

Chapter highlights

Purpose: This chapter sets forth background information and policy that should be followed by agencies and institutions. Adherence to this policy will ensure compliance with statutory regulations, protect the trust established between procurement officials and citizens of the Commonwealth, and establish fair and equal treatment of all suppliers who are interested in doing business with the Commonwealth.

Key points:

- VITA is committed to developing procurement policies and maintaining procurement processes which are fair, ethical, non-biased and in strict compliance with the laws of the Commonwealth.
- Procurement professionals have the responsibility to ensure that all information and documentation relative to the development of a solicitation or contractual document for a proposed procurement or anticipated contractual award remains confidential until successful completion of the procurement process.

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5.0 Introduction

VITA's SCM Division is responsible for establishing statewide contracts to meet agencies' needs for IT goods and services and for delegating procurement authority back to agencies, where appropriate. SCM is also responsible for developing policies, standards and guidelines for the procurement of information technology. Since

information technology procurement involves the expenditure of significant tax dollars, a trust is created between procurement officials, suppliers and the citizens of the Commonwealth.

This chapter provides VITA's policy regarding behavior of procurement professionals and suppliers and other project team members involved in the procurement of information technology. The *Code of Virginia* dictates a higher standard of conduct for procurement officials than for other public employees due to the extraordinary trust and responsibility exercised by public officials conducting procurement transactions, and because of the expectation by the public that this trust and responsibility be exercised properly. Procurement professionals and suppliers, as well as IT project team members involved in any IT procurement, must be cognizant of these laws which include the Virginia Public Procurement Act, the State and Local Government Conflict of Interests Act, and the Governmental Frauds Act. All personnel having official responsibility for procurement transactions should be familiar with Article 6, *Code of Virginia*, § 2.2-4367 *et seq.*, entitled "Ethics in Public Contracting."

VITA expects all procurement professionals and project team members involved in any IT procurement to maintain the public trust by conducting themselves with integrity and in a manner above reproach, with complete impartiality and without preferential treatment. All procurement professionals should avoid acts which are improper, illegal, or give the appearance of impropriety and shall pursue a course of conduct that does not raise any appearance of impropriety or suspicion among the public or potential Commonwealth suppliers.

5.1 Responsibilities of Commonwealth procurement professionals and project team members involved in an IT procurement

5.1.1 Confidentiality

Procurement professionals involved in an IT procurement have a duty to maintain certain information as confidential before and during the course of a solicitation. Procurement professionals have the responsibility to ensure that all information and documentation relative to the development of a solicitation or contractual document for a proposed procurement remains confidential until successful completion of the procurement process. All information and documentation relative to the development of a specification or requirements document will be deemed confidential in nature until award of a contract. A signed confidentiality statement is required for all project procurement team members, a version of which can be found here:

<https://www.vita.virginia.gov/procurement/policies--procedures/procurement-forms/> .

5.1.2 Ethics

All Commonwealth procurement professionals are subject to the Ethics in Public Contracting provisions of the VPPA (Virginia Code § 2.2-4367 *et seq.*), as well as the provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 *et seq.*) (COIA), the Virginia Governmental Frauds Act (§ 18.2-498.1 *et seq.*) and Articles 2 (§ 18.2-438 *et seq.*) and 3 (§ 18.2-446 *et seq.*) of Chapter 10 of Title 18.2.

In addition to these statutory requirements, VITA's procurement professionals and those acting on behalf of any VITA-delegated agency procurement shall:

- Seek to abide by the National Institute of Governmental Purchasing, Inc. (NIGP) Code of Ethics.
- Exhibit the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the Commonwealth's agencies and suppliers and the citizens being served.
- Provide and foster a procurement environment where all business concerns, large businesses or DSBSD

certified small businesses and small businesses owned by women- minorities and service-disabled veterans (SWaM) businesses, or micro businesses certified small, women-owned, minority-owned, service-disabled veteran- owned businesses, or micro businesses are afforded an equal opportunity to compete for the Commonwealth's business.

- Avoid unethical or compromising practices in actions, relationships, and communications, while also avoiding the appearance of impropriety or any action which might reasonably result in the perception of impropriety.
- Conduct all procurement activities in accordance with the laws of the Commonwealth, remaining alert to any and all legal ramifications of procurement decisions.
- Refrain from any private or professional activity that would create a conflict between personal interests and the interests of the Commonwealth as defined in Virginia Code § 2.2-3106 and § 2.2-4367 *et seq.*, and avoiding any appearance of a conflict, and continually evaluating their outside interests which have the potential of being at variance with the best interests of the Commonwealth.
- Promote positive supplier relationships through professionalism, responsiveness, impartiality, and objectivity in all phases of the procurement cycle.
- Enhance the proficiency and stature of the Commonwealth's purchasing community by adhering to the highest standards of ethical and professional behavior.
- Ensure all procurement project team members are aware of these principles and sign any required confidentiality and conflict of interest documents for the procurement file.

VITA procurement professionals and those acting on behalf of any VITA-delegated agency procurement shall not engage in any activity that violates the ethics and gifts provisions of the VPPA or COIA, which may include:

- Engaging in outside business or employment by any outside company that encroaches upon their primary responsibilities as a procurement officer of the Commonwealth;
- Engaging in any private or business relationship or activity that could result in a conflict of interest or could reasonably be perceived as a conflict of interest;
- Engaging in business with, or employment by, a company that is a supplier to the Commonwealth;
- Lending money to or borrow money from any Commonwealth supplier;
- Maintaining an interest in a firm that does business with VITA;
- Providing inside information to prospective suppliers;
- Accepting trips, lodging, meals, or gifts from suppliers.

5.1.3 Collusion awareness

As procurement watchdogs and citizens of the Commonwealth, procurement professionals have a duty to prevent and report collusion between suppliers competing for the Commonwealth's business. The purpose of the antitrust laws is to promote the free market system in the economy of this Commonwealth by prohibiting restraints of trade and monopolistic practices that decrease competition. The following could be construed as collusive activity or suspected antitrust violations:

- Any agreement or mutual understanding among competing firms that restrains the natural operation among market forces is suspect;
- Existence of an "industry price list" or "price agreement" to which suppliers refer in formulating their offers;
- Sudden change from competitive bidding to identical bidding;
- Simultaneous price increases or follow-the-leader pricing;
- Rotation of bids or proposals so that each offeror takes a turn as the low bidder;
- Division of the market so that certain competitors bid low only for contracts led by certain agencies or for

- contracts in certain areas or on certain products;
- Establishment by competitors of collusive price estimating systems;
- Incidents suggesting direct collusion. (Assertion by employees of a supplier, etc., that an agreement to restrain trade exists.);
- Identical bids that appear to be the result of collusion.

Practices that eliminate or restrict competition usually lead to excessive prices and may warrant criminal, civil, or administrative action by the Commonwealth against the supplier. Procurement personnel should therefore be sensitive to indications of unlawful behavior by suppliers, supplier's contractors, and other procurement, technical, or administrative personnel. Suspected antitrust or collusive activities shall be reported to the Office of the Attorney General, or to the agency's attorney advisor including any bids or proposals that show evidence or suspicion that an antitrust law violation has occurred. (See §§ 59.1-9.1 through 59.1-9.8 and §§ 59.1-68.6 through 59.1-68.8).

5.2 Expectations of VITA's suppliers

VITA expects its IT suppliers to deal with public officials in a manner that upholds the expectations of the public and reassures their confidence in the public procurement process. To that end, VITA expects suppliers to:

- Avoid all situations where propriety or financial interests, or the opportunity for financial gain, could lead to favored treatment for any organization or individual;
- Avoid circumstances and conduct that create the appearance of impropriety, even if that conduct might not constitute actual wrongdoing or a conflict of interest;
- Avoid offering or providing any interest, financial or otherwise, direct or indirect, in the business of the supplier or professional activity in which the supplier is involved with the officer or employee;
- Avoid causing or influencing, or attempting to cause or influence any Commonwealth officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of that officer or employee;
- Avoid offering any Commonwealth official or employee any gift, favor, service or other item of value under circumstances from which it might be reasonably inferred that such, gift, service or other item of value was given for the purpose of influencing the recipient in the discharge of his or her official duties;
- Accept responsibility for representations made on behalf of their company by employees or agents;
- Provide accurate and understandable pricing, schedules and terms and conditions;
- Treat competitors and employees of the Commonwealth with respect and professionalism, refraining from making any disparaging comments or accusations;
- Refrain from providing misleading information or unfavorable implications about a competitor's products or services.

5.3 Additional statutory prohibitions regarding contributions and gifts

The State and Local Government Conflict of Interests Act (Virginia Code §2.2-3100 *et seq.*) includes comprehensive standards for conduct by government employees, including language that directly addresses the solicitation and acceptance of gifts, grants and contracts by an agency at any time. All Commonwealth employees engaging in procurement activities should be familiar with the terms of this Act.

5.3.1 Contributions and gifts prohibited during PPEA or PPTA approval process

Conduct prohibited by law affects all procurements, bids and proposals under the Virginia Public Procurement Act, Public-Private Transportation Act, or the Public-Private Education Facilities and Infrastructure Act. Appendix 5.3.1 sets forth each of these standards by either direct quote or summary.

5.3.2 Return of gifts during procurement process

Gifts received by a Commonwealth governmental employee may be returned, and the employee will not be in violation of the Code, if accomplished in accordance with the provisions of Virginia Code § 2.2-3103.2.

5.3.3 Contributions and gifts prohibited during procurement process

Pursuant to Virginia Code § 2.2-4376.1, a supplier is prohibited from making contributions or giving gifts in excess of \$50 to the “Governor, his political action committee, or the Governor’s Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, during the period between the submission of the bid and the award of the public contract” where the stated or expected value of the public contract is \$5 million or more.

Any supplier or person who knowingly violates this requirement is subject to a civil penalty. Any person who willfully violates this requirement and is convicted is guilty of a Class 1 misdemeanor. A convicted public employee will have to forfeit his or her public employment and is subject to other fines or penalties provided by law.

