its website about preferences provided by other states, and localities may rely on that information when evaluating bids. In spite of that information, this bill may prove to be difficult and expensive to implement.

The locality also has the authority to reject all of the bids and rebid. While the locality cannot reject bids simply because it does not want to award the contract to a particular bidder, bids can be rejected if there is evidence that a rebid would result in more competition, that the low bid was too high, or that a protest was made that seems to have some validity.

Competitive Negotiation

If a locality is purchasing something for which it is difficult to write specifications, or if the service is more important than the price, the locality may choose to use competitive negotiation and issue a Request for Proposals rather than an Invitation to Bid. Appendix D contains a procedure for evaluating whether the use of a competitive negotiation process is appropriate, a sample of a Request to Bid, instructions for evaluating the requests received, and an evaluation form.

Request for Proposals. A Request for Proposals (RFP) is a more general statement of what the locality wishes to purchase, and it invites the offerors to come up with different ways of providing the services.

A Request for Proposals may be used to purchase goods, services, or insurance, although it is most often used for service contracts. Construction (except for a few limited instances, such as renovation of a building expected to cost less than \$500,000) must be done through an Invitation to Bid and competitive sealed bidding.

Before issuing a Request for Proposals, there must be a written basis for using competitive negotiation as opposed to competitive sealed bidding. This takes the form of a written determination that competitive sealed bidding is either impractical or fiscally disadvantageous. The reasons for the determination have to be given.

The Process. A notice indicating that a Request for Proposals has been issued must be both published in a newspaper and posted at least 10 days before the proposals are due. Once the proposals are received, they are reviewed (normally by a staff committee) to determine which proposers should be interviewed. This process is called short listing. While generally two firms need to be interviewed, often four or five firms that submitted proposals are offered interviews. Having more than that is perceived to be too cumbersome.

During the interviews, the firms are asked to describe why they should be given the contract, and the cost and scope of the services may be negotiated. It is important that the information from one firm about their services, including price, is not shared with the other firms during negotiation.

At the conclusion of the negotiations, the contract is awarded to the firm that the locality feels made the “best” proposal on the basis of the factors that were listed in the Request for Proposals. This standard is a very subjective one, and it allows the locality a good degree of latitude in choosing the winning proposal. Note that the award does not need to be made to the

firm with the lowest price, as long as it is determined to have the “best” overall proposal.

As with bids, the proposals can be rejected, and the process can be started again if there was not enough competition or a protest showed a problem with the procedure that needs to be fixed.

Professional Services

A special set of rules applies for the procurement of professional services, which includes primarily architects and engineers. For these services, a locality can use its small purchase procedure when the cost of the architect or engineer is not expected to exceed \$30,000. If the cost is expected to be above that amount, however, a locality must use a Request for Proposals, rather than an Invitation to Bid.

The process is a little different from the normal Request for Proposals process, however, in that the initial responses may not discuss the price of the professional services. Thus, the proposals that the locality gets back should not include anything about how much the professional services will cost. The purpose of this requirement is to keep localities from hiring the least expensive architect, engineer or other professional without looking at their qualifications.

Once the proposals are received, the firms are short listed, and those chosen are interviewed. At that time, the locality can ask for “non-binding” estimates of price from each firm. After these interviews, the firms are ranked 1-2-3 (or however many were interviewed) based on the factors listed in the RFP, including price. Then the locality may negotiate only with the firm ranked number 1 until it becomes clear that an agreement cannot be reached. At that point, the locality may negotiate with the firm ranked number 2, but may not go back and negotiate again with the firm ranked number 1. And so on. While this process may seem confusing, it is rare that anyone goes past the firm ranked number 1, since both sides have an incentive to come to agreement on a mutually satisfactory contract. The standard for making the decision, however, is still who makes the “best” proposal.

Protests

A bidder or a proposer who feels that the locality did not follow the proper procedure in evaluating a bid or proposal has the right to file a protest. The protest, which must be in writing, must state the grounds for the protest and be filed within 10 calendar days after the decision to award the contract or the decision that the locality intends to award the contract to one bidder or offeror. This short time frame reflects the fact that localities should not have

to hold up procurement decisions for six months or a year while bidders or offerors decide whether to challenge the process. Only bidders or offerors can file protests; disgruntled citizens are not legally entitled to sue the locality on the basis that the VPPA was not followed.

The protest is filed with someone designated by the locality, normally the head of the purchasing department. That person has 10 days to answer the protest. If it is denied, the bidder or offeror has the opportunity either to go to circuit court to challenge the decision, or to appeal to an administrative panel if one has been set up by the locality. Not every locality has an administrative appeal panel; if there is none (and one is not required), the only option of the bidder or offeror is to go straight to court. The court should normally rule in the locality's favor unless the decision was "arbitrary and capricious."

While local officials often indicate a desire to award contracts to the local bidder or offeror, the VPPA does not allow a locality to grant a preference to a local firm. While concepts such as response time may be taken into account, a contract cannot be awarded to a firm just because it is from the local community, and a protest on that basis would likely be successful.

Claims Procedure

If something occurs before or during the performance of a public contract that could entitle the contractor to make a claim for additional money or other relief, the contractor must give notice of intent to make such a claim. This notice of intent must be

Ethics

The VPPA contains a special set of ethical rules for anyone involved in the procurement transaction, including local elected officials if they approve the contract or are otherwise involved in the procurement or the contract. These rules exist because one of the most carefully scrutinized activities in local government is the process of contracting to buy goods, construction services and other services needed by the locality. Vendors who are not selected tend to view the selection process with skepticism, and are often quick to complain of any perceived undue influence, favoritism or other lack of fairness and honesty in the award of the contract.

Actual instances of such impropriety in Virginia localities fortunately are quite infrequent, certainly less common than in some other states. To help pre-

given either when the event occurs or at the beginning of the work on which the claim is based. The contractor must then submit his detailed claim in writing to the contracting public entity not later than 60 days after final payment on the contract.

Each contract should contain a procedure for considering and acting on such claims, either spelled out in the contract, or included in the public entity's purchasing procedures and incorporated by reference into the contract. If the claim is denied the contractor may then seek relief in circuit court. Under an amendment to the VPPA adopted in the 2005 Session of the General Assembly, if the public entity does not act on a claim within 90 days after receiving it, the claim is deemed to be denied and the contractor may then file suit in circuit court to resolve the dispute.

Discrimination Prohibitions

In soliciting and awarding contracts, no public entity shall discriminate against a bidder or offeror based on race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law.

Public entities must include in every contract over \$10,000 the requirement that the contractor will not discriminate on any such prohibited basis in its hiring or employment practices, and must also require the contractor to put the same non-discrimination requirement in every subcontract or purchase order of over \$10,000.

serve this corruption-free atmosphere, the General Assembly has included some strict anti-corruption standards in the VPPA along with some fairly severe penalties for violation of those standards.

These "Ethics in Public Contracting" sections found in Article 6 of the VPPA (Va. Code §§ 2.2-4367 through 2.2-4377) set rules for both members of local governing bodies and local government employees involved in the purchasing process that are more restrictive than the parallel provisions of the State and Local Government Conflict of Interests Act (the "COI Act") that apply to all public officers and employees.

For example, under § 2.2-4369 a public employee who exercises any responsibility in his agency's procurement process (including a member of the govern-

ing body) may not participate in any procurement transaction by the agency if he knows that:

- He is also employed by a firm that will bid on the public contract; or
- A member of his immediate family is an officer, director, partner, or owner of 5% or more of a firm that will be bidding on the public contract; or
- His partner or a member of his immediate family is employed by a firm that will bid, and that person works in a capacity in which he will have personal and substantial participation in the firm's transaction with the public agency; or
- He, his partner or a member of his immediate family has some other pecuniary interest in the procurement transaction (e.g., will earn a sales commission); or
- He, his partner or someone in his immediate family is negotiating or has an arrangement for prospective employment with a firm that will bid on the public contract.

These restrictions are somewhat parallel to § 2.2-3112 in the State and Local Government Conflict of Interests Act ("the COI Act"), which regulates a public official's personal interest in transactions coming before his agency, but the VPPA restrictions are more stringent.

The COI Act restricts or disqualifies a public officer or employee from participating in transactions based on his own employment or financial interests or those of a spouse or dependent living in the same household as the officer or employee. The VPPA section cited above prohibits participation based on the employment or financial interests of the public official or any member of his immediate family (spouse, children, parents, brothers, sisters) regardless of where they live, and of any other person in his household, regardless of relationship. (See § 2.2-3103.) This is considerably broader than the COI act requirement. It increases the possibility that the public official will have to recuse himself from participating in the procurement transaction because some family member's employer is involved in the transaction. Any local government employee or elected official who suspects he or a relative may have a connection with a potential bidder on a contract with his locality that would be covered by this law should consult the local government's attorney about the proper procedure for disqualifying himself.

A second way in which the VPPA sets a stricter standard for officials involved in the procurement

process relates to acceptance of gifts from persons doing business with the official's local government or agency. The COI Act prohibits acceptance by an officer or employee of any gift "that reasonably tends to influence him in the performance of his official duties," or if "the timing and nature of the gift would cause a reasonable person to question" the officer's or employee's impartiality or when the gifts to the official are "so frequent as to raise an appearance of the use of his public office for private gain." (See § 2.2-3103.) These are fairly subjective standards that in practice allow officials who are not involved in procurement transactions for their agencies to accept gifts of moderate value in many situations without violating the law.

Under the VPPA, however, officials who are involved in procurement, including members of the governing body, may not accept any gift, loan services or anything else of "more than nominal value" from a bidder or current vendor or contractor. (See § 2.2-4369.) This is a much more objective standard, and generally makes it illegal for local officials with purchasing responsibilities to accept anything more valuable than inexpensive promotional items like ballpoint pens, calendars or coffee mugs.

Another ethics requirement imposed by the VPPA affects former public officials who go to work for a bidder or contracting firm with whom they previously had public procurement dealings on behalf of their locality or agency. Any such person proposing to take such a job within the first year after leaving his public position must notify the former public employer before beginning the new employment. (See § 2.2-4370.)

Penalties for violating these ethics requirements in the VPPA are not insignificant. A violation is a Class 1 misdemeanor, punishable by up to a year in jail, or a fine of up to \$2500, or both. In addition, conviction results in automatic loss of the offender's public office or employment.

Public-Private Education Facilities & Infrastructure Act

The General Assembly adopted the Public-Private Education Facilities and Infrastructure Act in 2002 (Virginia Code, §§ 56-575.1 and following) (commonly referred to as the “PPEA”). The PPEA allows local governments to accept unsolicited or solicited proposals to construct buildings without having to go through the traditional process of issuing a design contract and then awarding the construction contract to the lowest responsive and responsible bidder. Although the title would seem to limit the availability to school buildings, in fact it can be used for any public building or facility. Prior to accepting a proposal, the locality must allow firms at least 45 days to submit competing proposals.

The PPEA may be used for a variety of projects including:

- any education facility, including stadiums;
- any other building or facility that meets a public purpose and is developed or operated by or for any public entity;
- public safety and security measures for buildings to be used mainly by public entities;
- utility and telecommunications and other communications infrastructure;
- recreational facilities;
- technology infrastructure;
- improvements to unimproved locally- or state-owned real estate.

Public entities are required to adopt a set of guidelines for use in receiving and evaluating proposals made under the PPEA before they accept any such proposals. After the initial adoption of the PPEA, a work group organized by the House and Senate

General Laws Committees developed a set of model guidelines for this purpose. The 2005 legislation reestablished that work group, which is currently working on revised and updated model guidelines.

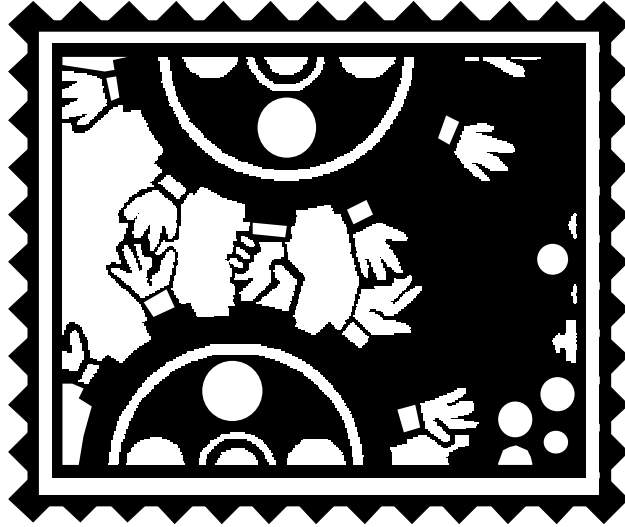
Proponents of the PPEA argue that it will enable many local public entities to obtain new facilities more quickly. By putting together a team of legal and financial professionals, engineers and designers, contractors and others necessary to move a project from start to finish, these private partners can avoid the step-by-step negotiating or bidding processes that the locality would otherwise have to follow to select the firms to do the various components of the work. In theory, at least, this should save considerable time.

In addition, many PPEA proposals will suggest that the project be owned by one or more of the private participants for some period of time after completion, and leased to the locality or other public entity that will use it. The most significant benefit to be realized from this private ownership is the depreciation that can be claimed by the owners for income tax purposes. That depreciation has no value to a public, tax-exempt owner; but the value to the private owners will often be very significant. The assumption is that by capturing this value, the PPEA proposers will be able to give the public entity a better price. Depending on how the transaction is structured, the private owners may also pay local property taxes over the life of the project— taxes that the locality would not get if it retained ownership of the facility.

While the PPEA procurement may indeed provide these and other advantages over the traditional method, each project must be evaluated carefully to determine if, in fact, there are sufficient savings in time and money to justify using this approach.

The Virginia Public Procurement Act

Guide for Local Government Leaders



Appendix A

Public Purchasing Policies
(including small purchases policy)

PURCHASING DIVISION POLICIES

- A. The Purchasing Office is organized into two functions within the Financial Services Department. The administrative offices are located in the Municipal Building at 300 South Main Street, Blacksburg. The warehouse is located at the 'Public Works Complex' on Prosperity Road. The hours of operation are 8:00 AM – 5:00 PM, Monday through Friday. The warehouse closes at 4:30 PM. The Purchasing Division oversees all of the Town's purchases, operates a warehouse for other department's convenience and manages all surplus property. The Division maintains a staff of 2.5 - one Purchasing Manager, one Warehouse Supervisor, one part-time Warehouse Assistant.
- B. The Virginia Public Procurement Act and the Town of Blacksburg Procurement Code.

The Town Purchasing Office is governed by the Virginia Public Procurement Act. Using the Act as a guideline, the Town has developed its own Procurement Code (Section 16), which is attached. These policies adhere to the Town Code and address levels of competition. The Procurement Code is developed to provide for the fair and equitable treatment of all persons involved in public purchasing by the Town, to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

- C. Small Purchases

1. Purchases of \$1,000 or less. This level of purchase is delegated to the using department head or designee(s) without obtaining quotations or keeping records. Purchases of \$1,000 or less may be accomplished through the use of a local supply order or the Visa/Purchasing Card. Users are encouraged to compare pricing and utilize previous research when purchasing at this level.
2. Purchases between \$1,000.01 and \$10,000. This level of purchase shall be made on the open market on the basis of terms most advantageous to the Town. It shall be accomplished through the use of a least two attempted telephone, written, catalog or electronic quotations. The using department should obtain these quotations and forward to Purchasing for review and purchase order issuance.
3. Purchases between \$10,000.01 and \$30,000. This level of purchase shall be made on the open market on the basis of terms most advantageous to the Town. It shall be accomplished through the use of at least three attempted written or electronic quotations. The using department should obtain these quotations and forward them to Purchasing for review and purchase order issuance.

4. Purchases between \$30,000.01 and \$50,000. This level of purchase shall be made on the open market on the basis of terms most advantageous to the Town. It shall be accomplished through the use of at least four written or electronic quotations. The Purchasing Division shall obtain these quotations.

D. Large Purchases

1. Large purchases are defined as any purchase whereby supplies, goods, construction and services are estimated to cost \$50,000 and above and professional services over \$30,000. This level of purchase requires that a formal Invitation for Bid or Request for Proposal be issued. This shall be accomplished by soliciting interested bidders and those vendors on the Town's bid list. A legal ad shall also be published in the local newspaper and/or posted on a bulletin board assessable to the general public. In addition, the notice may be posted on the town's web site and WTOB. All Invitations for Bid and Requests for Proposals shall be issued by the Purchasing Division.
2. Notation: The Invitation for Bid and Request for Proposal are two distinctly different methods of procurement and are further defined in the Purchasing Procedures. In general an Invitation for Bid is the most common and contains specifications, a public bid opening, posted bid tabulations, and a firm price offer from a vendor which may not be changed (unless the price is over the town's budgeted amount). The Request for Proposal differs in that it is a negotiated procurement. Offers are opened in private with no information regarding contents and prices being released until after the negotiation process.

E. Exceptions to the Above.

Contracts may be entered without competition when the purchase can qualify as:

1. A purchase from a sole source.
2. A purchase of an emergency nature.
3. A purchase from a vendor who has been awarded a State Contract.
4. Insurance if purchased through an association of which the Town is a member if the association was formed for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies and the association has procured the insurance by use of competitive principles.
5. A purchase for legal services or expert witnesses or other services associated with litigation or regulatory proceedings.
6. A purchase from a nonprofit sheltered workshop.
7. Professional services (strictly within the realm of accounting, architecture, land surveying, landscape architecture, law, medicine, actuarial services,

optometry or professional engineering) whereby costs do not exceed \$15,000 and only one source is practicably available.

8. Published books, maps, periodicals and audio visual material related to training.
9. A purchase from a state agency or other governing bodies.

F. Warehouse and Inventory

1. The Purchasing Division operates and maintains a warehouse for the convenience of other town departments. Common and repetitive use items are stocked in inventory and are available for any authorized employee. These include but are not limited to office supplies, tools and equipment, janitorial supplies, safety supplies, traffic supplies, utility equipment, automotive supplies and tires.
2. Users may **requisition** supplies and pick them up at the warehouse facility or have them delivered to the using department.

PURCHASING DIVISION PROCEDURES

A. Purchases of \$1,000 or less. A purchase of this level may be accomplished by the following methods:

1. Local Supply Order - manual. Items may be ordered by use of a “purchasing requisition.” Simply order the needed material. If a vendor needs a copy of the order, you may send him the back copy (blue copy) or give the vendor the requisition number as the purchase order number. When the material is received, in full, write the information on the purchasing requisition as completely as possible. Sign in the space marked “Received by: Signature”. Send the yellow copy of the requisition to Financial Services with the invoice/ticket attached. Send the white copy to Purchasing. The pink copy is for your files.

2. Local Supply Order – automated. Simply order the material. When the material is received, in full, enter the order in the Purchasing/Inventory system as “field purchase order.” Write the LO# on the invoice and forward it to Financial Services, Accounts Payable. Please see “Field Purchase Order or Local Supplies” for detailed instructions.
 3. Visa Purchasing Card - You may order material via telephone or present the purchasing card directly to the vendor. Make sure you receive a receipt or ticket. Enter this information onto “purchasing log” form. When your monthly statement is received, review your purchases for accuracy; attach all receipts/tickets, enter purchases into the H.T.E. system and forward to Financial Services.
 4. Purchases made with the purchasing card and local supply should not be used to avoid procurement rules and regulations. This method recognizes that materials are often needed quickly to complete a task. This does not constitute purchases made above the limit, then splitting the invoices to maintain the allowed amount. While these purchases are reviewed by Purchasing and/or Financial Services, the control and review rests emphatically with the using department.
 5. No back orders are acceptable when using a local supply.
- B. Purchases Between \$1,000.01 and \$10,000. Purchases of this level may be accomplished as follows:
1. Two quotations (or attempted quotations) are required for the above purchase. The quotations (quotes) may be written, verbal or electronic quotes. It is the using department’s responsibility to obtain the quotes; however, the Purchasing Division may do so upon your request. When obtaining the quotes, please be as detailed as possible and request shipping terms, delivery timeframe etc. Be sure to instruct the vendor when the quote is due back. Late quotes are not acceptable. When this has been completed, forward the necessary paperwork to Purchasing or enter your requisition with the quote information on the Purchasing/Inventory system – requisition entry menu.
 2. The automated purchasing system is the preferred method for processing requisitions. If you have access to the system, simply follow the detailed instructions on the attached “Regular Requisitions” page.
 3. If you do not have access to the system, complete the requisition form with as much detail as possible. Insert the quotations you obtained in the quotations received column. Keep the pink copy for your files and forward the rest of the paperwork to Purchasing.
 4. Once the requisition has been received in Purchasing a “purchase order” will be issued and a copy forwarded to your department. If you have inadvertently ordered the material, be sure to write “Confirming” on your requisition or put it in the ‘Comments’ section of the automated requisition.
 5. If you are unable to obtain a second quote, please forward us the information such as the company you solicited, the person you contacted, etc.

C. Purchases Between \$10,000.01 and \$30,000. Purchases of this level may be accomplished as follows:

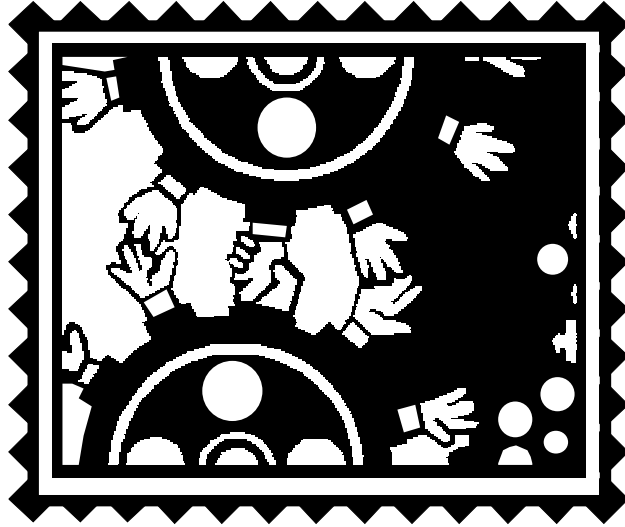
1. Three quotations are required for the above purchase. The using department is responsible for obtaining these quotes. The quotes may be written, verbal or electronic prices depending on the material requested.
2. Enter a requisition on the purchasing/inventory system by using Requisition Entry. Please include as much detail as possible. Use the "Extended Description" field if more space is needed. It is imperative that you let Purchasing know as much as possible about the item/s you wish to buy. In the "Comments" section, please include any known suggested vendors or any information you feel pertinent.
3. If you do not have access to the system, complete the requisition form with as much detail as possible. Retain the pink copy of the requisition for your files and send the rest to Purchasing.
4. Once the requisition has been received in Purchasing and the necessary procurement procedures performed, a purchase order will be issued. A copy of the purchase order will be forwarded to your department.
5. Purchasing reserves the right to confirm quotes and/or obtain further competition.

D. Purchases Between \$30,000 and \$50,000 (other than Professional Services)

1. Pursuant to the Commonwealth of Virginia , four attempted written quotations are required for the above purchase. The Purchasing Office will obtain these quotes.
2. Enter a requisition on the purchasing/inventory system by using Requisition Entry. Please include as much detail as possible. Use the "Extended Description" field if more space is needed. It is imperative that you let Purchasing know as much as possible about the item/s you wish to buy. If necessary, you may send additional information on paper, or preferably via E-mail. In the "Comments" section, please include any known suggested vendors or any information you feel pertinent. Do not place an order for the material until your receive a purchase order number from Purchasing.
3. If you do not have access to the system, complete the requisition form with as much detail as possible. Retain the pink copy of the requisition for your files and send the rest to Purchasing.
4. Once the requisition has been received in Purchasing and the necessary procurement procedures performed, a purchase order will be issued. A copy of the purchase order will be forwarded to your department.

The Virginia Public Procurement Act

Guide for Local Government Leaders



Appendix B

The Virginia Public Procurement Act – Outline of
Procedures For Competitive Sealed Bidding and
Competitive Negotiation

The Virginia Public Procurement Act -- Outline of Procedures for Competitive Sealed Bidding and Competitive Negotiation

Competitive Sealed Bidding	Competitive Negotiation for Professional Services	Competitive Negotiation for Other than Professional Services
<p>(Standard procedure for all types of procurement except for professional services)</p> <ol style="list-style-type: none"> 1. Invitation to bid, incorporating specific requirements 2. At least 10 days' public notice 3. Public opening of bids 4. Award of contract to lowest responsible and responsive bidder (price a definite factor - tie bids awarded by lot) <p>NOTE: A two step sealed bidding process may be used when it is impractical for the public body initially to prepare a purchase description to support an award based on price. The process is similar to that outlined above, except that the invitation to bid is sent to bidders who have submitted qualified offers in response to the first solicitation to bid requesting submission of unpriced offers.</p>	<p>(Standard procedure for professional services)</p> <ol style="list-style-type: none"> 1. Written request for proposal, indicating in general what is needed. The RFP shall not request that offerors furnish estimates of man-hours or cost for services. 2. At least 10 days' public notice 3. Receipts of proposal 4. Discussions with qualified offerors, with emphasis on professional competence to provide the required services 5. Ranking of offerors whose qualifications and proposed services are deemed most meritorious 6. Negotiation with offeror ranked first to obtain satisfactory contract at a fair and reasonable price. If unsuccessful, negotiations are terminated and begun with the offeror ranked second, and so on until the contract is awarded. <p>Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or more highly qualified than the others, a contract may be negotiated and awarded to that offeror.</p>	<p>(May be used for any type of purchases if the public body finds in writing that sealed bidding is either not practicable or not advantageous to the public)</p> <ol style="list-style-type: none"> 1. Written request for proposal, indicating in general terms what is needed 2. At least 10 days' public notice 3. Receipts of proposal 4. Negotiations with qualified offerors (price shall be considered but need not be the sole determining factor) 5. Award of contract to the offeror who has made the best proposal <p>Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or more highly qualified than the others, a contract may be negotiated and awarded to that offeror.</p>

Source: Compiled by the authors from the Virginia Public Procurement Act, Chapter 7 of the Virginia Code, 1950, sections 11-35 through 11-80.

The Virginia Public Procurement Act

Guide for Local Government Leaders



Appendix C

Invitation to Bid Sample Documents

Sample Invitation to Bid

Invitation to Bid Checklist

COMMONWEALTH OF VIRGINIA
COUNTY OF HENRICO



DEPARTMENT OF GENERAL SERVICES
PAUL N. PROTO
DIRECTOR

IFB: #05-XXXX-XXXX

DATE
Invitation for Bid

Subject: Furnish and provide inside delivery of ?????????????? to the Henrico ?????????????????? located at ??????????????????, Richmond, VA 23228 in accordance with the enclosed general terms, conditions and specifications. Should you have any questions concerning this Invitation for Bid, please contact XXXXXXXXX (804) 501-56XX.

Sealed bids in accordance with the conditions, specifications, and instructions below and on the attached sheets or drawings hereto, if any, will be received no later than ??????????????, local prevailing time, XXXXXXXXX, 2005 and will be opened and publicly read aloud.

IN PERSON OR SPECIAL COURIER
County of Henrico
Department of General Services
Purchasing Office
1590 E. Parham Road
Richmond, Virginia 23228

OR

U.S. POSTAL SERVICE
County of Henrico
Department of General Services
P.O. Box 27032
Richmond, Virginia 23273-7032

This IFB and any addenda are available on the County of Henrico website at: www.co.henrico.va.us The Bids and Proposals link is listed under the Henrico Business Section on the home page. To download the IFB, click the link and save the document to your hard drive. To receive a printed copy of this document please call (804) 501-5660 or bla04@co.henrico.va.us To receive an email copy of this document or any technical assistance please contact edw@co.henrico.va.us

Time is of the essence, and all bids received after the appointed hour for submission, whether by mail or otherwise, will be returned unopened. The time clock stamp in the Purchasing Office shall determine the time of receipt. Bidders are responsible for ensuring that Purchasing Office personnel stamp their bids by the deadline indicated.

Envelopes containing bids shall be sealed and marked in the lower left-hand corner with the bid request number, goods or services sought, hour and due date of the bid.

All bidders shall use the enclosed Bid Form in submitting their bid prices. The Purchasing Office reserves the right to waive any informality in bids and to award in part or in whole or to reject any or all bids.

Nothing herein is intended to exclude any responsible bidder, its product or service or in any way restrain or restrict competition. On the contrary, all responsible bidders are encouraged to bid and their bid is solicited. Comments as to how bid documents, specifications or drawings can be improved are welcome.

Very truly yours,

Paul N. Proto
Director of General Services

Your Name
Your Title
Your phone #
Your email

I. **Scope of Work/Services**

II. BIDDER INFORMATION AND REQUIREMENTS

A. General:

1. Sealed bids in accordance with the conditions, specifications, and instructions below and on the attached sheets or drawings hereto, if any, will be received in person or via special courier service in the Purchasing Office, Department of General Services, North Run Office Park, 1590 East Parham Road, Richmond, Virginia 23228-2360 or through the regular mail by the U.S. Postal Service, P.O. Box 27032, Richmond, Virginia 23273-7032 until, but no later than the time and date specified in the Invitation for Bid.
2. In the solicitation or awarding of contracts, the County of Henrico shall not discriminate because of the race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment.
3. The County welcomes and encourages the participation of small businesses and businesses owned by women and minorities in procurement transactions made by the County.
4. If your company is not listed on the County's bidder mailing list, please contact the Purchasing Office at (804) 501-5660, and request a Vendor Application.

B. Bidder's Representation:

1. By submitting a bid in response to this Invitation for Bid, the bidder certifies that it has read and understands the bid documents, specifications, and drawings, if any, and has familiarized itself with all federal, state and local laws, ordinances, rules and regulations that in any manner may affect the cost, progress or performance of the work.
2. The failure or omission of any bidder to receive or examine any form, instrument, addendum or other documents, or to acquaint itself with conditions existing at the site(s), shall in no way relieve any bidder from any obligations with respect to its bid or to the contract.

C. County License Requirement:

If a business is located in the County of Henrico, Virginia, it shall be unlawful for any person conducting or engaged in any such business, trade or occupation in the County, who is required to obtain a license therefore, to conduct or engage in such business, trade or occupation without having first obtained the proper license in the County. Contact the Business Section, Department of Finance, County of Henrico, telephone (804) 501-4310.

When a contractor or speculative builder shall have paid a local license tax to any city, town or county in which his principle office or branch office may be located, he shall be exempt from the payment of additional license tax to the county for conducting any such business within the confines of the county, except where the amount of business done by any such person in the county exceeds the sum of \$25,000.00 in any year, he shall be required to file an application and pay a license tax as provided in section 20-592 and shall be subject to all other provisions of this division. (Code 1980, 12-95; Ord. No. 909, 10-25-95; Ord No. 935,25,10-9-96).

D. Use of Brand Names/Product Information:

1. Unless otherwise provided in the Invitation for Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted (Code of Virginia, Section 2.2-4315).
2. If bidding other than specified, the bidder will clearly and specifically identify the product being offered and enclose complete and detailed descriptive literature, catalog cuts and specifications with the Bid Form to enable the Purchasing Office to determine if the product offered meets the requirements of the solicitation. Material Safety Data Sheets and descriptive literature will be provided with the Bid Form for each chemical and/or compound offered. Failure to do so may cause the bid to be considered nonresponsive and rejected.
3. It shall be understood that the burden of proof for an "equal" product shall be and remain the sole responsibility of the bidder. The County's decision of approval or disapproval of a proposed alternate shall be final. Nothing herein is intended to exclude any responsible bidder, its product or service or in any way restrain or restrict competition.

E. Addenda:

1. Comments as to how the bid documents, specifications or drawings can be improved are welcome. Bidders requesting clarification or interpretation of or improvements to the bid general terms, conditions, specifications or drawings shall make a written request which shall reach the Purchasing Office, Department of General Services, at least eight (8) calendar days prior to the date set for the receipt of bids.

2. Any changes to the bid's general terms, conditions, specifications or drawings shall be in the form of a written addendum from the Purchasing Office and it shall be signed by the Director of General Services or a duly authorized representative.
3. An addendum shall be issued no later than six (6) calendar days prior to the date set for the receipt of bids. An addendum extending the date for the receipt of bids or an addendum withdrawing the Invitation for Bid may be issued anytime prior to the date set for the receipt of bids.
4. Each bidder shall be responsible for determining that all addenda issued by the Purchasing Office for the Invitation for Bid have been received before submitting a bid for the work.
5. Each bidder shall acknowledge the receipt of each addendum on the Bid Form.

F. Taxes:

1. The County of Henrico is exempt from the payment of federal excise or state sales taxes on all tangible, personal property for its use or consumption except taxes paid on materials that will be installed by the bidder and become a part of real property.
2. If a bidder is bidding on materials that require installation by the bidder and become a part of real property, the applicable taxes shall be included in the lump sum bid price for the installation of the material and not as a separate charge for taxes. The taxes shall be an obligation of the successful bidder and not of the County, and the County shall be held harmless for same by the successful bidder.
3. The Purchasing Office will furnish a Tax Exemption Certificate (Form ST-12) upon request and if applicable to this contract.
4. When a bidder lists a separate tax charge on the Bid Form and the tax is not applicable to the purchase by the County, the bidder will be allowed to delete the tax from its bid.

G. Trade Secrets/Proprietary Information:

1. Trade secrets or proprietary information submitted by a bidder in connection with a procurement transaction or a prequalification application submitted pursuant to Section 2.2-4317B, Code of Virginia, shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder must invoke the protection of Section 2.2-4342F, Code of Virginia, prior to or upon submission of the data or other materials and

must identify the data or other material to be protected and state the reasons why protection is necessary.

2. The Purchasing Office will not accept responses to the Invitation for Bid in cases where the bidder declares the entire response to the Invitation for Bid to be proprietary information. The bidder must designate, in the smallest increments possible, that part of the bid, which is deemed to be proprietary.

H. Submission of Bids:

1. All bidders shall use the enclosed Bid Form in submitting their bid prices. The Purchasing Office shall not accept oral bids or bids received by telephone, telecopier (FAX machine) or telegraph for this bid.
2. All prices must be F.O.B. delivered to the point as indicated in this bid. The County will grant no allowance for boxing, crating, or delivery unless specifically provided for in this bid.
3. The Bid Form must be completed in blue or black ink or by typewriter. Discrepancies in the multiplication of units of work and the unit prices will be resolved in favor of the correct multiplication of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
4. All erasures, insertions, additions, and other changes made by the bidder to the Bid Form shall be signed or initialed by the bidder. Bids containing any conditions, omissions, erasures, alterations, or items not called for in the bid, may be rejected by the Purchasing Office as being incomplete or nonresponsive.
5. 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 simply the corporation's trade name. In addition, the bidder must indicate the corporate title of the individual signing the bid.
6. The Bid Form, the bid security, if any, and any other documents required, shall be enclosed in a sealed opaque envelope. Any notation or notations on the exterior of the envelope purporting to alter, amend, modify, or revise the bid contained within the envelope shall be of no effect and shall be disregarded.
7. The envelope containing the bid should be sealed and marked in the lower left-hand corner with the bid request number, goods or services sought, hour and due date of the bid.

8. The time for the receipt of bids shall be determined by the time clock stamp in the Purchasing Office. Bidders are responsible for ensuring that their bids are stamped by Purchasing Office personnel by the deadline indicated.
9. All bids received in the Purchasing Office by the deadline indicated will be kept in a locked bid box until the time and date set for the opening of bids.
10. All late bids shall be returned unopened to the sender.

I. Bid Security:

The Purchasing Office does not require the bidder to furnish a bid security with this bid.

J. Modification of Bids:

1. A bid may be modified or withdrawn by the bidder anytime prior to the time and date set for the receipt of bids. The bidder shall notify the Purchasing Office in writing of its intentions.
2. Modified and withdrawn bids may be resubmitted to the Purchasing Office up to the time and date set for the receipt of bids.
3. No bid can be withdrawn after the time set for the receipt of bids and for ninety (90) days thereafter except as provided under the withdrawal of bid due to error section.

K. Opening of Bids:

1. All bids received on time in the Purchasing Office shall be opened and publicly read aloud.
2. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract (Code of Virginia, Section 2.2-4342C).
3. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records (Code of Virginia, Section 2.2-4342E).

L. Withdrawal of Bid Due to Error (Other than Construction):

1. A bidder may withdraw its bid from consideration if the price bid was substantially lower than the next low responsive bid due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.
2. The bidder shall give written notice of their claim to withdraw their bid to the Purchasing Office within two business days after the conclusion of the bid opening procedure. Such mistake shall be proved only from the original work papers, documents and materials delivered to the Purchasing Office with the bidder's written request to withdraw its bid.
3. The Purchasing Office will inspect the written evidence submitted by the bidder with the request and if the Purchasing Office can verify to its satisfaction and sole discretion that the mistake was a non-judgmental mistake, the bidder will be allowed to withdraw the bid.
4. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%).
5. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit directly or indirectly from the performance of the project for which the withdrawn bid was submitted.
6. If a bid is withdrawn under authority of this section, the next lowest responsive and responsible bidder shall be deemed to be the low bidder.
7. If the Purchasing Office denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

M. Award of Contract:

1. The Purchasing Office reserves the right to waive any informality in bids and to award in part or in whole or to reject any or all bids. The reasons for the rejection shall be made a part of the contract file.
2. In case of a tie bid, preference shall be given to goods, services, and construction produced in the County of Henrico or the State of Virginia or provided by persons, firms or corporations having principal places of business in the County of Henrico or the State of Virginia, if such a choice is available; otherwise the tie shall be decided by lot. A County of Henrico business shall be given preference over a State of Virginia business, if such a choice is available.
3. The Purchasing Office shall have the right, before awarding the contract, to require a bidder to submit such evidence of its qualifications as it may deem necessary and may consider any evidence available to it concerning the financial, technical, and other qualifications and abilities of a bidder. (See Attachment A)
4. It is the intent of the County of Henrico to award a contract to the lowest responsive and responsible bidder provided the bid does not exceed the funds available for the contract. **This bid will be awarded by Total Bid Price for each line item.**
5. The bidder to whom the contract is awarded shall, within fifteen (15) days after prescribed documents are presented for signature, execute and deliver to the Purchasing Office the contract forms and any other forms required by the bid.
6. The County may during the first sixty (60) days after this contract is awarded, with the concurrence of the contractor, place additional orders under the contract at the original unit price through the issuance of separate purchase orders. The aggregate of such additional orders shall not exceed 100% of the quantity originally stated in the contract.
7. This contract is made, entered into, and shall be performed in the County of Henrico, Virginia and shall be governed by the applicable laws of the Commonwealth of Virginia. Any dispute arising out of any contract resulting from this Invitation for Bid, its interpretations or its performance shall be litigated only in either the General District Court or in the Circuit Court of the County of Henrico, Virginia.

8. Upon making an award, or giving notice of intent to award, the County will place appropriate notice on the public bulletin board located at the following locations:

Purchasing Office
1590 East Parham Road
Richmond, VA

Eastern Government Center
3820 Nine Mile Road
Richmond, VA

Henrico Government Center
4301 East Parham Road
Richmond, VA

Notice of award or intent to award may appear on the Purchasing Office website: <http://www.co.henrico.va.us/genserv>

N. Negotiation with the Lowest Bidder:

1. If all bids received exceed the available funds for the proposed purchase, the County, pursuant to County Code provisions, may meet with the lowest responsive and responsible bidder to discuss a reduction in the scope for the proposed purchase and negotiate a contract price within the available funds.
2. After bid negotiations, the lowest responsible bidder shall submit an addendum to its bid, which addendum shall include the change in scope for the proposed purchase, the reduction in price and the new contract value.
3. If the proposed addendum is acceptable to the County, the County may award a contract within funds available to the lowest responsible bidder based upon the bid as amended by the addendum.
4. If the County and the lowest responsible bidder cannot negotiate a contract within available funds, all bids shall be rejected.

O. Bonds:

The Purchasing Office does not require the successful bidder to furnish Performance Bond and a Payment Bond for this contract.

P. Insurance:

The successful bidder shall maintain insurance to protect itself and the County of Henrico from claims for damages for personal injury, including death, and for damages to property, which may arise from operations under this contract. Such insurance shall conform to the enclosed County Insurance Specifications. (See Attachment B)

Q. Contractor's Performance:

1. Goods and services must be delivered and rendered strictly in accordance with this bid and shall not deviate in any way from the terms, conditions, prices, quality, quantity, delivery instructions, and specifications of this bid.
2. All goods and/or services delivered and/or rendered shall comply with all applicable federal, state, and local laws, and shall not infringe any valid patent or trademark. The successful bidder shall indemnify, keep, save, and hold the County, its officers and employees, harmless from any liability for infringement and from any and all claims or allegations of infringement by the bidder or the County, its officers and employees, arising from, growing out of, or in any way involved with the goods delivered or services rendered pursuant to this purchase.
3. In the event that suit is brought against the County, its officers and/or its employees, either independently or jointly with the bidder, the bidder shall defend the County, its officers and employees, in any such suit at no cost to them. In the event that final judgment is obtained against the County, its officers, and/or its employees, either independently or jointly with the bidder, then the bidder shall pay such judgment, including costs and attorneys fees, if any, and hold the County, its officers and employees, harmless there from.
4. The successful bidder shall ensure that its employees shall observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any and all kinds.
5. The successful bidder shall not, in its product literature or advertising, refer to this purchase or the use of the bidder's goods or services by the County of Henrico, Virginia.
6. The successful bidder shall cooperate with County officials in performing the specified work so that interference with the County's activities will be held to a minimum.

R. Employment Discrimination by Contractor Prohibited:

1. During the performance of this contract, the contractor agrees as follows (Code of Virginia, Section 2.2-4311):
 - (a.) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in

conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- (b.) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- (c.) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

S. Drug-Free Workplace to be Maintained by the Contractor (Code of Virginia, Section 2.2-4312)

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Virginia Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

T. No Discrimination against Faith-Based Organizations:

Henrico County does not discriminate against faith-based organizations as that term is defined in Virginia Code Section 2.2-4343.1.

U. Compensation:

1. It is the County's policy not to pay for any goods or services until the same have been actually received.
2. Individual contractors shall provide the Purchasing Office their social security numbers and proprietorships, partnerships and corporations shall provide their federal employer identification numbers (Code of Virginia, Section 2.2-4354.2). This information shall be provided in the space indicated on the Bid Form.
3. The successful bidder shall submit a complete itemized invoice on each item or service, which is delivered under the contract. The successful bidder shall indicate the purchase order number on the front of each invoice and on the outside of each package or shipping container.
4. Cash discounts shall be deducted in accordance with the terms of the bid.
5. Payment shall be rendered to the successful bidder for satisfactory compliance with the general terms, conditions and specifications of this bid. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of such goods or services; or (ii) if such date is not established by contract, not more than forty-five days after goods or services are received or not more than forty-five days after the invoice is rendered, whichever is later (Code of Virginia, Section 2.2-4352).
6. Unless otherwise provided under the terms of the contract for the provisions of goods and services, if the County fails to pay by the payment date, the County agrees to pay the financial charge assessed by the successful bidder, which does not exceed one percent per month (Code of Virginia, Section 2.2-4354.4).

V. Successful Bidder's Obligation to Pay Subcontractors:

1. The successful bidder awarded the contract for this project shall take one of the two following actions within seven (7) days after the receipt of amounts paid to the successful bidder by the County for work performed by the successful bidder's subcontractor(s) under the contract (Code of Virginia, Section 2.2-4354):
 - a). Pay the subcontractor(s) for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor(s) under the contract; or

- b). Notify the County and subcontractor(s), in writing, of their intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. The successful bidder shall pay interest to the subcontractor(s) on all amounts owed by the successful bidder that remain unpaid after seven (7) days following receipt by the successful bidder of payment from the County for work performed by the subcontractor(s) under the contract, except for amounts withheld as allowed in subparagraph a (2) of this section. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent (1%) per month.
3. The successful bidder shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor(s).
4. The successful bidder's obligation to pay an interest charge to a subcontractor(s) pursuant to the payment clause in this section may not be construed to be an obligation of the County. A contract modification may not be made for the purpose of providing reimbursement for such interest charge and a cost reimbursement claim may not include any amount for reimbursement for such interest charge.

W. County's Right to Terminate the Contract:

1. If the successful bidder should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the successful bidder's insolvency, or if the successful bidder should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to deliver the goods or services within the time specified, or if the bidder otherwise defaults, then the County may without prejudice to any other right or remedy, and after giving the successful bidder seven (7) calendar days written notice, terminate the employment of the successful bidder and procure such goods or services from other sources. In such event, the successful bidder shall be liable to the County for any additional cost occasioned by such failure or other default.
2. In such cases, the successful bidder shall not be entitled to receive any further payment. If the expense of finishing the contract requirements, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the successful bidder shall pay the difference to the County.
3. Notwithstanding anything to the contrary contained in the contract between the County and the successful bidder, the County may, without prejudice to

any other rights it may have, terminate the contract for convenience and without cause, by giving 30 days written notice to the successful bidder.

X. Record Retention/County Audits:

1. The successful bidder shall retain, during the performance of the contract and for a period of three years from the completion of the contract, all records pertaining to the successful bidder's bid and any contract awarded pursuant to this Invitation for Bid. Such records shall include but not be limited to all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including successful bidder's copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the County on demand and without advance notice during the successful bidder's normal working hours.
2. County personnel may perform in-progress and post-audits of the successful bidder's records as a result of a contract awarded pursuant to this Invitation for Bid. Files would be available on demand and without notice during normal working hours.

Y. Product Evaluation/Testing:

1. The Purchasing Office shall have the option to evaluate and/or test any item offered in this Invitation for Bid prior to award of the contract. If the Purchasing Office elects to evaluate and/or test an item, the bidder shall provide all samples required for evaluation and/or testing at no charge within five (5) calendar days of the request by the Purchasing Office.

Samples shall be sent to:

Henrico County XXXXXXXXXX
Attention: XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Richmond, VA 23233

2. Upon the completion of the evaluation and/or testing by the Purchasing Office, the bidder shall be responsible for the pick-up/return freight of the samples. If return arrangements are not confirmed within seven (7) calendar days after notification from the Purchasing Office that samples are available for return, the Purchasing Office reserves the right to dispose of said samples.

BID FORM

County of Henrico
Department of General Services
Purchasing Office
North Run Office Park
1590 East Parham Road
P. O. Box 27032
Richmond, Virginia 23273-7032

I/We hereby propose to furnish and deliver of ?????????????? to the ?????????????? located at ??????????????, Richmond, VA 23228 in accordance with Bid #05-XXXX-XXXX general terms, conditions and specifications. The Bid Form must be completed in blue or black ink or by typewriter. Discrepancies in the multiplication of units of work and the unit prices will be resolved in favor of the correct multiplication of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. My/Our prices are as follows:

PRICES QUOTED SHALL BE FOB DESTINATION

Bidder has verified that the make and model "as bid" is currently available from the manufacturer _____ Yes _____ No

Bidder has verified that the make and model "as bid" is in currently production by the manufacturer _____ Yes _____ No

Bidder has verified with the manufacturer that the production of the make and model "as bid" has not been discontinued by the manufacturer _____ Yes _____ No

PLEASE SUBMIT AN ORIGINAL AND 1 COPY OF YOUR BID RESPONSE.

I/We can furnish and deliver all items within ___ calendar days after the date of the written notice to proceed with the contract from the County.

My/Our payment terms are: _____. If Bidder offers a cash discount for prompt payment, it will only be considered in determining the lowest responsible bidder if the bidder allows at least twenty (20) days for the prompt payment after the goods or services are received or after the invoice is rendered, whichever is later.

Under Section 2.2-4354.2, Code of Virginia, an individual contractor is required to furnish their social security number and a proprietorship, partnership and corporation is required to furnish their employer identification numbers to the County of Henrico. Please indicate this information on this Bid Form as follows:

Social Security Number: _____.

Federal Employer Identification Number: _____.

To aid in the evaluation of bids, bidders must submit the original Bid Form and one copy of the Bid Form and detailed specification sheets. Have you complies with requirement? ___Yes. ___No. If you fail to do so, your bid may be considered Nonresponsive and rejected.

Indicate whether your business ___is or ___is not located in the County of Henrico, Virginia an if it is, have you obtained a County license to conduct or engage in the business, trade or occupation in the County of Henrico? ___ Yes. ___ No.

I/We acknowledge the receipt of:

Addendum No. _____ Dated _____.

Addendum No. _____ Dated _____.

Bid Request No.05-XXXX-XXXX

By bidding in response to this invitation, the bidder represents that in the preparation and submission of this bid, said bidder did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

Respectfully submitted,

Signature

Printed Name

Title

Firm

Address

FAX#

E-MAIL

DATE

TELEPHONE#

ATTACHMENT A
Vendor Data Sheet

References:

Company Name	Contract Person	Telephone Number
1.		
2.		
3.		
4.		

DO NOT USE HENRICO COUNTY AS A REFERENCE

ATTACHMENT B

INSURANCE SPECIFICATIONS

The contractor shall carry Public Liability Insurance in the amount specified below, including contractual liability assumed by the contractor, and shall deliver Certificate of Insurance from carriers acceptable to the owner specifying such limits. **The Certificate shall show the County named as an additional insured for the Commercial General Liability and Automobile Liability**, including owned, non-owned and hired car coverage and Umbrella Liability coverage. The coverage shall be provided by a carrier(s) rated "Excellent" by A.M. Best. In addition, the insurer shall agree to give the County 30 days notice of its decision to cancel coverage.

1. Workers' Compensation and Employer's Liability

Coverage A – Statutory Requirements
Coverage B - \$1,000,000 Per Occurrence
Coverage C - \$1,000,000/\$1,000,000 Accident and/or Disease
All States Endorsement

2. Automobile Liability, including Owned, Non-Owned and Hired Car Coverage

Limits of Liability

Bodily Injury	\$1,000,000 each person \$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence

3. Comprehensive General Liability

Limits of Liability

Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
OR	
Single Limit Bodily Injury Property Damage	\$2,000,000 each occurrence

Including

- A. Completed Operations/Products
- B. Contractual Liability for Specified Agreement
- C. Personal Injury
- D. (XCU) Explosion, Collapse and Underground Coverage
- E. Broad Form Property Damage

NOTE 1: Contractual Liability covers the following indemnity agreement:

"The Contractor shall indemnify and hold harmless the owner against and from all liability, claims, damages and costs, including attorney's fees of every kind and nature and attributable to bodily injury, sickness, disease or death or to damage or destruction of property resulting from or in any manner arising out of or in connection with the project and the performance of the work under this contract"

CHECK LIST

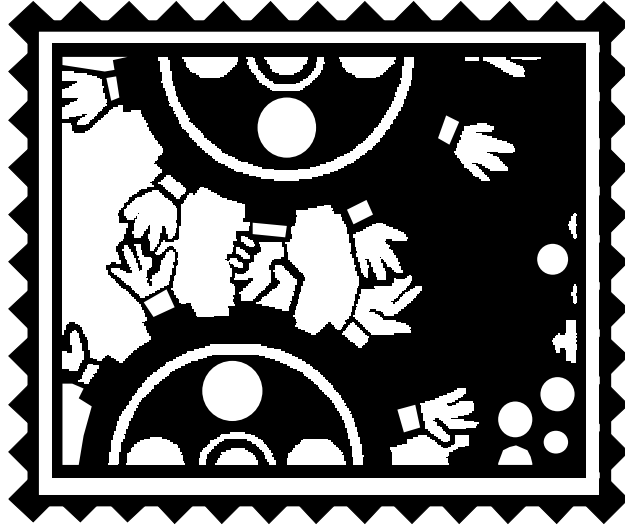
DOCUMENTATION OF FILES – INVITATION TO BID

Each Invitation to Bid file folder should contain the following:

- _____ (1) Copy of purchase requisition, if applicable.
- _____ (2) Agency information or specifications submitted.
- _____ (3) Invitation to Bid prepared by the Purchasing Officer for approval.
- _____ (4) Bid list of qualified bidders.
- _____ (5) Checked Department of Minority Business Enterprise website.
- _____ (6) Original copy of Invitation to Bid and the copy that was posted on the bid board in the Purchasing Office for the public notice of the Invitation to Bid.
- _____ (7) Posted on Website (with all attachments). _____
Date
- _____ (8) Addenda Posted on Website _____
Date
- _____ (9) All original copies of bids and information received from bidders.
- _____ (10) Bid tabulation form.
- _____ (11) Agency recommendation and written justification, if needed.
- _____ (12) All correspondence and documentation concerning the bid and the award.
- _____ (13) Contract received or Purchase Order Issued PO# _____
- _____ (14) Notice of Award Posted _____
Date
- _____ (15) Vendor Business Type updated in AIM
- _____ (16) Insurance Certificate (When applicable)
- _____ (17) Contract Extract prepared (if applicable)
- _____ (18) Update of Bid Log
- _____ (19) Contract amendments and change orders, if any.

The Virginia Public Procurement Act

Guide for Local Government Leaders



Appendix D

Request for Proposal Sample Documents

Justification for Request for Proposal

Sample Request for Proposal

Request for Proposal Checklist

Instructions for Evaluation of Request for Proposal

Evaluation Form for Request for Proposal

JUSTIFICATION FOR REQUEST FOR PROPOSAL

TITLE: _____

PURCHASING OFFICER: _____

This procurement is being handled as a Request for Proposal under the following conditions:

_____ **It is for professional services.**

_____ **Competitive sealed bidding is not practicable for the following reason(s):**

_____ **The County cannot prepare adequate detailed specifications for this procurement.**

_____ **The procurement is of a technical nature and the solution is best left to the vendors to propose, rather than limit the available options.**

_____ **Other** _____

_____ **Competitive sealed bidding is not fiscally advantageous since cost is not the primary consideration in awarding this contract.**

By _____
Cecelia H. Stowe, CPPO, C.P.M.
Purchasing Manager

Date: _____



COMMONWEALTH OF VIRGINIA

County of Henrico

RFP#05-XXXX-XXXX

DEPARTMENT OF GENERAL SERVICES

PAUL N. PROTO
DIRECTOR

XXXXXXXX, 2005

**REQUEST FOR PROPOSAL
Description**

Your firm is invited to submit a proposal to **XXXXXXXXXXXXXXXXXXXX** in accordance with the enclosed specifications. The submittal, consisting of the original proposal and **four (4)** additional copies marked, **"XXXXXXXXXXXXXXXXXXXXXXXXXXXX"**, will be received no later than **2:00 p.m., XXXXXXXXXXXXXXX, 2005**, by:

IN PERSON OR SPECIAL COURIER
County of Henrico
Department of General Services
Purchasing Office OR
1590 E. Parham Road
Richmond, Virginia 23228

U.S. POSTAL SERVICE
County of Henrico
Department of General Services
P.O. Box 27032
Richmond, Virginia 23273-7032

This RFP and any addenda are available on the County of Henrico website at: www.co.henrico.va.us The Bids and Proposals link is listed under the Henrico Business Section on the home page. To download the IFB, click the link and save the document to your hard drive. To receive a printed copy of this document please call (804) 501-5660 or bla04@co.henrico.va.us To receive an email copy of this document or any technical assistance please contact edw@co.henrico.va.us

Time is of the essence and any proposal received after **2:00 p.m., XXXXXXXXXXXXXXX, 2005**, whether by mail or otherwise, will be returned unopened. The time of receipt shall be determined by the time clock stamp in the Purchasing Office, Department of General Services. Proposals shall be placed in a sealed, opaque envelope, marked in the lower left-hand corner with the RFP number, title, and date and hour proposals are scheduled to be received. Offerors are responsible for insuring that their proposal is stamped by Purchasing Office personnel by the deadline indicated.

Nothing herein is intended to exclude any responsible firm or in any way restrain or restrict competition. On the contrary, all responsible firms are encouraged to submit proposals. The County of Henrico reserves the right to accept or reject any or all proposals submitted.

Technical questions concerning this Request for Proposal should be submitted to **XXXXXXXXXXXXxxx** at **501-XXXXX**.

Very truly yours,

Paul N. Proto
Director of General Services

Your Name
Your Title

I. PURPOSE:

II. BACKGROUND:

III. SCOPE OF SERVICES:

IV. ANTICIPATED SCHEDULE:

The following represents a tentative outline of the process currently anticipated by the County:

- Request for Proposals distributed XXXXXXXX
- Receive written proposals XXXXXX, 2005, 2:00 p.m.
- Conduct oral interviews with Offerors week of XXXXX, 2005
- Best and Final Offer due XXXXX, 2005
- Contract/installation begins after XXXXXXX, 2005

V. COUNTY RESPONSIBILITIES:

Henrico County will designate individual to act as the Project Manager for all work performed under this contract. The Project Manager shall coordinate the work, and shall have the authority to make decisions in writing binding their respective employers on matters within the scope of the contract.

VI. GENERAL CONTRACT TERMS AND CONDITIONS:

A. Annual Appropriations:

It is understood and agreed that this contract shall be subject to annual appropriations by the County of Henrico, Board of Supervisors. Should the Board fail to appropriate funds for this contract, the contract shall be terminated when existing funds are exhausted. There shall be no penalty should the Board fail to make annual appropriations for this contract.

B. Award Of The Contract:

1. The County reserves the right to reject any or all proposals and to waive any informalities.
2. The Successful Offeror shall, within fifteen (15) calendar days after prescribed documents are presented for signature, execute and deliver to the Purchasing Office the contract forms and any other forms or bonds required by the RFP.
3. Any contract resulting from this RFP is not assignable.
4. Upon making an award, or giving notice of intent to award, the County will place appropriate notice on the public bulletin board located at the following locations:

Purchasing Office	Eastern Government Center
North Run Office Complex	3820 Nine Mile Road
1590 East Parham Road	Richmond, VA

Henrico Government Center
4301 E. Parham Road
Richmond, VA

Notice of award or intent to award may also appear on the Purchasing Office website: <http://www.co.henrico.va.us/genserv>

C. Controlling Law; Venue

This contract is made, entered into, and shall be performed in the County of Henrico, Virginia, and shall be governed by the applicable laws of the Commonwealth of Virginia. Any dispute arising out of the contract resulting from this RFP, its interpretations, or its performance shall be litigated only in the Henrico County General District Court or the Circuit Court of the County of Henrico, Virginia.

D. Offeror's Performance:

1. The Offeror agrees and covenants that its agents and employees shall comply with all County, State and Federal laws, rules and regulations applicable to the business to be conducted under the contract.
2. The Offeror shall ensure that its employees shall observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any and all kinds.
3. The Offeror shall cooperate with County officials in performing the contract work so that interference with normal program will be held to a minimum.
4. The Offeror shall be an independent contractor and shall not be an employee of the County or the Personnel Department.

E. Employment Discrimination by Contractor Prohibited:

1. During the performance of this contract, the contractor agrees as follows (Code of Virginia, Section 2.2-4311):
 - (a.) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - (b.) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - (c.) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

F. Drug-Free Workplace to be Maintained by the Contractor (Code of Virginia, Section 2.2-4312)

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Virginia Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

G. No Discrimination against Faith-Based Organizations:

Henrico County does not discriminate against faith-based organizations as that term is defined in Virginia Code Section 2.2.-4343.1.

H. Compensation:

The Offeror shall be required to submit a complete itemized invoice on each delivery or service, which he may perform under the contract. Payment shall be rendered to the Successful Offeror for satisfactory compliance with the contract within forty-five (45) days after the receipt of the proper invoice.

I. Minority and Women-Owned Businesses:

The County of Henrico actively solicits both minority and women-owned businesses to respond to all Invitations For Bids and Requests For Proposals, and if not already on the County's Offeror mailing list, you may request application for inclusion on the list. Should you be interested, please contact the Purchasing Office at (804) 501-5660 and request an application.

J. Record Retention/ Audits:

The Successful Offeror shall retain, during the performance of the contract and for a period of three years from the completion of the contract, all records pertaining to the Successful Offeror's proposal and any contract awarded pursuant to this Request for Proposal. Such records shall include but not be limited to all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including Offeror copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the County on demand and without advance notice during the Successful Offeror's normal working hours.

County personnel may perform in-progress and post-audits of Offerors records as a result of a contract awarded pursuant to this Request for Proposals. Files would be available on demand and without notice during normal working hours.

K. Termination Of Contract:

1. The County of Henrico reserves the right to terminate the contract/purchase order immediately in the event that the Successful Offeror discontinues or abandons operations; if adjudged bankrupt, or is reorganized under any bankruptcy law; or fails to keep in force any required insurance policies or bonds.
2. Failure of the Successful Offeror to comply with any section or part of this contract/purchase order will be considered grounds for immediate termination of the contract/purchase order by the County of Henrico.
3. Notwithstanding anything to the contrary contained in the contract/purchase order between the County and the Successful Offeror, the County may, without prejudice to any other rights it may have, terminate the contract/purchase order for convenience and without cause, by giving 30 days written notice to the Offeror.
4. If the termination clause is used by the County, the Offeror will be paid by the County for all scheduled work completed satisfactorily by the Successful Offeror up to the termination date set in the written termination notice.

L. Taxes:

The Offeror shall pay all county, city, state and federal taxes required by law enacted at the time proposals are received and resulting from the work or

traceable thereto, under whatever name levied. Said taxes shall not be in addition to the contract price between the County and the Offeror, as the taxes shall be an obligation of the Offeror and not of the County, and the County shall be held harmless for same by the Offeror.

The County of Henrico is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption certificates will be furnished upon request.

M. Insurance Requirements:

The Successful Offeror shall maintain insurance to protect itself and the County of Henrico from claims under the Workers' Compensation Act, and from any other claim for damages for personal injury, including death, and for damages to property which may arise from operations under this contract, whether such operations be by itself or by any subcontractor or anyone directly employed by either of them. Such insurance shall conform to the Insurance Specifications. **(Attachment A)**

N. Collusion:

By submitting a proposal in response to this Request for Proposal, the Offeror represents that in the preparation and submission of this proposal, said Offeror did not, either directly or indirectly, enter into any combination or arrangement with any person, Offeror or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1) or Section 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

O. Subcontracts:

No portion of the work shall be subcontracted without prior written consent of the County of Henrico, Virginia. In the event that the Contractor desires to subcontract some part of the work specified in the contract, the Contractor shall furnish the County the names, qualifications, and experience of the proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by his/her subcontractor(s) and shall assure compliance with all the requirements of the contract.

P. Ownership of Deliverable and Related Products:

The County of Henrico, Virginia shall have all rights, title, and interest in or to all specified or unspecified interim and final products, work plans, project reports and/or presentations, data, documentation, computer

programs and/or applications, and documentation developed or generated during the completion of this project, including, without limitation, unlimited rights to use, duplicate, modify, or disclose any part thereof, in any manner and for any purpose, and the right to permit or prohibit any other person, including the Contractor, from doing so. To the extent that the Contractor may be deemed at any time to have any of the foregoing rights, the Contractor agrees to irrevocably assign and does hereby irrevocably assign such rights to the County of Henrico, Virginia.

The selected Offeror shall be expressly prohibited by the terms of any contract resulting from this procurement from receiving additional payments or profit from the items referred to in this paragraph, other than, that which is provided for in the general terms and conditions of said contract.

This shall not preclude Offerors from submitting proposals, which may include innovative ownership approaches in the best interest of the County.

Q. Indemnification

The successful Offeror agrees to indemnify, defend and hold harmless the County of Henrico including Henrico Public County Schools, its officers, agents and employees from any claims, damages, suits, actions, liabilities and costs of any kind or nature, including attorneys' fees, arising from or caused by the provision of any services, the failure to provide any services or the use of any services or materials furnished (or made available) by the successful Offeror, provided that such liability is not attributable to the County's sole negligence.

R. Severability

Any written contract resulting from this RFP shall contain a severability clause, which provides that each paragraph and provision of the contract will be severable from the entire agreement and if any provision is declared invalid the remaining provisions shall nevertheless remain in effect.

S. Default

If the Successful Offeror is wholly responsible for failure to make delivery or complete implementation and installation, or if the system fails in any way to perform as specified herein, the County may consider the Successful Offeror to be in default. In the event of default, the County will provide the Successful Offeror with written notice of default, and the Successful Offeror will be provided twenty (20) calendar days to provide a plan to correct said default.

If the Successful Offeror fails to cure said default within twenty days, the County, among other actions, may complete the system through a third party, and the Successful Offeror shall be responsible for any amount in excess of the agreement price incurred by the County in completing the system to a capability equal to that specified in the contract.

T. Contract Period:

1. The contract period shall be from XXXXX, 2005 through XXXXX, 2006. The contract price shall be firm for the contract period. The price for each subsequent contract year may not exceed three percent (3%) above the previous year's fee and shall remain firm for the renewal year.
2. The contract may be renewed for four (4) additional one-year terms upon written, mutual agreement between the County and the Successful Offeror.

U. Discussion of Exceptions to the RFP

The RFP, including its venue, termination, and payment schedule provisions, shall be incorporated by reference into the contract documents as if its provisions were stated verbatim therein. Therefore, any exception to any provisions of the RFP shall be explicitly identified in a separate "Exceptions to RFP" section of the proposal for resolution before execution of the contract. In case of any conflict between the RFP and any other contract documents, the RFP shall control unless the contract documents explicitly provide otherwise.

Please identify below or under separate cover any "Exceptions to RFP".

VII PROPOSAL SUBMISSION REQUIREMENTS:

- A. The Purchasing Office will not accept oral proposals, nor proposals received by telephone, FAX machine, or telegraph.
- B. All erasures, interpolations, and other changes in the proposal shall be signed or initialed by the Offeror.
- C. The proposal, the proposal security, if any, and any other documents required, shall be enclosed in a sealed opaque envelope. The envelope containing the proposal shall be sealed and marked in the lower left-hand corner with the number, title, hour, and due date of the proposal.

- D. The time proposals are received shall be determined by the time clock stamp in the Purchasing Office. Offerors are responsible for insuring that their proposals are stamped by Purchasing Office personnel by the deadline indicated.
- E. By submitting a proposal in response to this Request for Proposal, the Offeror represents they have read and understand the Scope of Services and have familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the contract work.
- F. The failure or omission of any Offeror to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with conditions existing at the site, shall in no way relieve any Offeror from any obligations with respect to its proposal or to the contract.
- G. Trade secrets or proprietary information submitted by an Offeror in response to this Request for Proposal shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protection of this section prior to or upon submission of data or materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary (Section 2.2-4342F of the Code of Virginia).**
- H. A proposal may be modified or withdrawn by the Offeror anytime prior to the time and date set for the receipt of proposals. The Offeror shall notify the Purchasing Office in writing of its intentions.
1. If a change in the proposal is requested, the modification must be so worded by the Offeror as to not reveal the original amount of the proposal.
 2. Modified and withdrawn proposals may be resubmitted to the Purchasing Office up to the time and date set for the receipt of proposals.
 3. No proposal can be withdrawn after the time set for the receipt of proposals and **for sixty (60) days** thereafter.
- I. Comments as to how the proposal documents, scope of services or drawings can be improved are welcome. Offerors requesting clarification or interpretation of or improvements to the proposal general terms, conditions, scope of services or drawings shall make a written request which shall reach the Purchasing Office, Division of General Services, at least eight (8) days prior to the date set for the receipt of proposals. Any changes to the proposal shall be in the form of a written addendum from the Purchasing Office and it shall be signed by the Director of General

Services or a duly authorized representative. **Each Offeror shall be responsible for determining that all addenda issued by the Purchasing Office have been received before submitting a proposal.**

- J. All proposals received in the Purchasing Office on time shall be accepted. All late proposals received by the Purchasing Office shall be returned to the Offeror unopened. Proposals shall be open to public inspection only after award of the contract.

1. **PROPOSAL RESPONSE FORMAT:**

A. Offerors shall submit a written proposal that present the Offeror’s qualifications and understanding of the work to be performed. Offerors are asked to address each evaluation criterion and to be specific in presenting their qualifications. Your proposal should provide all the information considered pertinent to your qualifications for this project.

B. The Offeror should include in their proposal the following:

- 1. Table of Contents – All pages are to be numbered
- 2. Introduction

Cover letter - on company letterhead, signed by a person with the corporate authority to enter into contracts in the amount of the proposal
Subcontractors - Information on any subcontractors that is necessary to provide the services required. Provide name, experience, address, telephone number and qualifications. (IF Applicable)

Proposal Signature Sheet – Attachment **B**

2. Executive Summary

Response to Scope of Services –The Offeror should address each section of the Scope of Services with an indication of the response. The Offeror shall identify any exceptions, referenced to the paragraph number, in a sub section titled “Exceptions”.

Company Profile – Offerors are to present a Company profile that shows the ability, capacity and skill of the Offeror, their staff, and their employees to perform the services required within the specified time.

References – provide a minimum of three (3) references, who could attest to the Offeror’s past performance to provide services similar to those required for the contract. The list should include contact persons

and telephone numbers. Offerors may not use Henrico County as one of their references.

Implementation Plan – A time schedule for proposed time frame and phases if applicable.

Warranty

Training

4. Pricing

5. Appendices – are optional for Offerors who wish to submit additional material that will clarify their response.

IX. PROPOSAL EVALUATION/SELECTION PROCESS:

A. Offerors are to make written proposals, which present the Offeror's qualifications and understanding of the work to be performed. Offerors are asked to address each evaluation criteria and to be specific in presenting their qualifications. Proposals should be as thorough and detailed as possible so that the County may properly evaluate your capabilities to provide the required goods/services.

B. Selection of the Successful Offeror will be based upon submission of proposals meeting the selection criteria. The minimum selection criteria will include:

1. Special experience, technical capabilities, professional competence, and qualifications of the Offeror.
 2. Special experience, technical capabilities, professional competence, and qualifications of proposed personnel assigned to provide their services in accordance with the Scope of Services.
 3. Clearly demonstrated understanding of the work to be performed and completeness and reasonableness of the Offeror's plan for accomplishing the Scope of Services.
 4. Completeness and reasonableness of proposing organization's plan for accomplishing the tasks.
 5. References and fiscal stability.
 6. The cost of services.
- These can change.
-

- C.** Selection will be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals. Negotiations shall then be conducted with each of the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the County shall select the Contractor, which, in its opinion, has made the best proposal, and shall award the contractor to that Offeror. Should the County determine in writing and in its sole discretion that only one Offeror is fully qualified or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Offeror's proposal as negotiated.

**ATTACHMENT A
INSURANCE SPECIFICATIONS**

TO BE DETERMINED AT TIME OF BID

**ATTACHMENT B
PROPOSAL SIGNATURE SHEET**

My signature certifies that the proposal as submitted complies with all Terms and Conditions as set forth in RFP #05-XXXX-XXX. My signature also certifies that by submitting a proposal in response to this Request for Proposal, the Offeror represents that in the preparation and submission of this proposal, said Offeror did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1 et seq.) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

I hereby certify that I am authorized to sign as a Representative for the Firm:

NAME OF OFFEROR: _____

ADDRESS: _____

FED ID NO: _____

SIGNATURE: _____

NAME (print): _____

TITLE: _____

TELEPHONE: _____

E-MAIL: _____

FAX: _____

DATE: _____

SUBMIT THIS FORM WITH PROPOSAL

CHECK LIST: DOCUMENTATION OF FILES – Request for Proposal

Each Request for Proposal file folder should contain the following:

- _____ (1) Copy of Purchase Requisition (if applicable)
- _____ (2) Written Justification for RFP
- _____ (3) Offerors List Established and Department of Minority Business Enterprise website checked.
- _____ (4) Review By:
Purchasing _____
Department _____
Risk Management _____
- _____ (5) Advertised Date: _____
- _____ (6) Original copy of Request for Proposal and the copy that was posted on the bid board in the Purchasing Office for the public notice of the Request for Proposal.
- _____ (7) Posted on Website (with all attachments). Date: _____
- _____ (8) Addenda Posted on Website Date: _____
- _____ (9) Selection Committee Appointed:

- _____ (10) Copies of Proposal, with memo sent to Selection Committee.
- _____ (11) Selection Committee meets to discuss initial evaluation. Date _____.
- _____ (12) Short list established and interviews scheduled for: Date: _____
Firms Selected:

- _____ (13) Negotiations Date _____
- _____ (14) Final Selection _____
- _____ (15) Contract received or Purchase Order Issued PO# _____
- _____ (16) Notice of Award Posted _____
Date _____
- _____ (17) Vendor Business Type updated in AIM
- _____ (18) Insurance Certificate (When applicable)
- _____ (19) Contract Extract prepared (if applicable)
- _____ (20) Update of Bid Log
- _____ (21) Contract amendments and change orders, if any.

Instructions For Evaluation Of Proposals

The Director of General Services has asked that you serve as a member of a Selection Committee responsible for reviewing and evaluating the proposals received in response to a Request for Proposal (RFP). A Selection Committee usually consists of three or more County staff members and a member of the Purchasing Office who serves as the facilitator of the process. Selection Committee members are cautioned against communication with the offerors or entering into discussion with anyone except other Committee members regarding the technical merit or rating of the proposals, the identity of the offerors, or even the number of proposals received. Whether this is the first time you have been asked to serve as a member of the Selection Committee, or you have served in that capacity in the past, the goal of this guide is to assist you and the other members of the Committee in the evaluation process.

The RFP is the solicitation document used for requesting offers (proposals) from qualified firms or individuals under the competitive negotiation procurement process. The RFP contains evaluation criteria that will be used to determine the successful offeror and results in a recommendation of award to the appropriate County official(s). During the process, you will be asked to review the proposals in a timely manner and provide completed score sheets to the Purchasing Office; attend oral presentations of selected offerors; and if applicable, attend the negotiation meeting with the selected offeror(s).

Should you have any questions concerning these procedures please contact the Purchasing Manager at 501-5685.

April 4, 2005

I. BASIC COMPONENTS OF A RFP

- A. A RFP is a document used to solicit and ultimately facilitate a purchase decision for professional and other than professional services. The basic parts of the document are the boiler plate language used for all RFP's, the scope of work (or services), evaluation criteria, and the appropriate selected procedure for either professional services or other than professional services as mandated by the Virginia Public Procurement Act (VPPA).
- B. The boiler plate sets forth specific language used for all RFP's which standardize policies and procedures relative to where and when RFP's are received, the importance of timeliness in submitting RFP's, proposal signing responsibility, public inspection of records, nondiscrimination and noncollusion clauses, etc.
- C. The scope of work (or services) identifies to offerors what services are required by the County so that an offeror can first decide if they are interested in or possess the qualifications, experience and organizational ability to perform a specific service. The scope of work and the successful offeror's response become an integral part of a resulting contract between the County and the offeror.
- D. The evaluation criteria are used as standards (see below), which provide specific measures for the SELECTION COMMITTEE to use in evaluation of an offeror's written responses.
- E. The selection procedure is the specific method of negotiation as required by the VPPA, for either professional services or other than professional services. The selection procedure to be used is outlined in the Request for Proposal.

II. PURPOSE OF EVALUATION CRITERIA

- A. Prior to issuing the RFP, evaluation criteria are developed in relation to their importance to the proposed work or project. Frequently, such criteria can be divided into three main categories: technical capability and the approach for meeting performance requirements; managerial and firm experience and capability; and, for other than professional services only, the competitiveness and reasonableness of cost of services. Only criteria designated in the Request for Proposal can be considered in the evaluation of proposals.

- B. Evaluation criteria should be looked upon, as standards that measure how well an offeror's approach meets desired performance requirements. Such standards should seek to match the evaluation of proposals against objective norms **rather than against other competing firms proposal**. Scoring of the proposal, by use of the evaluation criteria and the weights assigned (if applicable), must be impartially applied when reviewing each proposal.

III. **SELECTION COMMITTEE REVIEW OF WRITTEN PROPOSALS**

- A. The evaluation criteria are clearly stated in the RFP document. Each member of the SELECTION COMMITTEE reviews the written proposal submitted by each offeror based on the evaluation criteria.
- B. Written documentation is obtained by the SELECTION COMMITTEE member's use of the score sheets that are provided with the proposals. Once the score sheets are completed, each member of the SELECTION COMMITTEE submits their completed score sheets to the Purchasing Office to be tallied. This facilitates the development of the short list of firms to be considered for discussions (interviews) and/or potential negotiations.

IV. **SELECTION COMMITTEE RESPONSIBLE FOR DETERMINING SHORT-LISTED FIRMS**

- A. The SELECTION COMMITTEE in conjunction with the recommendations of the Purchasing Office has the responsibility of determining which offerors will be short listed for interviews based on the best responses to the evaluation criteria outlined in the RFP.
- B. Each member of the SELECTION COMMITTEE will review all proposals and choose those firms he/she feels are the most qualified. The Committee may meet to determine the final list if necessary.

V. **ORAL PRESENTATIONS AND NEGOTIATION ETHICS**

- A. While conducting discussions (interviews) and/or negotiations with offerors, **there shall be no disclosure by the SELECTION COMMITTEE of any information derived from proposals submitted by competing offerors.** Use of auction techniques and disclosure of any information derived from competing proposals to competing or non-competing firms or to anyone else other than appropriate County Officials and SELECTION COMMITTEE members is prohibited. The SELECTION COMMITTEE shall conduct all discussions and negotiations with offerors in a fully professional manner.

- B. Individual members of the SELECTION COMMITTEE should have no contact or have individual discussions with any of the offerors. Committee members must not reveal any information or tentative conclusions on the relative merits of proposals, the status of awards, etc. Always keep in mind that there is no such thing as an "off the record" statement.

VI. DISCUSSION AND NEGOTIATION PROCEDURES WITH SHORT-LISTED OFFERORS FOR PROFESSIONAL SERVICES AND OTHER THAN PROFESSIONAL SERVICES.

- A. The appropriate discussion and/or negotiation procedure is detailed in the RFP document sent to each offeror. There is a distinct and different procedure for professional services and for other than professional services mandated by the Virginia Public Procurement Act. Should you need further clarification, please contact the Purchasing Officer with whom you are working on this RFP process.
- B. Professional Services: At the conclusion of discussions of the basis of evaluation criteria published in the RFP and all information developed in the selection process to this point, the SELECTION COMMITTEE shall select in the order of preference (by numerically ranking 1, 2, 3, etc.) two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second and so on until such a contract can be negotiated at a fair and reasonable price.
- C. Other than Professional Services: Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of evaluation factors published in the RFP, including price if so stated in the RFP. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the SELECTION COMMITTEE shall select the offeror, which, in its opinion, has made the best proposal, and shall recommend awarding the contract to that offeror.

VII. DOCUMENTATION OF DISCUSSION AND NEGOTIATIONS

Written confirmation of any changes to proposals that were agreed to during negotiations must be obtained from each offeror with whom negotiations have been conducted. Such documentation becomes part of the RFP. File maintained in the Purchasing Department.

VIII. REQUEST FOR PROPOSALS AND COMPETITIVE SEALED BIDS, DIFFERENCES AND SIMILARITIES.

- A. The principal distinction between competitive sealed bids (Invitation for Bids or IFB's) and competitive negotiation (Request for Proposals or RFP's) is that the bidding process requires that bids be evaluated and awards made on the basis of information contained in the bids at the time of opening. No substantive changes, or any changes which would affect determination of award, are permitted either in the nature of the bid or in price.
- B. RFP's, on the other hand, allow modification and alteration of both content and price during the negotiation process. RFP's are used when an exact description of a service cannot be made by the County, and where qualifications and experience of any offeror are of more or less equal importance to price.
- C. IFB's are appropriate when an exact or equivalent description or specification of a commodity or service can be made and when bidders can readily offer products or services which meet or exceed these specifications. Award is then made to the lowest responsive and responsible bidder meeting these specifications.
- D. Some procedural characteristics of IFB's also apply to RFP's. For example, RFP's as well as IFB's, involve public notice and the issuance of a solicitation, which establishes the time and place at which the solicitations will be received. There are, however, also differences. RFP's are not publicly opened (as are IFB's). No information is made public at the time and date set for receiving RFP's.

EVALUATION SHEET

Request for Proposal #05-7582-3CS

Project: Water & Sewage Pumping Stations

Firm _____

Committee Member _____

Legend:

**Outstanding
10 points**

**Adequate to Good
6-8 points**

**Marginally Acceptable
3-4 points**

**Unacceptable
0 points**

Criteria	Weight	Score	Subtotal
Special experience, technical capabilities, professional competence, and qualifications of the Offeror and qualifications of proposed personnel assigned to the project and the recent and successful experience of the project team on similar projects.	20		
Demonstrated knowledge and understanding of local conditions and all pertinent codes and regulations.	15		
Expertise and experience of Offeror relative to the specific project.	15		
Past cost performance, project scheduling performance and general overall completion on time of past projects.	10		
Current workload and ability to complete the required work within County time constraints.	10		
Clearly demonstrated understanding of the work to be performed and completeness and reasonableness of the proposing Offeror's plan for accomplishing the tasks.	20		
Quality of proposal submission and/or oral presentation.	10		
TOTALS	100 %		

There is no 9, 5, 1, or 2
Multiply score by weight to obtain sub-total for criteria.
Add up sub-total to obtain grand score.

*Criteria and weights are customizable.