



Navigating the State and Local Public Procurement Process in Virginia

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If your company has a contract (or hopes to win a contract) with a public body in the Commonwealth of Virginia, then you likely are aware of the dominant role the Virginia Public Procurement Act (VPPA) will play in the public body's decision. Originally enacted in 1982 as an effort to provide competition, fairness and accountability in the expenditure of public monies, the VPPA (2.2-4300 et seq.) has evolved over the years to meet those same needs while balancing changes in how goods and services are procured through the private sector.

While the general rule is that all goods and services must be competitively procured, there are several exceptions that allow public bodies flexibility to meet unique circumstances. The most commonly utilized exceptions include:

- Certain low-dollar purchases
- Sole source purchases where there is only one company offering the good or service
- Emergency procurements for situations where circumstances dictate a quick turn-around

These exceptions play a key role in the early stages of discussions with public bodies and provide companies, and public bodies, an opportunity to avoid a timely and costly competitive public procurement.

Once your company has identified an open procurement opportunity, chances are you will need to act fast. Most solicitations have anywhere between a 10 and 30-day turnaround for bid or proposal submission. The Commonwealth has an excellent online tool that can provide vendors with immediate notice when procurements are posted. The site is known as eVA, and potential vendors can register at www.eva.virginia.gov.

Once you have identified an open procurement opportunity, it is important to determine what body of law governs the procurement. Generally, every public body in the Commonwealth is governed by the VPPA, or has been given limited authority to develop its own procurement system that incorporates competitive

principles. Consequently, the first step in understanding how to respond to a solicitation is to understand what body of law governs the procurement. If the procuring entity is a state agency, there is a strong chance the VPPA governs the transaction. If the procuring entity is a large local government, institution of higher education, or independent state authority, chances are they have adopted their own version of a procurement act. The good news is that the bulk of the information you need to know should be contained within the solicitation for the good or service.

When drafting a response to a solicitation, it is important to understand what is being procured and how the agency will make its decision. The VPPA has different procurement processes for goods, non-professional services and professional services. For goods and some non-professional services procurements the process is called competitive sealed bidding, which is initiated by a publicly posted invitation for bid (IFB) containing a description of what is being procured. For IFB's, the lowest price wins. For professional services such as accounting, medical, architectural and engineering, the procurement process is called competitive negotiation and is initiated with a publicly posted request for proposals (RFP). The RFP describes the needs of the public body, the scope of the project or services and any special requirements that must be contained in any proposals. In the competitive negotiation process it is not necessarily the proposal with the lowest price that wins. Public entities make their decisions based on the evaluation criteria listed in the RFP, which can include a mix of technical experience, qualifications, references, and approach to the project. Once qualified companies are short-listed, the public body will then seek to negotiate on price.

Whether the solicitation is for a good or service, it is also important to understand the role any preferences will play in the public body's decision. For example, many solicitations procured using competitive negotiation will contain a scoring system that has a bonus for the use of small, women-owned, or minority-owned businesses. Depending on the weighting and level of competition, this factor can have a huge impact on the ultimate outcome of the procurement. Likewise, for certain low dollar IFBs, a solicitation may state that only small, women-owned or minority-owned businesses (SWaM) may respond. When considering whether your company qualifies for SWaM certification in the Commonwealth (and if so whether you should apply), keep in mind that once a solicitation is posted there will not be enough time to apply for a SWaM certification prior to the due date of the proposal or bid. Even if you otherwise would have qualified for SWaM certification, you will leave the points on the table if your certification is not in hand when you submit the proposal.

Whether your company is looking to expand from defense to commercial applications or is entering the market as a new start-up, the opportunities to do business with public bodies in the Commonwealth will only grow over time. With an over \$6 billion spend on private contracts in fiscal year 2015, the Commonwealth is simply too large a customer for growing companies to ignore. Companies that understand how public bodies procure goods and services from the private sector will maintain a distinct advantage over their competitors during the public procurement process.

For more information: Williams Mullen is hosting a seminar on "Selling Unmanned Systems Products and Services to Federal, State and Local Government Agencies" from 8:00 ? 11:00 a.m. on November 15, 2017 at the Tower Club in Tysons, VA to help explain how businesses can better sell unmanned products and services to these entities. The event is free and open to CEOs, CFOs, COOs and in-house counsel. For more information, and to register, please click [here](#).

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