



PURCHASING AND DISPOSAL POLICY

I. Purpose

The purpose of these purchasing procedures is to provide County officials and employees with information and guidelines for the procurement of goods and services on behalf of the County. All purchases of goods and services shall be made in accordance with applicable provisions of the Virginia Public Procurement Act, §2.2-4300 et seq. of the Code of Virginia (1950), as amended from time to time (“VPPA”). This policy also addresses the disposal of County property.

II. Methods of Procurement

All County contracts with nongovernmental contractors must be awarded through a formal procurement process, i.e., competitive sealed bidding (Invitation for Bids, “IFB”) or competitive negotiations (Request for Proposals, “RFP”),¹ *except for the following*:

- Contracts procured through arrangements with other government entities. Goods and services may be purchased, without a local IFB or RFP, through contracts currently held by other public bodies,² such as:
 - Cooperative procurement agreements with other localities
 - Contracts held by the Commonwealth of Virginia (“state contract” purchases)
 - Contracts awarded by the U.S. General Services Administration (GSA) or other U.S. government agencies

- Sole source contracts.³ Goods and services may be purchased without an IFB or RFP when there is only one source practicably available. If a County official or employee arranges for a sole-source contract, then the following is required:
 - A written determination signed by the County official or employee authorizing the purchase, documenting the reason(s) why there is only one source practically available under the circumstances. A copy of this determination shall be provided to the County Administrator.

¹ Va. Code §2.2-4300 et seq.

² See Va. Code §2.2-4304

³ Va. Code §2.2-4303(E)

- A written notice, prepared by the official or employee authorizing the purchase. The notice shall include a statement that only one source was determined to be practicably available, and identifying the item(s) being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted at the office of the County Administrator on the day the contract is awarded.
- Emergency contracts.⁴ Goods and services may be purchased without an IFB or RFP in cases of emergency. If a County official or employee arranges for an emergency contract, then the following is required:
 - Some competition, as much as is practicable under the circumstances (for example, obtaining quotes from more than one vendor)
 - A written determination signed by the County official or employee authorizing the purchase, describing the basis of the emergency. A copy of this determination shall be provided to the County Administrator.
 - A written notice, prepared by the official or employee authorizing the purchase. The notice shall include a statement that the contract is being awarded on an emergency basis, identify the contractor selected and the item(s) or service(s) being procured, and the date on which the contract was or will be awarded. This notice shall be posted at the office of the County Administrator on the day the contract is awarded.
- Purchases from Public Auction Sales.⁵ Goods, products and commodities may be purchased without an IFB or RFP from a public auction sale, including online public auctions, with the advance written approval of the County Administrator.
- Small Purchases. A contract for goods or services may be entered into without conducting an IFB or RFP, when the aggregate or sum of all phases of the contract will not exceed \$50,000 (contracts for goods and non-professional services) or \$30,000 (contracts for professional services). All purchases made under this category must be in accordance with the County's approved Small Purchase Procedures, set forth below.⁶

III. Small Purchase Procedures

Contract Price: <\$2,500

- Verbal or written price quotes are encouraged, but not required
- Use of local vendors/contractors is preferred
- Purchasing official or employee must verify that budgeted funds are available prior to purchasing goods or authorizing performance of services
- Written receipts of the purchases must be obtained and provided to the Finance Director
- State contract prices shall be checked

⁴ Va. Code §2.2-4303(F)

⁵ Va. Code §2.2-4303(I)

⁶ Va. Code §2.2-4303(G) and (H)

Contract Price: \$2,501 to \$10,000

- At least **two (2) verbal or written price quotes** must be obtained
- Use of local vendors/contractors is preferred
- State contract prices shall be checked
- Purchasing official or employee must verify that budgeted funds are available prior to purchasing goods or authorizing performance of services
- A purchase order, or other documentation authorized by the Finance Director, shall be prepared by the purchasing official or employee, documenting the specific goods or services to be provided, date(s) of delivery, the price of the goods or services, and any other specific terms or conditions applicable to the purchase
- A written invoice or statement must be received from the vendor/contractor, detailing the specific goods or services delivered, date(s) of delivery, and the amount(s) for which payment is requested.
- Within 15 days of the receipt of an invoice from a vendor/contractor, the purchasing official/employee must certify whether the invoice is suitable for payment. If there is a defect or impropriety in the invoice, or in the goods or services received, the official or employee shall notify the contractor/vendor in writing within that 15-day period.

Contract Price: \$10,001 to \$30,000

- The purchasing official or employee shall prepare a written “Request for Quotes” for approval by the County Administrator. The RFQ shall then be used to solicit written quotes from potential vendors
- **Three (3) written price quotes** shall be solicited from potential vendors/contractors
- State contract prices shall be checked
- Selection of a vendor/contractor shall be made upon a determination of the overall combination of quality, price and requirements/specifications that, in total, are optimal relative to the County’s needs. Where local and non-local vendors/contractors are otherwise equal, the local vendor/contractor is preferred
- A written contract document shall be utilized, in a form approved by the County Administrator. The Finance Director must certify in writing that budgeted funds are available, and the County Administrator must approve the terms and conditions of the purchase
- All contracts in excess of \$10,000 are subject to the requirements of Va. Code §2.2-4311 (prohibiting employment discrimination by contractors) and §2.2-4312 (requiring contractors to maintain drug-free workplaces).

Contract Price: \$30,001 through \$50,000

- The purchasing official or employee shall prepare a written “Request for Quotes” for approval by the County Administrator. The RFQ shall then be used to solicit written quotes from potential vendors
- **Four (4) written price quotes** shall be solicited from potential contractors⁷
- State contract prices shall be checked
- Selection of a vendor/contractor shall be made upon a determination of the overall combination of quality, price and specifications of the required goods or services, that in total are optimal relative to the County’s needs. Where local and non-local vendors/contractors are otherwise equal, the local vendor/contractor is preferred
- A written contract document shall be utilized, in a form approved by the County Administrator. The Finance Director must certify in writing that budgeted funds are available, and the County Administrator must approve the terms and conditions of the purchase
- All contracts in excess of \$10,000 are subject to the requirements of Va. Code §2.2-4311 (prohibiting employment discrimination by contractors) and §2.2-4312 (requiring contractors to maintain drug-free workplaces)

IV. Contract Pricing Arrangements

- Except in case of emergency affecting the public health, safety or welfare, no contract may be awarded on the basis of cost plus a percentage of cost.
- Contracts may be awarded on a fixed price or cost reimbursement basis, or any other basis that is not specifically prohibited.

V. Required Payment Clauses

Contracts must contain the following clauses⁸:

- A payment clause that requires that, prior to receipt of any payment from the County: (i) individual contractors must provide their social security numbers and (ii) proprietorships, partnerships and corporations must provide their federal employer identification numbers.”
- An interest clause that states “Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.”
- For any contracts awarded to a main contractor who will utilize subcontractors, the following payment clauses are required:
 - A payment clause that obligates the contractor to take one of the two following actions, within seven (7) days after receipt of amounts paid to the contractor by the County for work performed by the subcontractor: (i) pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor, or (ii) notify both the County and the subcontractor in writing of the contractor’s intention to withhold all or a part of the subcontractor’s payment and the reason(s) for the withholding
 - An interest clause obligating the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid

⁷ Va. Code §2.2-4303(G)

⁸ Va. Code §2.2-4354

after seven (7) days following receipt by the contractor of payment from the County for work performed by the subcontractor (except for amounts permissibly withheld)

- A payment clause obligating the contractor to 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.

VI. No Discrimination

In the solicitation or awarding of contracts, no County official or employee shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by federal or state law relating to discrimination in employment.

VII. Contracts for Construction

- No County official or employee shall allow any contractor to perform any work on a County construction project, until the contractor has provided evidence that he has obtained, and will maintain for the duration of the work, workers' compensation coverage required by Virginia law. If subcontractors are being utilized, the contractor must be required to provide evidence that each of its subcontractors has obtained and will maintain the required workers' compensation coverage for the duration of the work performed by the subcontractor.⁹
- Every solicitation, RFQ, IFB and RFP for construction services must require contractors to submit their contractor's license or certificate number as part of their responses. No price quote, bid or proposal from a construction contractor shall be given consideration unless the contractor has provided his license or certificate number.¹⁰
- Every construction contractor shall be required to provide evidence of its general liability insurance coverage, prior to commencement of any work on a County construction contract. If subcontractors are being utilized, the main contractor must be required to provide evidence of the subcontractors' general liability insurance coverage prior to allowing them to commence any work.

VIII. Formal Procurement Transactions (IFBs and RFPs).

- An IFB process *must* be used for construction contracts, except in a limited number of circumstances authorized by state law.¹¹
- An RFP process (competitive negotiation) *must* be used for "professional services", if the aggregate or sum of all work to be performed by the contractor will exceed \$30,000 (e.g., contracts for accounting, architecture, landscape architecture, engineering services, land surveying).¹² An RFP process *may* be

⁹ Va. Code §2.2-4332

¹⁰ Va. Code §54.1-115(A)(6)

¹¹ Va. Code §2.2-4303(D)

¹² Va. Code §2.2-4303(B)

used, under certain circumstances, for procurement of insurance, construction or other contracts, when authorized by the VPPA.

- IFB and RFP documents must be approved in advance by the County Administrator
- The County Administrator shall be provided a list of the person(s) and businesses to whom IFBs or RFPs have been sent, and a copy of the public notice of the IFB or RFP shall be posted at the County Administrator's office.
- Whenever IFBs or RFPs are issued, notice of the procurement transaction shall be sent to potentially qualified businesses selected from a list published by the Virginia Department of Minority Business Enterprise.¹³
- In the case of a tie bid, preference will be given to goods, services and construction produced within Madison County or provided by persons, firms or corporations having principal places of business in Madison County, if such a choice is available; otherwise, a tie shall be decided by lot unless the provisions of Virginia Code §2.2-4324 applies (preference for Virginia products and firms)

IX. Debarment

The County may, in the public interest, debar a prospective contractor (including a prospective subcontractor) for any of the causes listed below, using procedures described in this policy. The existence of a cause for debarment, however, does not necessarily require that a contractor be debarred. The seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.

A prospective contractor may be debarred for any of the following causes:

- Conviction of, or civil judgment establishing the contractor's:
 - Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
 - Violation of federal or state antitrust statutes relating to the submission of offers;
 - Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or
 - Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a government contractor or subcontractor.
- Violation of the terms of a government contract or subcontract so serious as to justify debarment, such as willful failure to perform in accordance with the terms of one (1) or more contracts, or a history of failure to perform, or of unsatisfactory performance of one (1) or more contracts.
- Debarment by a federal, state or local government, a public authority, or other agency or entity subject to public procurement laws and requirements.

¹³ Va. Code §2.2-4310

- Any other cause of so serious or compelling a nature that it affects the present responsibility of a government contractor or subcontractor.

The following procedures governing the debarment decision-making process are designed to be as informal as practicable, consistent with principles of fundamental fairness:

- *Notice to contractor.* Debarment shall be initiated by the County Administrator advising the prospective contractor in writing that debarment is being considered. This notice shall be provided to the contractor by hand-delivery or by certified mail, return receipt requested. The notice shall include the reasons for the proposed debarment in terms sufficiently detailed to put the contractor on notice of the conduct or transaction(s) upon which the debarment is based, and shall identify the specific period of debarment under consideration. Unless a response is received from the prospective contractor within thirty (30) days of the date of this notice, the County Administrator's decision shall be final. For the purposes of this subsection the "date of the notice" shall be deemed to be the date on which the notice is hand-delivered to the contractor or is deposited in the United States Mail.
- *Opportunity of contractor to respond.* The prospective contractor or his authorized representative may submit to the County Administrator, in writing, and within thirty (30) days of the date of the notice described in subparagraph (1), any information or argument that the contractor deems relevant to the proposed debarment, including, without limitation, any specific information that raises a genuine dispute as to a fact that is material to the County's findings or conclusions. Following timely receipt of information from the contractor, the County Administrator shall review the proposed debarment and shall, within fifteen (15) days thereafter, render a final determination. During the fifteen-day review period, the prospective contractor shall provide the Administrator with such additional information as she may request in order to complete her review of the proposed debarment.
- *Appeals.* A final decision of the County Administrator may be appealed by the prospective contractor by initiating legal action as provided within the Virginia Public Procurement Act.
- *Period of debarment.* A debarment shall be and remain effective for a period commensurate with the seriousness of the cause, as determined by the purchasing manager in his discretion.

X. Ethics in Public Contracting Requirements

- The provisions of Virginia Code §2.2-4367 et seq. (Ethics in Public Contracting) apply to procurement transactions conducted by County officials and employees. Among the prohibitions of this law are the following:

- No County employee having official responsibility for a procurement transaction may participate in the transaction on behalf of the County, when the employee: (i) is contemporaneously employed by an offeror or contractor involved in the transaction; (ii) the employee, the employee's business partner, or any member of the employee's immediate family holds a position with an offeror or contractor (e.g., corporate officer, director, trustee, partner, etc.), or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than 5%; (iii) the employee, the employee's business partner, or any member of the employee's immediate family has a monetary interest arising from the procurement transaction; or (iv) the employee, the employee's business partner, or any member of the employee's immediate family is negotiation, or has an arrangement concerning, prospective employment with the offeror or contractor.
- No person who, for compensation, has prepared any portion of this IFB shall (i) submit a bid, or (ii) disclose to any other potential bidder information concerning the procurement transaction that is not otherwise available to the general public, unless the County has determined in advance that exclusion of such person would limit the number of potential qualified bidders in a manner contrary to the best interests of the County.
- Certain contractual relationships are generally prohibited by Virginia's State and Local Government Conflict of Interests Act (§2.2-3100 et seq.), such as: (i) no officer or employee of County government may have a personal interest in a contract with the agency or department of which he is an officer or employee (other than his own employment contract), and (ii) no officer or employee of the County government may have a personal interest in a contract with any other agency or department of the County government, unless the contract was awarded after an IFB or RFP process.

XI. Administration

The County Administrator shall have the authority to establish administrative procedures consistent with the Virginia Public Procurement Act, as she deems necessary to ensure that the County may obtain high quality goods and services at a reasonable cost; that all procurement transactions are conducted in a fair and impartial manner; and that all qualified vendors have access to public business.

XII. Surplus Asset Policy

- Purpose and Scope. The intent of this policy is to authorize and establish clear processes and procedures for the disposal of Madison County's surplus assets. This policy shall apply to all assets under the authority of the Madison County Board of Supervisors. Such assets includes those used by constitutional officers but not those for which use, management and disposal is the responsibility of the Madison County Social Services Board, the Madison County Parks and Recreation Authority or the Madison County School Board.

This policy shall not be construed as limiting the authority of the Madison County Board of Supervisors to directly donate or sell any County property to any specific individual or

organization without an open sale procedure or its authority to authorize an alternate disposal procedure on a case-by-case basis.

This policy shall not affect the authority of the Purchasing Agent to exercise opportunities to trade in any item for a similar item.

- Definitions

A. Department means any organizational unit funded all or in part by Madison County including the department of social services, the school board, parks and recreation authority and constitutional officers.

B. Material means personal property including, but not limited to, any tangible or intangible property, materials, supplies, equipment, and recyclable items and owned by Madison County. *Reference § 2.2-1124.*

C. Purchasing Agent means the Madison County Administrator or his designee.

D. Property means an interest in land and any improvements thereon, including the privileges and appurtenances of every kind belonging to the land, held by Madison County and under the control of any of its departments, agencies, or institutions. *Reference § 2.2-1147.*

E. Surplus means anything no longer required, obsolete or no longer substantially functional, impractical or not cost effective to repair for use.

- Responsibilities

The Board of Supervisors has the authority for and responsibility to direct the proper disposition of surplus items owned by Madison County.

County employees, through their supervisors, shall periodically notify the Purchasing Agent of all material and property under their oversight, management or control deemed to be surplus and shall provide information on surplus items and assist with the disposition of such surplus items (such as providing photographs and item descriptions) as requested.

The County Administrator shall review surplus items identified by employees. The County Administrator shall transfer a surplus material item to another department upon request if appropriate. No County material shall be sold, transferred or disposed of in any way unless approved by the County Administrator. The Board of Supervisors has the sole authority to approve the disposal of real property.

The Purchasing Agent shall be responsible for organizing the proper disposal of any surplus items not transferred to other County departments. Lists of recently transferred and disposed items shall be provided to the Board of Supervisors.

- Procedures and Methods of Sale

In general, disposal of County property shall be via a public auction or sealed bid procedure open to the public. Auctions shall be in conformance with the procedure established in Chapter 12, Section 7.4 of the Virginia Department of General Services Agency Procurement And Surplus Property Manual. *Reference §2.2-1124& §15.2-951; at http://townhall.virginia.gov/L/GetFile.cfm?File=C:%5CTownHall%5Cdocroot%5CGuidanceDocs%5C194%5CGDDoc_DGS_4359_v1.pdf*

The Purchasing Agent shall give appropriate public notice of the disposal sale, listing conditions for purchase and type of material available. Terms will normally include (a) all sales are final and (b) payment is to be by cash, money order, certified check, or cashier's check.

Notice of sale shall be published in a newspaper of general circulation at least five days prior to sale if the material is valued at over \$500. If the amount of the sale is estimated by the county purchasing agent to exceed \$5,000, sealed bids shall, unless otherwise approved by the Board of Supervisors on a case-by-case basis, be solicited by public notice published at least once in a newspaper of countywide circulation at least five calendar days before the final date of submitting bids. *Reference §15.2-1236B*

The Purchasing Agent may enter into a cooperative arrangement with another public body (such as the Madison County School Board) to dispose of surplus items. If the other public body administers the process, the rules of that body may be followed for the sale of County property. Further, the purchasing agent may utilize appropriate and bona fide in-person or online auction services to manage a disposal process.

The Madison County Board of Supervisors has reserved the authority to authorize the sale of law enforcement animals to retired law enforcement offices as permitted by the Code of Virginia. *Reference §2.2-1124B8*

The Madison County Sheriff shall be responsible for the proper disposal of County-owned firearms. *Reference §59.1-148.3.*

No real property shall be disposed of until the Madison County Board of Supervisors has held a public hearing concerning such disposal. *Reference §15.2-1800B*

- Disposition of Proceeds
The Purchasing Agent shall supervise the sale of all property and material, turn the proceeds over to the Madison County Treasurer, and report the sale to the Board of Supervisors. Proceeds shall not be expended unless they have been appropriated by the Madison County Board of Supervisors.
- Conflict of Interest
County employees, members of the Board of Supervisors and their immediate families are not eligible to purchase any item through a County surplus sale procedure.

Confirmed on January 2, 2020