



# *City of* **Norfolk**

## **PROCUREMENT MANUAL**

### **CITY CODE CHAPTER 33.1 WITH REGULATIONS**

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**Note:** Regulations established by the City Manager to implement the City Code provisions are included in this *manual* and identified by the letter “R” in the section designation.

## ARTICLE I. GENERALLY

### **Sec. 33.1-1. Purpose.**

To the end that the city obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no bidder or offeror be arbitrarily or capriciously excluded, it is the purpose and intent of this chapter that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the city rather than being drawn to favor a particular vendor, and that the city and vendor freely exchange information concerning what is sought to be procured and what is offered. The city may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

### **Sec. 33.1-2. Application.**

This chapter applies to all contracts for the procurement of goods, services, and construction entered into by the City of Norfolk with non-governmental sources, to include city procurement that may or may not result in monetary consideration for either party. This chapter shall apply whether the consideration is monetary or non-monetary and regardless of whether the city, the contractor, or some third party is providing the consideration.

#### ***R 33.1-2. Posting of public notices.***

*The following bulletin boards are designated as public information areas for purposes of giving notice of city procurements:*

*A. Office of the Purchasing Agent, 401 Monticello Ave, Suite 420, Norfolk, Virginia 23510, for goods and services.*

*B. Department of Public Works, elevator lobby, 7th floor of City Hall Building, 810 Union Street, Norfolk, Virginia 23510 for construction projects and for services of architects, engineers, and land surveyors.*

*C. Department of Utilities, 400 Granby Street, Norfolk, Virginia 23510 for construction for the Department of Utilities.*

### **Sec. 33.1-3. Rules and regulations.**

The city manager shall establish rules and regulations to implement the provisions of this chapter which shall be amended from time to time as deemed necessary. Such rules and regulations shall be consistent with the objectives set forth in this chapter and approved as to form and correctness by the city attorney. Public notice of such amendments shall be given by posting in a designated public area for a minimum of ten (10) days before such amendments take effect.

#### ***R 33.1-3. Distribution.***

*Procurement regulations will be distributed at cost by the Purchasing Agent. Contractors and potential contractors are responsible for maintaining current copies of regulations. A master copy with amending ordinances and regulations will be available for reference at the Office of the Purchasing Agent during normal business hours.*

### **Sec. 33.1-4. Cooperative procurement.**

- (1) The city may enter into a cooperative procurement agreement with any public body; provided, that if the city is the procuring agency, the procurement shall comply with the policies and procedures set forth within this chapter and the rules and regulations promulgated to implement this chapter; and if the city is not the procuring agency, then the procurement will comply with the policies and procedures of the other public body, provided that such compliance is consistent with the intent of this chapter. Except for contracts for architectural and engineering services, the city may purchase from another public body's contract even if it did not participate in the request for proposals or invitation to bid, if the request for proposals or invitation to bid specified that the procurement was being conducted on behalf of other public bodies.
- (2) The city may enter into a cooperative procurement agreement with any nonprofit entity if the entity was formed and is maintained for the purpose of advancing the public interest; provided, that if the city is the procuring agency, the procurement shall comply with the policies and procedures set forth within this chapter and the rules and regulations promulgated to implement this chapter; and if the city is not the procuring agency, the procurement is based upon an open competitive process and is fiscally advantageous to the public.
- (3) As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases, the city may purchase goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

**R 33.1-4. Method.**

*The authorized procuring agent as defined in Sec. 33.1-23 shall determine whether cooperative procurement agreements for certain goods and services will be entered into by the City. Any comments or recommendations regarding cooperative procurement shall be forwarded to the procuring agent before taking any procurement action.*

**Sec. 33.1-5. Procurement involving state or federal funding.**

- (1) When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation in addition to those which are consistent herein. Nothing in this chapter shall prevent the city from complying with the terms and conditions of any grant, gift, or bequest which are otherwise consistent with law.
- (2) No contract for the construction of any building or for an addition to or improvement of an existing building by the city for which state funds of not more than thirty thousand dollars (\$30,000) in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive sealed proposals. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform to section 33.1-36 of this code.

**Sec. 33.1-6. Certain contracts prohibited.**

Except in the event of an emergency affecting the public health, safety, or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this provision.

**Sec. 33.1-7. Certain contracts excepted.**

Contracts for legal services and police undercover activities may be entered into without competitive procedures required by this chapter. Contracts associated with litigation or regulatory proceedings, such as contracts for expert witnesses or related goods or services, may also be entered into without the competitive procedures required in this chapter.

**Sec. 33.1-7.5. Goods or personal services to individual recipients of public assistance excepted.**

Any procurement on behalf of public assistance programs as defined in section 63.1-87, Code of Virginia, or the fuel assistance program may be made without competitive sealed bids or proposals or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of section 33.1-2.

**Sec. 33.1-8. Certain contracts with the handicapped excepted.**

The city may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

**Sec. 33.1-8.3. Essential election materials and services exempted from procurement requirements.**

Contracts for the printing of ballots, statements of results, or other materials or services essential to the conduct of elections, [shall be] exempt from procurement requirements.

**Sec. 33.1-8.5. Insurance from associations excepted.**

Insurance may be purchased through an association of which the city or its officer or employee is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare and developing close relationship with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the city manager has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and proposals are not fiscally advantageous to the public.

**Sec. 33.1-9. Public inspection of procurement records.**

- (1) Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.
- (2) Cost estimates relating to a proposed procurement transaction shall not be open to public



inspection.

**R 33.1-9.2. Protection of records.**

*Such cost records must be identified as records not open to public inspection when forwarded to the procuring agent. Files containing such information must be marked on the outside of each file in order to alert employees of the requirement to withhold this information from the public. In certain instances it may be necessary to remove cost estimate information from files which are given public access to facilitate the control of such information.*

- (3) Upon request any bidder shall be afforded the opportunity to inspect bid records after the opening of all bids. Bid records shall be open to public inspection only after award of the contract. Any inspection of procurement records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the record.

**R 33.1-9.3. Inspection.**

*The obligation to withhold proprietary information normally precludes inspection of bid documents at the time of bid openings. Opportunities for bidders to inspect bid records must be afforded after the procuring agent has reviewed the bid documents to determine if claims for proprietary information have been made and if so, measures are taken so that proprietary information is not disclosed.*

- (4) Upon request any offeror of a proposal shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are complete but prior to award, except in the event that the city decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.
- (5) Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the specific area or scope of data or other materials to be protected and state the reasons why protection is necessary.

**R 33.1-9.5. Proprietary information.**

*If, in the opinion of the procuring agent, the information sought to be withheld from public inspection is not considered to be properly categorized as trade secrets or proprietary information, or that the reasons stating why the protection is necessary are insufficient, the procuring agent may by written notification inform the bidder of this opinion. If the bidder, offeror or contractor cannot furnish within a reasonable time*

*acceptable reasons why this protection should be invoked, the bidder, offeror or contractor will be given the opportunity to remove such request from its bid or proposal or the opportunity to withdraw the bid or proposal from consideration. The procuring agent may impose such time limitations on the requirements of the bidders, offerors or contractors as are reasonable or practicable taking into consideration the nature of the procurement and relevant schedule requirements.*

**Sec. 33.1-10. Modifications and change orders**

A public contract may include provisions for modifications and change orders during performance, except that no contract may be increased by more than five thousand dollars (\$5,000) without the written approval of the city manager. Such modifications and change orders shall not be artificially divided to avoid this procedure.

**Sec. 33.1-11. Affirmative action.**

The city will facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions.

***R 33.1-11. Methods.***

*Affirmative action methods include the following:*

*A. Cooperation with and assistance to the Virginia State Office of Minority Business Enterprise, the Virginia Minority Supplier Development Council, and other public or private agencies.*

*B. Inclusion of qualified small businesses and those owned by women and minorities on bidders' lists and assurance that they are solicited for bids whenever they are potential sources.*

*C. When requirements permit, establishment of delivery schedules which encourage participation by small businesses and those owned by women and minorities.*

**Sec. 33.1-12. Lease or installment purchase.**

The City may acquire personal property by lease or installment contract and may grant security interests therein. Any debt incurred shall be subject to the limitations imposed by Article VII, Section 10 of the Constitution of Virginia.

***R 33.1-12. Lease or installment purchase procedure.***

*A. Application. The City may purchase certain personal property by lease or*

*installment contract provided the useful life of the property exceeds the duration of the lease or contract term.*

**B. Process.**

*1. Requests. Directors of departments will submit requests for property according to budget preparation instructions, describing property needed, purpose, justification for lease or installment contract funding, useful life of the property, and potential reimbursement opportunities.*

*2. Financial analysis. The director of finance will provide analysis of financial factors and prepare bid specifications or proposal requirements for financing the procurement.*

*3. Approval. The city manager will review recommendations for items to be purchased using lease or installment contracts and will send approved lists to the Purchasing Agent.*

*4. Procurement. Directors of departments will submit requisitions to the purchasing agent to procure approved property. Bids and proposals will be evaluated and awards will be made according to established procedures.*

*5. Procurement of financing. The purchasing agent will issue invitations to bid or requests for proposals for financing, indicating anticipated volume and type of property without minimum commitment and stipulating that funding of obligations after the current fiscal year will be subject to additional appropriations of the City Council. Bids or proposals will be evaluated, and a contract will be executed according to established procedures.*

**Secs. 33.1-13-19. Reserved.**

## **ARTICLE II. DEFINITIONS**

**Sec. 33.1-20. Definitions.**

- (1) *Brand name specification:* A specification limited to one or more items by manufacturers' names or catalog numbers.
- (2) *Brand name or equal specification:* A specification limited to one or more items by

manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the requirements of the city and which provides for the submission of equivalent products.

- (3) *Business*: Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (4) *Change order*: A written order signed and unilaterally issued by the procuring agent, directing the contractor to make changes which the changes clause of the contract authorizes the procuring agent to order without the consent of the contractor.
- (5) *Contract modification*: A written contract modification that alters specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (6) *Confidential information*: Any information which is available to an employee only because of the employee's status as an employee of the city and is not a matter of public knowledge or available to the public on request.
- (7) *Construction*: Building, altering, repairing, improving, or demolishing any structure, building or highway, and any draining, dredging, excavation, grading, or similar work upon real property.
- (8) *Contract*: Any type of arrangement, regardless of what it may be called, for the procurement of goods, services, or construction.
- (9) *Cooperative purchasing*: Procurement conducted by, or on behalf of, more than one public procurement unit.
- (10) *Cost-reimbursement contract*: A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee or profit, if any.
- (11) *Direct or indirect participation*: Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity.
- (12) *Goods*: All material, equipment, supplies, printing, and automated data processing hardware and software.
- (13) *Immediate family*: A spouse, children, parents, brothers and sisters, and any other persons living in the same household as the employee.

- (14) *Informality*: A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid, or the request for proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services, or construction being procured.
- (15) *Invitation for bids*: All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
- (16) *Nonprofessional service*: Any service not specifically identified as professional service as defined herein.
- (17) *Official responsibility*: Administrative or operating authority, whether immediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting there from.
- (18) *Pecuniary interest arising from the procurement*: A personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (Virginia Code, § 2.1-639.1 et seq.).
- (19) *Person*: Any business, individual, union, committee, club, other organization, or group of individuals.
- (20) *Prequalification for inclusion on bidders' lists*: A prospective bidder or offeror who satisfies the criteria established for inclusion on bidders' lists, which does not represent necessarily a finding of responsibility.
- (21) *Procurement transaction*: Any function that pertains to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (22) *Professional service*: Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.
- (23) *Proprietary information*: Trade secrets or particularized business data which are exempt from public disclosure under the Virginia Freedom of Information Act and which the bidder, offeror or contractor identifies prior to or upon submission of the data or other materials stating the reasons why protection is necessary.
- (24) *Public employee*: Any person employed by the city, including elected officials or appointed members of governing bodies.
- (25) *Qualified products list*: An approved list of goods, services, or construction items

described by model or catalog numbers, which, prior to competitive solicitation, the city has determined will meet the applicable specification requirements.

- (26) *Request for proposals*: All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (27) *Responsible bidder or offeror*: A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment and credit which will assure good faith performance.
- (28) *Responsive bidder or offeror*: A person who has submitted a bid which conforms in all material respects to the invitation for bids.
- (29) *Reverse auctioning* means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.
- (30) *Service*: Any work performed by an independent contractor, specifically including insurance coverage, wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and goods.
- (31) *Sheltered workshop*: A work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.
- (32) *Specification*: Any description of the physical or functional characteristics, or of the nature of a good, service, or construction item, which may include a description of any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery.
- (33) *Surplus property*: Personal property of the city that is determined to be unusable or unnecessary by the director of a department, which property may or may not have value to the city.
- (34) *Using agency*: Any department, agency, commission, bureau, or other unit in the government of the city which requires goods, services, or construction as provided in this chapter.

## **ARTICLE III. PROCUREMENT ORGANIZATION**

### **Sec. 33.1-21. Reserved.**

### **Sec. 33.1-22. General duties of purchasing agent.**

The purchasing agent shall serve as the central procurement officer of the city. Except as provided in the following section of this article or as otherwise specifically provided by the council, the purchasing agent shall perform the following duties in accordance with the rules and regulations promulgated to implement this chapter.

- (1) Procure or supervise the procurement of all goods, services, and construction needed by the city;
- (2) Exercise general supervision and control over inventory of goods of the storehouse division; and
- (3) Sell, trade, or otherwise dispose of surplus property.

### **Sec. 33.1-23. Procurement duties exclusive of the purchasing division.**

Unless otherwise provided by the council, the following procurement need not be processed through the office of the purchasing agent, but shall nevertheless be procured by the appropriate agency subject to the requirements of this Code and the regulations promulgated by the city manager:

- (1) Construction, inspection, or testing which constitutes a public work or improvement as designated in the provisions of section 54 of the Charter for which purposes the director of public works will be the appropriate procurement agent; provided, however, that if the construction is less than ten thousand dollars (\$10,000.00) then the director of public works may issue a requisition to the purchasing agent to make such procurement;
- (2) Construction for the department of utilities for which purposes the director of utilities will be the appropriate procurement agent; provided, however, that if the construction is less than ten thousand dollars (\$10,000.00) then the director of utilities may issue a requisition to the purchasing agent to make such procurement;
- (3) Demolition of deteriorated structures for which purposes the code official in the department of city planning and codes administration will be the appropriate procurement agent;
- (4) Published books (including binding services), maps, periodicals, pamphlets, recordings and materials for library circulation, such as audio-visual items for which purposes the director of the Norfolk public library system will be the appropriate procurement agent;

(5) Reserved.

(6) Animals for Lafayette Zoological Park for which purposes the director of parks and recreation will be the appropriate procurement agent in accordance with section 30-14 of this code;

(7) Promotion services and ticketing services for the department of civic facilities for which purposes the director will be the appropriate procurement agent in accordance with sections 13-6 and 13-7 of this Code; and

(8) Consulting services for which purposes the city manager will appoint the appropriate procurement agents or committees.

***R 33.1-23. Procedures required.***

*All procurement activities listed in this section must be subjected to competitive procedures as defined in this chapter even though the procuring agent varies. Small purchase procedures, sealed bids, sealed proposals, competitive negotiation, sole source, emergency, and reverse auctioning constitute the possible methods of source selection.*

**Sec. 33.1-24. Advisory committees.**

The city manager may establish procurement advisory committees composed of qualified representatives of the city as deemed appropriate. Such committees shall conduct studies and make written reports and recommendations on procurements assigned to them by the city manager. All such reports and recommendations shall state the reasons therefor.

***R 33.1-24. Establishment.***

*Advisory committees may be established for specific projects (ad hoc committee) or for recurring projects of a similar nature (standing committee). The procedural requirements described in this section shall apply to all advisory committees. Specific procedures of a more specialized or detailed nature, however, may be adopted by any advisory committee if consistent with this chapter and if approved by the city manager. Each committee shall keep complete records of all proceedings and be responsible for the custody and preservation of its papers and documents. An advisory committee may solicit technical advice or additional information from any available source and use any such data in the selection process.*

*A. Architects, engineers and surveyors selection committee. This committee shall be a standing committee and shall recommend to the city manager the selection of all architects, engineers, and land surveyors required by the city. Five of the*



*members shall constitute a quorum.*

*1. The following officials shall constitute the membership of this committee:*

*Member*

*Director of Public Works, Chairman*

*Director of Planning*

*Engineering Manager, Utilities*

*Director of sponsoring department*

*City Engineer*

*Purchasing Agent*

*Director of Neighborhood Preservation*

*Facility Maintenance Manager*

*A member may designate by memorandum to the committee one or more appropriate substitutes to serve on the committee in his or her absence.*

*2. Subcommittees.*

*a. Subcommittees are hereby established for the standing committee which selects all architects, engineers, and land surveyors required by the city. Each member of the full committee may participate in any activity of the subcommittee.*

*b. The subcommittee consists of a minimum of three members, including at least one person who is a member of the selection committee or a designated substitute, one member of the department that is to manage the contract, and one member of the sponsoring department. Where there is overlap in these conditions that would result in fewer than three members of a sub-committee, the rest of the membership may be filled with an appropriate person(s), as determined by the procuring agent.*

*B. Other procurement committees. Ad hoc advisory committees or additional standing committees may be appointed by the city manager to make recommendations for other procurements or types of procurements. Such appointments will include a statement of purpose, membership, chairperson, quorum requirements, and terms of the appointments.*

***R 33.1-24.1. Distribution lists.***

*Each standing advisory committee shall maintain a listing of potential bidders or offerors. Such listing for the architects, engineers and surveyors selection committee shall be maintained in the department of public works and requests for additions to this list must be directed to the director of public works. Such listings for other advisory committees shall be maintained in the department of finance and requests for additions to this list must be directed to the purchasing agent. Ad hoc committees shall make reasonable efforts to maximize the competitiveness of contractor selections.*

**R 33.1-24.2. Solicitation.**

*Advisory committees may solicit bids or proposals from all contractors on the list of potential bidders or offerors or may limit bids or the selection to a specific number of bidders or offerors. Minimum numbers of bids or proposals solicited may be established on the basis of anticipated contract values. Criteria for determining bidders or offerors from which to solicit proposals must be non-discriminatory and relevant to requirements of the contract anticipated.*

**R 33.1-24.3. Purpose.**

*The overriding objective in both soliciting proposals and in awarding contracts is to obtain the highest quality of desired services at a fair and reasonable price. To rotate contracts or distribute contracts among any population of potential offerors is not an objective to be considered in the selection process. Advisory committees for soliciting bids and awarding contracts shall make awards to the lowest responsive and responsible bidders.*

**R 33.1-24.4. Public notice.**

*Posting requirements for requests for proposals for services of architects, engineers and surveyors shall be met by posting on the bulletin board in the department of public works, 7th floor elevator lobby, City Hall Building. Posting requirements for all other advisory committee requests for proposals shall be met by posting on the bulletin board in the office of the purchasing agent, 401 Monticello Ave, Suite 420, Norfolk, VA 23510.*

**R 33.1-24.5. Professional services.**

*A. Review of Proposals. Proposals for professional services shall be reviewed by the appropriate selection committee according to the requirements of the competitive negotiation procedure and request for proposals issued. The committee or subcommittee, if any, will select for individual discussions two or*

*more offerors deemed fully qualified, responsible and suitable to provide the required services on the basis of initial responses with emphasis on professional competence. At the conclusion of discussions, on the basis of evaluation factors published in the request for proposals and all information developed in the selection process, the committee or subcommittee, if any, will determine the offeror whose professional qualifications and proposed services are deemed most meritorious. In cases of subcommittee action, the subcommittee will report to the full committee at its next meeting. The full committee may endorse all recommendations of the subcommittee, request further interviews, or take other appropriate action. The committee will forward its recommendations to the city manager for review and award.*

*B. Negotiation and award of contract. If the recommendations of the committee are accepted, the city manager shall authorize negotiations by a city representative to determine whether a contract agreement can be reached at a price considered fair and reasonable, in accordance with Sec. 33.1-38. Upon completion of negotiations, a contract shall be prepared and executed in accordance with established city contracting procedures.*

***R 33.1-24.6. Review of proposals and negotiation of contract for other services.***

*Proposals for services other than those defined by this code as professional shall be reviewed by the appropriate selection committee and any desired discussions or presentations conducted for the benefit of the committee. The committee may establish a rating or ranking system to facilitate the selection process. The committee shall forward a recommendation to the city manager citing the offeror whose proposal is determined to be most advantageous to the city taking into consideration price and the evaluation factors set forth in the request for proposals. Upon completion of the evaluation process and approval by the city manager, a contract shall be prepared and executed in accordance with established city contract or purchase order procedures.*

***Sec. 33.1-25. Requisition for goods, services, or construction; sufficiency of funds for purchases.***

Except as otherwise specifically provided in this chapter, no goods, services, or construction for any department, division, bureau, or office of the city government may be ordered, except by a requisition upon the purchasing agent, approved by the head of such bureau, division, or office, or by his authorized deputy, and approved by the director of the department, provided sufficient funds exist in the account to be charged for such procurement.

**Sec. 33.1-26. Authorization of certain employees to purchase: decentralized**

## **purchasing system.**

Under rules and regulations established by the director of finance and under the supervision of the purchasing agent, the director of a department or the authorized designee may purchase goods and services which do not exceed the amount of five thousand dollars (\$5,000), provided that sufficient funds are available for such procurement.

### ***R 33.1-26. Decentralized purchasing system.***

*The decentralized purchasing system applies to the purchase of goods and services (with the exception of Information Technology hardware and software) which do not exceed the amount of five thousand dollars (\$5,000).*

*A. Funds. Decentralized purchases may be made provided that sufficient funds are available for such purchases and that the purchases are promptly recorded and reported according to established accounting procedures.*

*B. Supervision. The purchasing agent will supervise the decentralized purchasing system for purchases within the purview of the purchasing agent. The purchasing agent may deny any claims and may suspend or reduce decentralized purchasing privileges of any unit or individual for decentralized purchasing procedures. Purchases shall not be artificially divided to circumvent the five thousand dollar (\$5,000) limit and evidence of such violations will constitute a cause for suspension or reduction of purchasing privileges. In the event that purchasing privileges are suspended, the department or bureau must utilize the requisition-purchase order process for all procurement requirements.*

*C. Purchase based upon price agreement. Materials and supplies and services which are subject to existing price agreements must be purchased from the vendors specified in the agreements. The purchasing agent will maintain lists of such agreements. The purchasing agent may require that certain commodities be obtained from available storehouse division inventory.*

*D. Procedure. City departments are required to obtain the lowest cost good or service from the most responsive and responsible vendor. Quotes from vendors are required. Where the cost of goods or services is between one thousand dollars (\$1,000) and five thousand dollars (\$5,000), three quotes must be obtained and documented utilizing the city purchasing quote tab provided in Appendix A and on the Intranet. The soliciting of one or more local minority or woman-owned business enterprise is encouraged. All supporting solicitation documentation must be attached to the purchase order in the city's financial system. A purchase order shall be entered into the financial system. In selecting vendors from which to*

*make small purchases, consideration shall be given to the costs associated with transportation (e.g., fuel) and labor (e.g., time away from the job). If price differences are not substantial, the nearest vendor may be the most cost effective. An invoice will be obtained from the vendor at the time that the purchase is made and the department or bureau will process the invoice for payment. If the invoice cannot be obtained at the time of the purchase, the vendor shall be instructed to mail it to the department or bureau.*

*E. Single quotations. Where the cost of goods or services does not exceed one thousand dollars (\$1,000), purchases may be made upon receipt of one written or telephone quotation. Whenever practicable a small business or minority or woman-owned business enterprise will be solicited to obtain pricing. City departments and agencies shall seek additional competition whenever there is reason to believe a quotation is not fair or reasonable.*

*F. Price Reasonableness. When competition is restricted or lacking and prices offered appear excessive, city departments and agencies are responsible for further written analysis to determine if the prices obtained are fair and reasonable. Written documentation may be based on price analysis (comparison with prices previously paid, prices charged for functionally similar items, prices paid by other consumers, prices set forth in a public price list or commercial catalog, or estimates). The purchasing agent shall be consulted to provide advice and assistance. The written analysis must be supported by factual evidence in sufficient detail to demonstrate why the proposed price is deemed to be reasonable.*

*G. Records. The names of the businesses submitting quotations and bids and the amounts of each shall be recorded and maintained as public records.*

*H. The purchasing agent shall be notified of any problems or concerns with any vendor.*

### **Sec. 33.1-27. Procurement of storehouse goods and services.**

(1) The purchasing agent may procure goods and services on the storehouse account; and when furnished to city departments, the purchasing agent shall charge the costs of the goods or services to the receiving department. All purchases on the storehouse account shall be made in accordance with the provisions of this chapter and rules and regulations promulgated to implement this chapter.

(2) The Norfolk Redevelopment and Housing Authority may cooperatively procure office supplies as requested to service storehouse accounts; and when furnished to city departments and agencies, the authority shall charge the costs of office supplies without mark-up or surcharge to

the receiving department. All purchases shall be made in accordance with the provisions of the Virginia Public Procurement Act and rules and regulations promulgated to implement the Act.

### **Sec. 33.1-28. Disposition of surplus property.**

The purchasing agent shall sell, trade, or otherwise dispose of all surplus property. The purchasing agent shall promote free and open competition in the disposal of surplus property and make such awards as are in the best interest of the city.

#### ***R 33.1-28. Procedure for disposition of surplus property.***

##### *A. Identification of surplus property and reuse by the city.*

- 1. Any departmental director may relocate within a department any city property which is surplus to one operating bureau, unit or division.*
- 2. Endeavors to redistribute all excess or useless city property to other departments must be done by the custodial department prior to reporting the property to the purchasing agent.*
- 3. Any surplus city property not relocated within a department or redistributed to other city departments and agencies must be reported to the purchasing agent. City-owned materials removed from real property remain the property of the city and must be reported by the responsible departmental director to the purchasing agent for redistribution or disposal as useless. Such reports must specifically describe the surplus property and contain the page and line number of the last annual inventory on which the item is listed or a statement that the item is not on inventory records.*
- 4. All property must be retained by the reporting department until disposition instructions are provided by the purchasing agent.*

*B. Offer for sale. The purchasing agent will offer for sale all unredistributed city property reported in writing as surplus. If no bids are received, the purchasing agent will direct the departmental director to deliver surplus material to the appropriate accumulation point for subsequent sale as scrap.*

*C. Disposition of unsalable surplus. The purchasing agent will direct the destruction and disposal of all unsalable surplus by the custodial department. Materials which are or may be considered dangerous to the health and welfare of city employees and/or the general public will be disposed of by the custodial*

*department in accordance with the governing laws and regulations.*

*D. Unclaimed property in custody of police department. Under Article II of Chapter 33 of this code the chief of police has responsibility for the sale and disposal of unclaimed property in custody of the police. Such sale and disposal is exempt from these regulations and shall be administered under rules established by the police department.*

*E. There is no legal authority for the donation of surplus or useless city property to any unit or organization not a part of the city.*

**Sec. 33.1-29. Disposition of replaced articles of equipment.**

If any article of new equipment is purchased to replace similar equipment, the director of finance may trade the existing equipment applying the proceeds as necessary to the account from which the new equipment is purchased, and the balance, if any, to the appropriate general revenue account.

**Sec. 33.1-30. Disposition of property damaged beyond repair in accidents involving third parties.**

Notwithstanding the provisions of any other ordinance to the contrary, in any case where city property is damaged beyond repair in an accident involving a third party, or in which the city acquires ownership of property damaged beyond repair in an accident involving a third party, the purchasing agent may sell or otherwise dispose of such property upon such terms and after such opportunity for competition as he may determine are practicable under the circumstances. In determining the terms for sale or disposal and the sufficiency and practicability of opportunity for competition in cases, the purchasing agent shall take into account the salvage practices of private insurance carriers, and shall not be limited to the usual means of disposing of surplus property.

**Sec. 33.1-31-35. Reserved.**

**ARTICLE IV. SOURCE SELECTION AND  
CONTRACT FORMATION**

**Sec. 33.1-36. Competitive sealed bidding.**

- (1) *Conditions for use.* All contracts of the city shall be awarded by competitive sealed bidding except as otherwise provided in this article.

- (2) *Invitation for bids.* An invitation for bids shall be issued and shall include specifications and contractual terms and conditions applicable to the procurement.
- (3) *Public notice.* Public notice of the invitation for bids shall be given a minimum of ten (10) days prior to the date set for opening of bids by posting in a designated public area, or by publication in a newspaper of general circulation, or both. The public notice shall state the place, date, and time of bid opening.
- (4) *Bid opening.* Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the procuring agent deems appropriate, together with the name of each bidder shall be recorded; and the record and each bid, with the exception of proprietary information, shall be open to public inspection, after award of the contract.
- (5) *Bid acceptance and bid evaluation.* Bids shall be accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used, such as inspection, testing, quality, workmanship, maintenance requirements, delivery, and suitability for a particular purpose.
- (6) *Award.* The contract shall be awarded by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event that a responsive bid from the lowest responsible bidder exceeds available funds as determined by the director of finance, the procuring agent may negotiate the amount of the bid with the apparent low bidder to obtain a contract price within budgeted funds.

***R 33.1-36. Negotiation with low bidder.***

*In the event all bids exceed budgeted funds as determined by the procuring agent, and time or economic considerations preclude resolicitation of work of a reduced scope, the procuring agent may authorize negotiation of an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of budgeted funds. In no event may substantial changes in the bid specifications be subject to such negotiation. If substantial changes are necessary in the bid specifications for the scope of the project or work, the work shall be rebid.*

**Sec. 33.1-37. Competitive sealed proposals.**



(1) *Conditions for use.*

(a) When the city manager determines that the use of competitive sealed bidding is either not practicable or not fiscally advantageous to the public, a contract may be entered into by use of the competitive sealed proposals method unless competitive negotiation is required.

(b) This method does not apply to construction unless the city manager makes the written determination in advance that is required in the paragraph above and the alteration, repair, renovation or demolition of buildings is not expected to cost more than five hundred thousand dollars (\$500,000.00) or the project is highway construction or any draining, dredging, excavation, grading or similar work upon real property.

(2) *Request for proposals.* Proposals shall be solicited by a request for proposals which shall state the objective of the procurement and specify the factors which will be used in evaluating the proposals, including any qualifications which will be required.

(3) *Public notice.* Public notice of the request for proposals shall be given a minimum of ten (10) days prior to the date set for receipt of proposals by a means that can be expected to provide reasonable notice to the maximum number of prospective offerors that can be practically anticipated to submit proposals in response to the particular request. Where substantial changes in public policy are involved in such a proposal, there shall be more extensive advertising to help ensure notice to prospective offerors and the public. In addition, proposals may be solicited directly from potential contractors. The public notice shall state the deadline and the location for receipt of proposals.

(4) *Receipt of proposals.* No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerors during the process of evaluation. The name of each offeror, the number of modifications received, if any, and a description sufficient to identify such proposals and modifications shall be recorded. The record shall be open for public inspection after award of the contract.

(5) *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals for the purpose of clarification to assure full understanding of and conformance to the solicitation requirements. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose

of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- (6) *Award.* Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city taking into consideration price and the evaluation factors set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

### **Sec. 33.1-38. Competitive negotiation.**

- (1) *Conditions for use.* When professional services are the subject of the procurement, a contract shall be entered into by use of the competitive negotiation method.
- (2) Request for proposals. Written requests for proposals shall be issued indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposals and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. The request for proposals shall not, however, request that offerors furnish estimates of hours of work or cost for services.
- (3) *Public notice.* Public notice of the request for proposals shall be given a minimum of ten (10) days prior to the date set for receipt of proposals by a means that can be expected to provide reasonable notice to the maximum number of prospective offerors that can be practically anticipated to submit proposals in response to the particular request. Where substantial changes in public policy are involved in such a proposal, there shall be more extensive advertising to help ensure notice to prospective offerors and the public. In addition, proposals may be solicited directly from potential contractors. The public notice shall state the deadline and the location for receipt of proposals.
- (4) *Procedure.* The city shall engage in individual discussions with two (2) or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage, the city may discuss nonbinding estimates of total project costs, including, but not limited to, life cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussions, outlined in this paragraph above, on the basis of evaluation factors published in the request for proposals and all information developed in the selection process to this point, the city shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the

offeror ranked first. If a contract satisfactory and advantageous to the city 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. Should the city determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by the city, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the request for proposals, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the city. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall not exceed one million dollars; and (c) the project fee of any single project shall not exceed two hundred thousand dollars (\$200,000). Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the request for proposals so states and (2) the city has established procedures for distributing multiple projects among the selected contractors during the contract term.

Multiphase professional services contracts satisfactory and advantageous to the city for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the city shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of the city require awarding the contract.

### **Sec. 33.1-39. Small purchases.**

Any procurement contract not exceeding fifty thousand dollars (\$50,000) may be made in accordance with small purchase procedures which shall be specified in the rules and regulations promulgated to implement this provision; provided, however, that contract requirements shall not be artificially divided so as to constitute a small purchase under this provision; provided also that any procurement of goods or services under five thousand dollars (\$5,000) may be made directly under the decentralized purchasing system. For contracts other than professional services and to the extent practicable, no less than three (3) businesses shall be solicited to submit quotations and

award shall be made to the business offering the lowest acceptable quotation. In a proposal situation, award shall be made to the offeror of the proposal that is determined to be the most advantageous. Professional services may be procured on the basis of at least two (2) solicitations and the selection of the more meritorious. Names of businesses solicited for procurement under this section shall be recorded with dates and amounts and such entries shall be maintained as public records.

***R 33.1-39. Procedure.***

*A. Application. Procurement of goods and services not expected to exceed \$50,000 shall not require competitive sealed bids, competitive sealed proposals, or competitive negotiation as defined in the Sections 33.1-35, 33.1-36, and 33.1-37. Procurement of goods and services that exceed five thousand dollars (\$5,000) shall be made by the authorized procuring agent on a competitive basis.*

*B. Requisitions. All purchases exceeding five thousand dollars (\$5,000) shall be performed under the supervision of the appropriate procuring agent. A completed requisition shall be forwarded to the authorized procuring agent for procurement. Requisitions must adequately describe actual requirements, cite the appropriate funding source, and be approved by the department director. Additional information may be required for specific requisitions or commodity categories. The procuring agent will review each requisition and may revise it as to quantity, quality, or estimated cost.*

*C. Competitive requirements.*

*1. Procurement of professional services shall require the written solicitation of no fewer than two valid businesses or professionals. The soliciting of one or more local minority or woman-owned business enterprise is encouraged. Publicly posting of the solicitation and the award notice shall be required.*

*2. Purchases of goods and services exceeding five thousand dollars (\$5,000), but less than fifteen thousand dollars (\$15,000) require soliciting three valid sources for oral quotations. The soliciting of one or more minority or woman-owned business enterprise is encouraged if available.*

*3. Purchases exceeding fifteen thousand dollars (\$15,000), but less than fifty thousand dollars (\$50,000) require at least three valid sources to submit written quotes. The soliciting of one or more local minority or woman-owned business enterprise is encouraged. Publicly posting of the solicitation and award notice shall be required. When determined advantageous to the city, the authorized procuring agent may issue informal requests for proposals for goods or services. In lieu of an evaluation committee, the authorized procuring agent may solely evaluate and rank offers. Upon completion of the evaluations, negotiations shall*

*be conducted with the offerors selected and an award made to the offeror whose proposal is most advantageous to the City.*

*D. Records. The names of the businesses submitting quotations and bids and the amounts of each shall be recorded and maintained as public records.*

*E. Bonds. Bid, payment, and performance bonds may be required by the procuring agent.*

*F. Awards. In a quotation or bid situation, award shall be made to the lowest responsible and responsive bidder. In a proposal situation, award shall be made to the offeror of the proposal that is determined to be the most advantageous. In a procurement for professional services, award shall be made to the offeror who submits the most meritorious proposal.*

*G. Execution and administration. Upon completion of the selection process, the purchasing agent shall issue purchase orders and other procuring agents shall contract with successful vendors.*

### **Sec. 33.1-40. Sole source procurement.**

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. Any sole source procurement which otherwise would have required competitive sealed bidding, competitive sealed proposals, or competitive negotiations shall be reported to the city council on a monthly basis.

#### ***R 33.1-40. Procedure.***

*A. Application. Sole source procurement shall be made by the appropriate procuring agent only.*

*B. Determination. The determination that only one source is practicably available shall be certified in writing by the director of the department requesting the procurement. The determination shall contain factual information which documents the reasons for source selection.*

*C. Reports. Reports of procurements which would have required competitive sealed bidding, competitive sealed proposals or competitive negotiations if sources were available shall be forwarded by the procuring agent to the city manager listing the following information:*

- 1. brief description of procurement;*

2. *department for which procured;*
3. *contractor providing good or service;*
4. *amount of contract; and*
5. *reason for sole source determination.*

### **Sec. 33.1-41. Emergency procurement.**

In the event of a threat to public health, welfare, or safety, a contract may be awarded without competitive sealed bidding, competitive sealed proposals or competitive negotiation. Such procurement, however, shall be made with such competition as is practicable under the circumstances. In addition to regular reports of emergency public works according to Charter section 81, any emergency procurement which would have required competitive sealed bidding, competitive sealed proposals or competitive negotiation under non-emergency conditions shall be reported to the city council on a monthly basis.

#### ***R 33.1-41. Procedure.***

*A. Determination of emergency conditions. An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the city manager. Such condition creates an immediate and serious need for goods, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of the city, the preservation or protection of city property, or the health or safety of any person.*

*B. Source selection. Under emergency conditions the city manager, a departmental director or their designees may negotiate directly for emergency procurements which are required to meet the emergency. The authorized procuring agent shall direct the procurement action if circumstances permit. Such procurements shall ensure such competition as is practicable under the circumstances and shall be conducted in a manner which most closely parallels the normal procedure, taking into consideration the nature of the emergency and the time available for procurement action. As required by Charter 78, a sufficient appropriation must exist against which an emergency procurement may be charged.*

*C. Records. As soon as practicable, a record of each emergency procurement shall be made which sets forth the basis of the emergency, the competitive measures taken, and the reason for the selection of the particular contractor. Documentation of emergency procurement shall include a requisition and a confirmation purchase order when the procurement is one which would have been handled in non-emergency situations by the purchasing agent, or a contract when*

*the procurement would have been handled in non-emergency situations by other procuring agents. In any case the record shall list:*

- 1. the contractor's name;*
- 2. the amount and type of the contract;*
- 3. a listing of the goods, services, or construction procured under the contract;*
- 4. identification of the contract file.*

*D. Reports. Determinations and records of emergency procurements in excess of fifty thousand dollars (\$50,000) shall be sent promptly to the city manager. In addition to reports of emergency public works according to Charter 81, the city manager will report emergency procurements to the city council on a monthly basis.*

### **Sec. 33.1-41.1 Reverse auctioning.**

The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

### **Sec. 33.1-42. Withdrawal of bids or proposals due to error.**

- (1) *Construction.* A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price was substantially lower than others due solely to a mistake therein, provided the bid was submitted in good faith, the mistake was a clerical mistake as opposed to a judgment mistake, and the mistake was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, 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.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall 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.

Within two (2) business days after the conclusion of the opening procedure, the

bidder shall give notice in writing to the agent responsible for the procurement of his claim of right to withdraw his bid. Such mistake shall be proved only from the original work papers, documents, and materials delivered as required herein.

- (2) *Other.* A bidder or offeror on contracts other than construction contracts may withdraw a bid or proposal according to procedures established by the rules and regulations promulgated by the city manager.

***R 33.1-42.2. Non-construction.***

*A bid or proposal may be withdrawn prior to acceptance.*

- (3) *Bidders or offerors owning other bidders or offerors.* No bid or proposal may be withdrawn under this section when the result would be the awarding of the contract on another bid or proposal of the same bidder or offeror or of another bidder or offeror in which the ownership of the withdrawing bidder or offeror is more than five (5) percent.
- (4) *Lowest remaining bid.* If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be low.
- (5) *Withdrawal precludes subcontracting.* No bidder or offeror who is permitted to withdraw 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 or proposal was submitted.
- (6) *Denial.* If the withdrawal is denied, the bidder or offeror shall be notified in writing of the denial and the reasons therefor.

**Sec. 33.1-43. Cancellation of invitations for bids or requests for proposals; waiver of informalities; rejection of bids or proposals; determination of responsibility.**

Any invitation for bids, request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part, when it is in the best interest of the city. The right to waive informalities in bids or proposals submitted is reserved to the city. The right to determine responsibility of all bidders or offerors is reserved to the city.

**Sec. 33.1-44. Prequalification generally; prequalification for construction.**

- (1) Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to



prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

(2) Any prequalification of prospective contractors for construction by the city shall be pursuant to a prequalification process for construction projects adopted by the city. The process shall be consistent with the provisions of this section.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection (5) of section 33.1-9 of this code.

In all instances in which the city requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the city shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by the city denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in section 33.1-101 of this code.

(3) The city may deny prequalification to any contractor only if the city finds one of the following:

a. The contractor does not have sufficient financial ability to perform the

contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the city shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

b. The contractor does not have appropriate experience to perform the construction project in question;

c. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

d. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the city without good cause. If the city has not contracted with a contractor in any prior construction contracts, the city may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The city may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

e. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (section 2.2-4367 et seq.) of this chapter, (ii) the Virginia Governmental Frauds Act (section 18.2-498.1 et seq.), (iii) Chapter 4.2 (section 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;

f. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any, agency of another state or agency of the federal government; and

g. The contractor failed to provide to the city in a timely manner any information requested by the city relevant to subdivisions a. through f. of this subsection.

### **Sec. 33.1-45. Debarment.**

Contractors may be barred from contracting for particular types of construction, goods, and services for specified periods of time.

#### ***R 33.1-45. Procedure.***

*A. Causes for debarment. Vendors may be barred from competition by a procuring agent for any of the following reasons:*

*1. Failure to comply with contract terms and conditions or to meet specification requirements.*

*2. Offering any gift, gratuity, favor or advantage, present or future, to any employee of the city who exercises any procurement responsibility,*

*regardless of the action of the employee and irrespective of the intent to influence the employee in an official act. Extending to any city employee exercising procurement responsibility any discount or privilege not available to all city employees is considered to be offering an advantage.*

*3. Failure to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner of the vendor in a contract or purchase order awarded by the city. It is not necessary that there be a judicial determination that a violation of the State and Local Government Conflicts of Interest Act has occurred.*

*4. Conviction of any criminal offense involving public contracting. Examples include, but are not limited to, bribery, sale of materials for city buildings by the architect or engineer in charge, knowingly making a false statement in regard to collusion on a bid or proposal. Conviction for any of the above of any officer, director, owner, partner, or agent of a vendor shall constitute grounds for the removal of the vendor.*

*5. Court judgment finding a violation of either federal or state antitrust laws.*

*6. Harassment or abusive conduct toward city procuring agents during the performance of their duties or as a result of the performance of their duties.*

*7. Violation of any provision of these rules and regulations.*

*8. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.*

*B. Notice of decision. The procuring agent will provide to the vendor written notification of any debarment action. A copy of all such notices will be forwarded to the purchasing agent who will maintain a record of all city debarment activity. This record will be available to all procuring agents of the city.*

**Sec. 33.1-46 Policy for recycled materials; preference for recycled paper and paper products in competitive sealed bidding.**

- (1) It shall be the policy of the city to promote the recycling of materials and the reduction of waste matter so as to make environmentally sound procurement decisions.

- (2) In the procurement of the following products for use in city operations, the city will select products containing recycled materials provided the quality is suitable for the purpose intended:
- (a) Cement and concrete containing fly ash;
  - (b) Paper and paper products containing recovered materials;
  - (c) Lubricating oils containing re-refined oils;
  - (d) Retreaded tires; and
  - (e) Building insulation products containing recovered materials.
- (3) In determining the award of any contract for paper and paper products, the purchasing agent shall procure using competitive sealed bidding and shall award, consistent with Virginia Code section 2.2-4326, to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than ten (10) percent greater than the bid price of the lowest responsive and responsible bidder offering a product that does not contain recycled material.

**Secs. 33.1-47-50. Reserved.**

## **ARTICLE V. SPECIFICATIONS**

### **Sec. 33.1-51. Maximum practicable competition.**

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage maximum free and open competition in satisfying the minimum needs of the city and shall not be unduly restrictive.

### **Sec. 33.1-52. Brand names or equal specification.**

Unless otherwise provided in the invitation to bid, the name of a certain brand, make, or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the city 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.

**Sec. 33.1-53. Employment discrimination by contractor prohibited; required contract provisions.**

Every contract over ten thousand dollars (\$10,000) shall include or incorporate by reference the following provisions:

- (1) During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability or national origin, except where religion, sex or national origin 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 ten thousand dollars (\$10,000.00), so that the provisions will be binding upon each subcontractor or vendor.

**Sec. 33.1-54. Tie bids.**

In the event of a tie bid, preference shall be given to goods, services, and construction produced in Virginia or provided by persons, firms or corporations having principal places of business in Virginia, if such a choice is available; otherwise preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations, if such a choice is available. If neither choice is available, the tie shall be decided by lot.

***R 33.1-54. Decision by lot.***

*When tie bids require decision by lot, the procuring agent shall contact each bidder submitting a tie bid informing those bidders that a decision will be made by lot. The decision by lot shall be made in public with each of the bidders involved afforded an*

*opportunity to attend. The transaction record shall include a notation of at least one witness, in addition to the procuring agent or his representative.*

**Sec. 33.1-55. Retainage on construction contracts.**

- (1) In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five (95) percent of the earned sum when payment is due, with no more than five (5) percent being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment upon satisfactory completion of all the work.
- (2) Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of the same limitations.

**Sec. 33.1-56. Deposit of certain retained funds on certain construction contracts; penalty for failure to timely complete.**

- (1) Contracts of two hundred thousand dollars (\$200,000.00) or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations in which portions of the contract price are to be retained, shall include in the invitation to bid or request for proposals an option for the contractor to use an escrow account procedure for utilization of the retainage funds by so indicating in the space provided in the solicitation documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the invitation to bid or request for proposals and contract shall be executed and submitted to the city within fifteen calendar days after notification. If the escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit its rights to the use of the escrow account procedure.
- (2) In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the commonwealth. The escrow agreement and all regulations shall be substantially the same as that used by the Commonwealth of Virginia Department of Transportation.
- (3) This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

- (4) Any such public contract for construction which includes payment of interest on retained funds may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.
- (5) Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

**Sec. 33.1-57. Permitted contracts with certain religious organizations; purpose; limitations.**

- (1) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes the city to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.
- (2) For the purposes of this section, "*faith-based organization*" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.
- (3) The city, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection 6, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.
- (4) The city shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the city does not discriminate against faith-based organizations.
- (5) A faith-based organization contracting with the city (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with the city to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the city. Nothing in clause (ii) shall be construed to supercede or otherwise override any other applicable state law.
- (6) Consistent with the Personal Responsibility and Work Opportunity Reconciliation



Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with the city shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

(7) Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (section 2000e-1 et seq.), to employ persons of a particular religion.

(8) If an individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the city shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

The city shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the city and a faith-based organization a notice in bold face type that states: "Neither the city's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."

### **Sec. 33.1-58. Substance abuse and drug-free work place policy for city construction contracts.**

Every bid response for a construction project solicited on or after March 1, 1996, shall include, by reference or incorporation, legally defensible, written substance abuse policies which shall be in effect during the period of performance of the contract. Notwithstanding the aforesaid, every contract as declared by the director of public works entered into on or after March 1, 1996, shall include, by reference or incorporation, legally defensible, written substance abuse policies which shall be in effect during the period of performance of the contract. The substance abuse policy shall include all workers who will perform on City of Norfolk projects both general and subcontractors. Said policies shall include, but not be limited to, the following requirements:

- (1) Drug testing by a state-approved laboratory licensed to conduct such tests in accordance with standards established by the National Institute On Drug Abuse (NIDA). Drugs to be tested for shall be as follow:

- a. Amphetamines/methamphetamine (e.g., crystal and speed);
  - b. Cocaine and crack cocaine;
  - c. Opiates (e.g., codeine, heroin, morphine, hydromorphone, hydrocodone);
  - d. Phencyclidine (PCP); and
  - e. Marijuana (THC).
  - f. Alcohol.
- (2) Drug testing will be conducted on the employee(s) by and at the expense of the employer before the employee(s) is/are allowed to visit and/or work on any job site.
- (3) Random drug testing shall be required. The criteria for random testing should be based upon the function(s) performed by the employee, particularly those functions in which a momentary lapse could cause death, serious bodily injury or destruction of property.
- (4) Testing upon reasonable suspicion is required. For purposes of this section, "reasonable suspicion" means an articulable belief based on specific facts, and reasonable inferences, drawn from those facts, that an employee is under the influence of drugs or alcohol. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:
- a. A pattern of abnormal or erratic behavior (e.g. hyperactivity, unexplained mood swings, paranoia, hallucinations);
  - b. Information provided by a reliable and credible source;
  - c. A work-related accident;
  - d. Direct observation of drug or alcohol use;
  - e. Possession of drugs or drug paraphernalia; or
  - f. Presence of the physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, odor of alcohol on breath, slurred speech, needle marks/scar tracks on arms, unusual drowsiness or sluggishness).
- (5) Written notice of the testing policy is required to be given to all employees by the employer.

- (6) A consent form shall be executed authorizing the drug and/or substance abuse testing and permitting the release of tests results to the employer to be used to prove compliance with drug and/or substance abuse policies. Test results for all personnel working pursuant to a City of Norfolk contract will be made available to the City on a confidential basis.
- (7) A refusal to consent section will be required which specifically informs the employee that refusal to consent to a drug and/or substance abuse test will be grounds for preventing the employee from working on city-contracted work.
- (8) Confirmation of positive test results through at least one additional test is required.
- (9) Confidentiality of tests results, except as exempted by other subsections of this section, is required as part of any drug and/or substance abuse policy adopted pursuant to this section.
- (10) An employer is required to notify the City of Norfolk of any employee who is arrested or convicted for drug-related offenses as stipulated in this section as soon as such information is known to the employer.
- (11) A section stipulating that searches may be conducted of all areas and property jointly controlled by the employee(s) and the employer, or fully controlled by the employer, is required.
- (12) A severability section stating that each provision of the drug and/or substance abuse policy is severable from other sections and provisions of the policy and, if found to be illegal by a court, such invalidity shall not affect the validity of the other sections or provisions.
- (13) No contractor shall allow any employee to engage in work on a city project upon notification of a positive test result unless and until the employees is certified to be drug free.
- (14) That the city manager is hereby authorized to take all actions necessary to implement the aforesaid provisions including defining terms, establishing reports and forms, and establishing deadlines for the production of information.

### **Sec. 33.1-59 Design-build or construction management contracts.**

- (1) While the competitive sealed bid process remains the preferred method of construction procurement, the city may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis, provided the city complies with the requirements of this section and has obtained the approval of the Design-Build/Construction Management Review Board (the Review Board) pursuant to Virginia Code § 2.2-2406.

Prior to making a determination as to the use of design-build or construction management for a specific construction project, the city shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the city regarding the use of design-build or construction management for that project and who shall assist the city with the preparation of the Request for Proposals and the evaluation of such proposals.

Prior to issuing a Request for Proposals for any design-build or construction management contract for a specific construction project, the city shall:

a. Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation and award of design-build and construction management contracts. Such procedures shall be consistent with those described in this chapter for the procurement of nonprofessional services through competitive negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the city determines appropriate for that particular construction project. Except as may otherwise be approved by the Review Board, such procedures for:

(i) Design-build construction projects shall include a two-step competitive negotiation process consistent with the Review Board's regulations.

(ii) Construction management projects shall include selection procedures and required construction management contract terms consistent with the Review Board's regulations.

b. Have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the city by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

(2) Once approved by the Review Board in accordance with Virginia Code § 2.2-2406, the city may procure a design-build or construction management contract for the

specific construction project presented to the Review Board. Unless otherwise specified in the Request for Proposals, the contract shall be awarded to the fully qualified offeror who submits an acceptable proposal at the lowest cost in response to the Request for Proposals.

(3) The city shall provide information as requested by the Review Board to allow post-project evaluation by the Review Board.

**Secs. 33.1-60-75. Reserved.**

## **ARTICLE VI. BONDS AND BID SECURITY**

**Sec. 33.1-76. Construction contracts.**

- (1) *Bid bonds on contracts which exceed one hundred thousand dollars (\$100,000).* Except in cases of emergency, all bids or proposals for construction contracts in excess of one hundred thousand dollars (\$100,000) shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five (5) percent of the amount bid. No forfeiture under a bid bond shall exceed the lesser of (a) the difference between the bid for which the bond was written and the next low bid, or (b) the face amount of the bid bond.
- (2) *Performance and payment bonds.* Upon the award of any public construction contract exceeding one hundred thousand dollars (\$100,000) awarded to any prime contractor, such contractor shall furnish to the city the following bonds:
  - (a) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications, and conditions of the contract.
  - (b) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any

subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such materials furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility service and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

- (3) Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.
- (4) Bonds shall be made payable to the City of Norfolk.
- (5) Each of the bonds shall be filed with the city or a designated office or official thereof.
- (6) Nothing in this section shall preclude the city from requiring payment or performance bonds for construction contracts below one hundred thousand dollars (\$100,000).
- (7) Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

#### **Sec. 33.1-77. Action on performance bond.**

No action against the surety on a performance bond shall be brought unless within one year after (a) completion of the contract, including the expiration of all warranties and guarantees, or (b) discovery of the defect or breach of warranty, if the action be for such.

#### **Sec. 33.1-78. Action on payment bond.**

- (1) Subject to the provisions of subsection (2) hereof, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of ninety (90) days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to such action.
- (2) Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under 33.1-76(7) of this chapter but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given

written notice to the contractor within one hundred eighty (180) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under section 33.1-76(7) of this chapter but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

- (3) Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

**Sec. 33.1-79. Bonds on other than construction contracts.**

The city may require bid, payment or performance bonds for contracts for goods or services if provided in the invitation for bids or request for proposals.

**Sec. 33.1-80. Alternative forms of security.**

- (1) In lieu of a bid, payment, or performance bond, a bidder or offeror may furnish a certified check or cash escrow in the face amount required for the bond.
- (2) If approved by the city attorney, a bidder or offeror may furnish a personal bond, property bond, or bank or savings institution letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the city which is equivalent to the corporate surety's bond.

**Secs. 33.1-81-85. Reserved.**

## **ARTICLE VII. ETHICS IN PUBLIC CONTRACTING**

**Sec. 33.1-86. Purpose.**

The provisions of this article supplement, but shall not supersede, other provisions of law including but not limited to, the State and Local Government Conflict of Interests Act (Virginia Code, § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Virginia Code, § 18.2-498.1 et seq.), and Articles 2 (Virginia Code, § 18.2-438 et seq.) and 3 (Virginia Code, § 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

**Sec. 33.1-87. Proscribed participation by public employees in procurement transactions.**

Except as may be specifically allowed by subdivisions A.2 and A.3 of section 2.2-3112 of the Code of Virginia, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the city when the employee knows that:

- (1) The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
- (2) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five (5) percent;
- (3) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- (4) The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

**Sec. 33.1-88. Solicitation or acceptance of gifts.**

No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The city may recover the value of anything conveyed in violation of this section.

**Sec. 33.1-89. Disclosure of subsequent employment.**



No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the city unless the employee, or former employee, provides written notification to the city manager prior to commencement of employment by that bidder, offeror or contractor.

**Sec. 33.1-90. Gifts by bidders, offerors, contractors or subcontractors.**

No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

**Sec. 33.1-91. Kickbacks.**

- (1) No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
- (2) No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- (3) No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
- (4) If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the city and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

**Sec. 33.1-92. Purchase of building materials, supplies or equipment from architect or engineer prohibited.**

Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the city shall be sold by or purchased from any person employed as an independent contractor by the city to furnish architectural or engineering services, but not construction, for such building or structure, or from any partnership, association, or corporation in which such architect or engineer has a pecuniary interest.

**Sec. 33.1-92.1. Participation in bid preparation; limitation on submitting bid for same procurement.**

No person who, for compensation, prepares an invitation to bid or request for proposals for or on behalf of the city shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, the city may permit such person to submit a bid or proposal for that procurement or any portion thereof if the city determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the city.

**Sec. 33.1-92.2. Certification of compliance required; penalty for false statements.**

(1) The city may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.

(2) Any public employee required to submit a certification as provided in subsection (1) who knowingly makes a false statement in the certification shall be punished as provided in section 33.1-95 of this code.

**Sec. 33.1-92.3. Misrepresentations prohibited.**

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

**Sec. 33.1-93. Penalty for violation.**

Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

**Sec. 33.1-94-100. Reserved.**

**ARTICLE VIII. REMEDIES**

**Sec. 33.1-101. Ineligibility.**

(1) Any bidder, offeror or contractor refused permission to, or disqualified from participation

in public contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror, or contractor appeals within thirty (30) days of receipt by instituting legal action as provided in section 33.1-106 of this code.

- (2) If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief shall be restoration of eligibility.

### **Sec. 33.1-102. Appeal of denial of withdrawal of bid.**

- (1) A decision denying withdrawal of bid under the provisions of section 33.1-42 shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in section 33.1-106 of this Code.
- (2) If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of section 33.1-42, prior to appealing, shall deliver to the city a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

### **Sec. 33.1-103. Determination of nonresponsibility.**

- (1) Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days by instituting legal action as provided in section 33.1-106 of this code.
- (2) If, upon appeal, it is determined that the decision of the city was arbitrary or capricious, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of the city was arbitrary or capricious, the relief shall be as set forth in section 33.1-104 of this code.
- (3) A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under section 33.1-104 of this code.
- (4) Nothing contained in this section shall be construed to require the city, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular

proposal was not deemed to be the most advantageous.

#### **Sec. 33.1-104. Relief.**

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

#### **Sec. 33.1-105. Effect of appeal upon contract.**

Pending final determination of an appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that an appeal has been filed.

#### **Sec. 33.1-106. Legal actions.**

- (1) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in a procurement, or who is determined not to be a responsive bidder or responsible bidder or offeror for a particular contract, may bring an action in the Norfolk Circuit Court challenging that decision which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious.
- (2) A bidder denied withdrawal of a bid under section 33.1-42 of this code may bring an action in the Norfolk Circuit Court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the city was clearly erroneous.
- (3) 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 sections 33.1-40 and 33.1-41, may bring an action in the Norfolk 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 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 proposals.
- (4) If injunctive relief is granted, the court, upon request of the city, shall require the posting of reasonable security to protect the city.

- (5) A contractor may bring an action involving a contract dispute with the city in the Norfolk Circuit Court.
- (6) Nothing herein shall be construed to prevent the city from instituting legal action against a contractor.

# Appendix A



**CITY OF NORFOLK**  
**Quote Tab**  
 Required for all purchase from \$1,000-\$5,000

City Employee \_\_\_\_\_

Description of Good or Service to Buy \_\_\_\_\_

<b>Department:</b>		<b>Division:</b>	<b>Date:</b>
<b>VENDOR QUOTES</b>	<b>1</b>	<b>2</b>	<b>3</b>
VENDOR NAME			
Employee/Title			
Address/Location			
Phone number			
email address (optional)			

Payment terms								
Discount								
Delivery Time								
Item No.	Unit	Qty.	Unit Price	Total	Unit Price	Total	Unit Price	Total
				\$0.00		\$0.00		\$0.00
				\$0.00		\$0.00		\$0.00
				\$0.00		\$0.00		\$0.00
				\$0.00		\$0.00		\$0.00
Sub total				\$0.00		\$0.00		\$0.00
Freight				\$0.00		\$0.00		\$0.00
TOTAL				\$0.00		\$0.00		\$0.00

**Location of this tab sheet: S:finance/purchasing/quotetab**

**Procurement Rules: Intranet/Departments/FinanceandBusinessServices/Purchasing/ProcurementManual**

**Appendix A**

# Appendix B

## City of Norfolk Examples of How to Procure Goods & Services July 2009

There are a variety of legal/acceptable methods available to city employees to procure goods and services. Below are common examples of items purchased and methods to procure those items.

**NOTE – The RQS process is still required for all IT hardware and software procurements regardless of dollar value.**

### 1. Push lawnmower

- **Check to see if the City Storehouse sells (search on intranet Storehouse link).** If yes then enter a Storehouse requisition (SR) and for most locations Storehouse personnel will deliver or you can pick up
- **If the item is under \$1,000 -**
  - Obtain and document 1 price quotes and issue a Decentralized Purchase Order (PO document)
  - OR obtain and document 1 price quotes and utilize Bank of America procurement card (P-card)
  - City departments and agencies shall seek additional competition whenever there is reason to believe a quotation is not fair or reasonable.
- **If the item is between \$1,000 and \$5,000**
  - Obtain and document 3 price quotes utilized the quote tab and issue a Decentralized Purchase Order (PO document) to lowest bidder
- **If the item is over \$5,000 -**
  - Enter a Requisition (RQS) document in AFMS. Purchasing will solicit bids

### 2. Cleaning supplies

- **Storehouse Item? Yes**
  - Enter a Storehouse requisition SR in AFMS. Storehouse delivers to designated locations or you pick-up
- **Storehouse Item? No**
- **If the item is under \$1,000 -**
  - Obtain and document 1 price quotes and issue a Decentralized Purchase Order (PO document)
  - OR obtain and document 1 price quotes and utilize Bank of America procurement card (P-card)
  - City departments and agencies shall seek additional competition whenever there is reason to believe a quotation is not fair or reasonable.
- **If the item is between \$1,000 and \$5,000**
  - Obtain and document 3 price quotes utilized the quote tab and issue a Decentralized Purchase Order (PO document) to lowest bidder

- **If the item is over \$5,000 -**
  - Enter a Requisition (RQS) document in AFMS. Purchasing will solicit bids

### 3. Technical Book

- **Is the book under \$1,000. Yes**
  - Issue a PO document in AFMS or utilize p-card

### 4. Office supplies

- Utilize City contract and issue a General Accounting Expense document (GAX) for payment.  
Currently Office Max.  
Phone: 800-472-6473  
Fax: 800-572-6473  
Internet ordering: [www.OfficeMaxSolutions.com](http://www.OfficeMaxSolutions.com)  
Catalogs are free
- If not available from city contract, get 3 quotes and order via PO document.

### 5. Printing of brochures/flyers/books

- **Call the City's print shop. Phone: 664-4255**
- **Can they do the job? No**
- **Is the job under \$1,000? Yes**
  - Obtain and document 1 price quotes and issue a Decentralized Purchase Order (PO document) to lowest bidder
  - OR obtain and document 1 price quotes and utilize Bank of America procurement card (P-card)
  - City departments and agencies shall seek additional competition whenever there is reason to believe a quotation is not fair or reasonable.
- **Is the job between \$1,000 and \$5,000**
  - Obtain and document 3 price quotes utilizing the quote tab and issue a Decentralized Purchase Order (PO document) to lowest bidder
- **Is the job over \$5,000 -**
  - Enter a Requisition (RQS) document in AFMS. Purchasing will solicit bids