

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

A. Emergency Purchases

In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the particular contractor shall be submitted to the superintendent and included in the contract file. (Code of Va., § 11-41 (E))

B. Small Purchases

All purchases pursuant to single or term contracts, estimated to be less than \$30,000 in value, shall not be subject to the requirements of the competitive sealed bidding procedures as described in Policy 4-32. The superintendent shall develop appropriate regulations regarding small purchase procedures which provide for competition wherever practicable.

C. Sole Source Purchases

Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding (*See policy # 4-32*) or competitive negotiation (*see policy # 4-35*). The writing shall document the basis for this determination.) (Code of Va., § 11-41 (D))

D. Public Notice

Public notice shall be made under Parts A and C preceding as mandated in the legal reference to this policy

Legal Reference

Code of Va., § 11-41. Methods of Procurement. D. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first.

E. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Emergency/Small/Sole Source Purchases (continued)

basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as practicable.

F. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts if the aggregate or the sum of all phases is not expected to exceed \$30,000; however, such small purchase procedures shall provide for competition wherever practicable. (1996)

Code of Va., § 11-66. Protest of award or decision to award.--"A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit such protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 11-41. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under § 11-52, then time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 11-52, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of the written decision by invoking administrative procedures meeting the standards of § 11-71, if available, or in the alternative by instituting legal action as provided in § 11-70 of this Code.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Emergency/Small/Sole Source Purchases (continued)

performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where a public body, an official designated by that public body, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 4 of this chapter, the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder." (1985)

Code of Va., § 11-70. Legal actions. (1995) A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious, or, in the case of denial of pre-qualification, that the decision to deny pre-qualification was not based upon the criteria for denial of pre-qualification set forth in subsection B of § 11-46.

B. A bidder denied withdrawal of a bid under § 11-64 may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was clearly erroneous.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 11-41, whose protest on an award or decision to award under § 11-66 is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting or reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 11-71, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Emergency/Small/Sole Source Purchases (continued)

G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor. (1982, c.647; 1985, c. 164; 1994, c.918; 1995, c.527.)

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