

AN ORDINANCE TO AMEND CHAPTER 46, SECTION 46-31 OF THE CODE OF THE COUNTY OF WASHINGTON, VIRGINIA, TO REVISE COUNTY PROCEDURES FOR AWARD OF CONTRACTS AND OTHER SECTIONS IN CHAPTER 46 TO UPDATE TERMINOLOGY

WHEREAS, in accordance with Article 2 of Virginia Code Title 15.2, Chapter 12 the Washington County Administrator has designated the County Director of Budget and Finance to serve as the county purchasing agent;

WHEREAS, as authorized by Virginia Code § 15.2-1235, the Director of Budget and Finance has promulgated regulations in the form of the County Purchasing Procedures Manual for procurement of goods and services for the benefit of the County;

WHEREAS, the Board of Supervisors also adopted Chapter 46 of the County Code of Ordinances, which governs procurement and disposition of surplus property;

WHEREAS, from time to time as state law provisions applicable to procurement are revised, the County Purchasing Procedures Manual and the County ordinance governing procurement and disposition of surplus property are revised accordingly;

WHEREAS, revision of the County ordinance such that it refers to the County Purchasing Procedures Manual rather than duplicates its provisions will increase efficiency without loss of public service or regulation; and

WHEREAS, including in the ordinance a provision that allows flexibility in the contract approval process will increase efficiency, allow better service in unusual circumstances, and still maintain a protocol of checks and balances that is protective of the public funds held by the County.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING, and in consideration of the best interests of the public health, welfare, and safety, and having held a public hearing on this proposed ordinance, the Board of Supervisors of the County of Washington, Virginia hereby ordains the following:

1. That this ordinance shall be effective immediately;
2. That should any section or provision of this ordinance be decided to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section or provision of this ordinance or the Washington County Code;

3. That Chapter 46, Article II, Section 46-31 of the Code of the County of Washington, Virginia (2002, as amended) shall be revised as set forth herein, subject to Article, Division, Section, and Subsection titles and numbers amendment by the Editor as necessary for Code consistency. New language is indicated by underline, and deletions are indicated by strikethrough, as follows:

CODE OF THE COUNTY OF WASHINGTON, VIRGINIA (2002, as amended)

Chapter 46 - PROCUREMENT AND SURPLUS PROPERTY¹

Footnotes: --- (1) ---

Cross reference— Finance, § 2-171 et seq.

State Law reference— Procurement regulations, Code of Virginia, § 2.2-4300 et seq.; rules and regulations regarding county purchases ~~purchasee~~, Code of Virginia, § 15.2-1235.

ARTICLE I. - IN GENERAL

Sec. 46-1. - Purpose of chapter.

The purpose of this chapter is to supplement the provisions of the Virginia Public Procurement Act (Code of Virginia, § 2.2-4300 et seq.) by enunciating the county's policies pertaining to governmental procurement from nongovernmental sources, to encourage competition among vendors and contractors, to provide for the fair and equitable treatment of all persons involved in public purchasing by the county, to maximize the purchasing value of public funds ~~finds~~ in procurement so that high quality goods and services may be obtained at the lowest possible price and to increase public confidence in procurement practices by providing safeguards for maintaining a procurement system of quality and integrity. Where the provisions of the Act ~~public procurement act~~ are in conflict with the provisions of this chapter, then the provisions of this chapter shall prevail, unless otherwise provided by law.

(Code 1997, § 46-1)

Sec. 46-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a difference meaning:

Act and public procurement act mean the Virginia Public Procurement Act, Code of Virginia, § 2.2-4300 et seq.

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Administrator means the County Administrator appointed in accordance with Code of Virginia § 15.2-1540.

Business means any corporation, limited liability company, general or limited partnership, individual, sole proprietorship, joint stock company, joint venture or other nongovernmental legal entity.

Contract means all types of county agreements for the procurement of goods, services, insurance or construction.

Contractor means any person having a contract with the county or a using agency thereof.

County means the County of Washington, but shall not include the county school board or independent political subdivisions of the county.

Emergency. An emergency shall exist when a breakdown in an essential service occurs or under any other circumstances when supplies are needed for immediate use in work which may vitally affect the safety, health or welfare of the public or, because of the timing, would be an undue burden on the public.

Employee means an individual drawing a salary, wages or other compensation from the county, whether elected or not; or any noncompensated individual performing personal services for the county or any department, office or other agency of the county government.

Insurance means a contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.

Invitation to bid means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

Purchasing agent means the county employee appointed by the administrator who shall administer the purchasing system for the county administrative division as described in this chapter and in the county purchasing procedures manual.

Request for proposal means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Small purchase procedures means the purchase procedures that shall apply to purchases up to maximum values as specified in the purchasing procedures manual.

Using agency means any department, office or other agency of the county government requiring goods, services, insurance or construction as provided for in this chapter, but shall not include the county school board or independent political subdivisions of the county.

(Code 1997, § 46-2)

Cross reference— Definitions generally, § 1-2.

State Law reference— Definitions, Code of Virginia, § 2.2-4301.

Sec. 46-3. - Applicability of state law and county ~~procurement~~ purchasing procedures manual.

This chapter should be read in conjunction with the ~~county procurement~~ purchasing procedures manual and provisions of the ~~Act Virginia Public Procurement Act, Code of Virginia, § 2.2-4301 et seq. which~~ that apply to contracts for the procurement of goods, services, insurance and construction entered into by the county involving every expenditure for public purchasing, irrespective of its source. The provisions of the ~~Act state public procurement act~~ shall apply except where modified by alternative policies and procedures enumerated in this chapter or in the ~~county procurement~~ purchasing procedures manual.

(Code 1997, § 46-3)

Sec. 46-4. - Purchasing system established.

There is hereby created a purchasing system within the county ~~departments of accounting and purchasing,~~ to operate under the direction and supervision of the purchasing agent accounting/purchasing manager.

(Code 1997, § 46-4)

Sec. 46-5. - Employment of purchasing agent accounting/purchasing manager.

The purchasing agent accounting/purchasing manager shall be employed by the county a county employee appointed by the administrator and supervised by the administrator in accordance with pursuant to the provisions of the board of supervisors' personnel policies and procedures manual.

(Code 1997, § 46-5)

~~State Law reference — Employment of purchasing agent, Code of Virginia, § 15.2-1543.~~

Sec. 46-6. - Powers and duties of the purchasing agent accounting/purchasing manager.

- (a) For the purposes of this chapter, the purchasing agent accounting/purchasing manager shall serve as the principal public purchasing official for the county and shall be responsible for the procurement of goods, services, insurance and construction in accordance with this chapter, as well as the management and disposal of goods.
- (b) In addition to the duties of the purchasing agent accounting/purchasing manager as outlined in the ~~accounting/purchasing manager~~ position description for such appointed position and in furtherance of this chapter, the purchasing agent accounting/purchasing manager shall:
 - (1) Purchase or supervise the purchasing of all goods, services, insurance and construction needed by the county.

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- (2) Assist the general services manager in the selling, trading or disposal of surplus goods belonging to the county.
- (3) Establish and maintain programs for specifications development, contract administration, inspection and acceptance, in cooperation with the public agencies using goods, services, and construction.
- (4) Maintain a current file of sources of goods, services, insurance and construction, to be known as a bidder list, on which vendors can request to be included.
- (5) Keep current a written ~~county procurement~~ purchasing procedures manual, which shall be effective upon approval of the county administrator and board of supervisors.
- (6) Perform such other functions and duties in accordance with this chapter that the county administrator may assign.

(Code 1997, § 46-6)

Sec. 46-7. - Delegation of authority by purchasing agent ~~accounting/purchasing manager~~.

The purchasing agent ~~accounting/purchasing manager~~ may delegate authority to purchase certain goods, services, insurance or construction to other county employees and officials if such delegation is deemed necessary or expedient for the effective procurement of those items.

(Code 1997, § 46-7)

Sec. 46-8. - Unauthorized purchases.

Except as otherwise provided in this chapter, no official, elected or appointed, or any employee shall purchase or contract for any goods, services, insurance or construction within the purview of this chapter other than by and through the purchasing agent. ~~accounting/purchasing manager, and any other~~ Any purchase order or contract made contrary to the provisions of this section is not approved and the county shall not be bound thereby. Any person responsible for such purchase may be held personally liable for such purchase, and, if already paid for out of county funds, the amount may be recovered in the name of the county in an appropriate action instituted therefor.

(Code 1997, § 46-9)

Secs. 46-9—46-30. - Reserved.

ARTICLE II. - BIDDING AND AWARD OF CONTRACTS^[2]

Footnotes: --- (2) ---

State Law reference— Mandatory provisions, Code of Virginia, § 2.2-4343(A)(12).

Sec. 46-31. - Award of contracts generally.

- ~~(a) The accounting/purchasing manager shall award all contracts on behalf of the board of supervisors except for:~~
- ~~(1) Contracts for construction which are expected to exceed \$100,000.00;~~
 - ~~(2) Contracts for professional services which are expected to exceed \$30,000.00;~~
 - ~~(3) Contracts for goods and nonprofessional services which are expected to exceed \$50,000.00;~~
 - ~~(4) Contracts where the accounting/purchasing manager, in his sole discretion, has determined that an award by the board of supervisors is appropriate and the request for proposal or invitation to bid states that the award of the proposed contract will be made by the board of supervisors.~~
- ~~(b) The board of supervisors shall award all contracts not awarded by the accounting/purchasing manager.~~
- (a) The purchasing agent shall be responsible to review and approve all contracts that qualify for small purchase procedures upon determination that procurement procedures were implemented consistently with applicable law, ordinance, and purchasing procedures manual requirements and that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such purchase.*
- (b) The board of supervisors shall be responsible to review for its approval all contracts for purchases that do not qualify for approval by the purchasing agent as follows. The purchasing agent shall review such contracts to determine whether procurement for such contracts complied with law, ordinance, and purchasing procedures manual requirements and to determine that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such purchase. Upon the purchasing agent's finding of such compliance and sufficiency of funds, the purchasing agent shall present such contracts to the board of supervisors for its review and its determination whether to approve the contract.*
- (c) Notwithstanding the foregoing, the board of supervisors may, in the public interest, by resolution adopted in public meeting, delegate to the purchasing agent jointly with the administrator the approval authority for purchases that do not qualify for small purchase procedures. The resolution shall include a statement of the public interest served by such resolution, the length of time during which it shall be effective, and shall require subsequent*

ratification by the board of supervisors of any contracts approved in accordance with such delegated authority.

(d) Notwithstanding the foregoing, the purchasing agent may refer to the board of supervisors for its review and approval any contract for which the purchasing agent has determined that procurement procedures were properly implemented and that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such purchase if the purchasing agent determines board of supervisors review will best serve the interests of the county.

(e) All contracts shall be approved as to form by the county attorney or other qualified attorney and a copy of each contract shall be filed with the purchasing agent.

(Code 1997, § 46-31)

~~State Law reference— Professional service contracts, Code of Virginia, § 2.2-4303(N); goods and nonprofessional services, Code of Virginia, § 2.2-4303G; construction contracts, Code of Virginia, § 2.2-4303.;~~ Purchase procedures for small purchases, professional services, and goods and non-professional services, Code of Virginia, § 2.2-4303; authority of county purchasing agent, Code of Virginia, §§ 15.2-1233, et seq.; approval of form by attorney, Code of Virginia, § 15.2-1237; availability of funds, Code of Virginia § 15.2-1238.

Sec. 46-32. - Competitive sealed bidding and competitive negotiations.

The purchasing procedures manual, this chapter, and the Act ~~Virginia Public Procurement Act and county procurement manual~~ shall establish the procedures for small purchases, competitive sealed bidding, and competitive negotiation~~negotiations~~.

(Code 1997, § 46-32)

Sec. 46-33. - Exceptions to requirement for competitive procurement.

In addition to the exceptions provided for in the ~~Virginia Public Procurement Act,~~ exceptions as allowed by the ~~county procurement~~ this Chapter and the purchasing procedures manual shall apply.

(Code 1997, § 46-33)

State Law reference— Methods of procurement, exemptions, Code of Virginia, §§ 2.2-4303E, 2.2-4303G, 2.2-4303H.

Sec. 46-34. - Debarment.

- (a) *Generally.* The purchasing agent ~~accounting/purchasing manager~~ may, in the public interest, debar a prospective contractor for any of the causes listed in subsection (b) of this section, using the procedures described in subsection (d) of this section. The seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.
- (b) *Causes.* The purchasing agent ~~accounting/purchasing manager~~ may debar a prospective contractor for any of the following causes:
- (1) Conviction of or civil judgment for:
 - a. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
 - b. Violation of federal or state antitrust statutes relating to the submission of offers;
 - c. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or
 - d. 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.
 - (2) Violation of the terms of a government contract or subcontract so serious as to justify debarment, such as willful failure to perform in accordance with the terms of one or more contracts or a history of failure to perform, or of unsatisfactory performance of, one or more contracts.
 - (3) Any other cause of so serious or compelling a nature that it affects the present responsibility of a government contractor or subcontractor.
- (c) *Reports and investigations.* The purchasing agent ~~accounting/purchasing manager~~ shall establish procedures for the prompt reporting, investigation and referral of matters appropriate for his consideration.
- (d) *Debarment procedures.* The following procedures governing the debarment decision-making process are designed to be as informal as practicable, consistent with principles of fundamental fairness:
- (1) *Notice to contractor.* Debarment shall be initiated by the purchasing agent providing written notification to ~~advising~~ the prospective contractor and any specifically named affiliate, by certified mail, return receipt requested, that debarment is being considered. Such notice shall include the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction upon which it is based.

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- (2) *Period of debarment.* Debarment shall be for a period commensurate with the seriousness of the cause, as determined ~~by~~ at the sole discretion of the *purchasing agent* ~~accounting/purchasing manager in his sole discretion.~~
- (3) *Submission of statement by contractor, hearing.* The prospective contractor may submit to the *purchasing agent* ~~accounting/purchasing manager~~, within 30 days after the receipt of notice, in person, in writing or through a representative, information and argument to the proposed debarment, including any additional specific information that raises a genuine dispute over the material fact. If the proposed debarment is based upon a cause other than those specified in subsection (b)(1) of this section, an informal hearing allowing the examination and cross examination of witnesses shall be provided if so requested by the prospective contractor. In such cases, the *purchasing agent* ~~accounting/purchasing manager~~ shall conduct the hearing and shall render ~~his~~ a decision within 15 days thereafter, or within 15 days after the receipt of written information and argument if no hearing is requested or required to be held.
- (4) *Appeals.* The decision of the *purchasing agent* ~~accounting/purchasing manager~~ shall be final unless the prospective contractor appeals within 30 days of receipt by invoking administrative procedures provided for by this chapter, or in the alternative by instituting legal action as provided in the public procurement act.

(Code 1997, § 46-34)

State Law reference— Debarment, Code of Virginia, § 2.2-4321.

Sec. 46-35. - Negotiation with lowest responsible bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that, if the bid from the lowest responsible bidder exceeds available funds, the county may negotiate with the apparent low bidder to obtain a contract price within available funds. If the county wishes to negotiate with the apparent low bidder to obtain a contract price within available funds, negotiations shall be conducted in accordance with the following procedures:

- (1) The using agency shall provide the *purchasing agent* ~~accounting/purchasing manager~~ with a written determination that the apparent low bid exceeds available funds. The using agency shall also provide the *purchasing agent* ~~accounting/purchasing manager~~ with a suggested reduction in scope for the proposed purchase if practicable.
- (2) The *purchasing agent* ~~accounting/purchasing manager~~ shall advise the lowest responsible bidder, in writing, that the proposed purchase exceeds available funds and invite the lowest responsible bidder to resubmit a bid within available funds. If the lowest responsible bidder chooses not to do so, the *purchasing agent* ~~accounting/purchasing manager~~ shall further suggest a reduction in scope for the proposed purchase if provided by the using agency in accordance with subsection (1)

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of this section and invite the lowest responsible bidder to amend its bid proposal based upon the proposed reduction in scope.

- (3) Repetitive informal discussions with the lowest responsible bidder for purposes of obtaining a contract within available funds shall be permissible.
- (4) The lowest responsible bidder may 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.
- (5) 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 amended bid.
- (6) If the county and lowest responsible bidder cannot negotiate a contract within available funds, all bids shall be rejected.

(Code 1997, § 46-35)

State Law reference— Authority to establish, Code of Virginia, § 2.2-4318.

Sec. 46-36. - Administrative appeals.

- (a) Any bidder or offeror may appeal a decision to award or an award, a decision to refuse to allow withdrawal of bids, a decision of disqualification or debarment or a determination of nonresponsibility.
- (b) Any bidder or offeror who desires to appeal a decision to award or an award shall first file a written protest with the purchasing agent ~~accounting/purchasing manager~~, specifying the basis for the protest the relief sought, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. The purchasing agent ~~accounting/purchasing manager~~ shall render a written decision within ten days of receipt of the written protest stating the reasons for the decision. This decision shall be final and binding unless any bidder or offeror appeals within ten days of the date of the written decision in the manner set forth in subsection (c) of this section, or, in the alternative, institutes legal action as provided by the public procurement act.
- (c) Any appeal permitted by this section shall be in accordance with the following administrative procedures:
 - (1) Any bidder or offeror shall file a letter of appeal with the ~~county~~ administrator with a copy to the purchasing agent ~~accounting/purchasing manager~~, within the time constraints set forth in the ~~Act public procurement act~~. The letter of appeal shall specify the basis for the appeal, the relief sought, and whether the bidder or offeror wishes to have a hearing with respect to the appeal. The letter of appeal shall contain a statement that it has been mailed or otherwise delivered to all other bidders or offerors. Upon request, the purchasing agent ~~accounting/purchasing manager~~ shall

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provide the names and addresses of all other bidders or offerors to the appealing bidder or offeror. No appeal will be allowed if the letter of appeal is untimely filed or does not contain the information required by this subsection.

- (2) Any bidder or offeror notified of the appeal may do either of the following:
 - a. File a written statement setting forth its position with the ~~county~~ administrator with a copy to the purchasing agent ~~accounting/purchasing manager~~, whether or not the letter of appeal requests a hearing. Such written statements also shall specify whether the bidder or offeror wishes to have a hearing. Such written statement shall be filed within eight days of the date of the letter of appeal.
 - b. Participate in any hearing requested by the appealing party or by any other bidder or offeror.
 - (3) If no hearing is requested, the ~~county~~ administrator shall render a written decision within ten days of receipt of the letter of appeal or any written statement filed as provided in subsection (c)(2) of this section, whichever is later. The written decision shall be sent to the appealing party and any other bidder or offeror who submitted a written statement with respect to the appeal.
 - (4) If a hearing is requested, it shall be held within 30 days of receipt of the letter of appeal and a final decision shall be rendered within 30 days after the hearing. During the hearing, all parties to the process shall have the opportunity to present pertinent information and to cross examine adverse witnesses. The hearing shall be an informal administrative proceeding rather than a judicial-type trial, and shall be conducted by a disinterested person, who shall not be a county employee and who shall be appointed by the ~~county~~ administrator.
 - (5) The findings of fact shall be final and conclusive and shall not be set aside unless they are fraudulent or arbitrary or capricious or so grossly erroneous as to imply bad faith, or, in the case of denial of prequalification, such findings were not based upon the criteria for denial of prequalification set forth in Code of Virginia, § 11-46. No determination on an issue of law shall be final if appropriate action is instituted in a timely manner.
 - (6) Any party to the administrative procedure, including the county, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.
- (d) Notwithstanding anything to the contrary contained in this section, no party who has unsuccessfully protested or appealed a decision to award may protest or appeal the subsequent award of the same contract.
- (e) Notwithstanding anything to the contrary contained in this section, no administrative protest or appeal shall lie to a decision to award or an award made by the board of supervisors or a recommendation made by any person, selection team or committee or other entity to the board of supervisors concerning the award of a contract.

(Code 1997, § 46-36)

State Law reference— Remedies, Code of Virginia, § 2.2-4357 et seq.; authority to adopt appeal procedure, Code of Virginia, § 2.2-4365.

Secs. 46-37—46-60. - Reserved.

ARTICLE III. - DISPOSAL OF OBSOLETE OR SURPLUS PROPERTY³

Footnotes: --- (3) ---

State Law reference— Power to adopt ordinances to secure and promote the health, safety and general welfare of citizens, Code of Virginia, § 15.2-1200.

Sec. 46-61. - Disposal of obsolete or unusable property.

The ~~county~~ administrator shall sell, transfer, trade or otherwise dispose of all materials, supplies, motor vehicles, equipment or other tangible property of the county which has become obsolete or unusable by the department, office or other agency for which it was purchased and is unusable for public use.

(Code 1997, § 46-10)

Sec. 46-62. - Disposition of surplus property.

- (a) All sales of property pursuant to this chapter shall be accomplished by means of competitive bids, public auction or firm price offered to all persons wishing to participate in the sale. The general services manager and purchasing agent~~accounting/purchasing manager~~ shall use whichever method they believe will raise the highest revenue for the county, subject to the approval of the ~~county~~ administrator.
- (b) Notwithstanding the provisions of subsection (a) of this section and subject to the limitations of state law, the board of supervisors may direct the disposition of surplus materials, supplies, motor vehicles, equipment or other tangible property of the county to entities not part of the county government, including, but not limited to, public or private not-for-profit organizations, civic or community groups or organizations, municipal corporations and political subdivision of the state and political subdivisions of the county. The general services manager shall maintain a list of all requests received by the county for surplus property.

(Code 1997, § 46-11)

State Law reference— Authority to dispose of surplus property, Code of Virginia, §§ 15.2-414C; 15.2-1235B.3.