

Department of General Services - Agency Procurement and Surplus Property Manual (APSPM) Procurement of non-technology goods and nonprofessional Services

- 3.17 **Public Access to Procurement Records.** Records are open to the public in accordance with the *Virginia Freedom of Information Act*, subject to the following:
- a. Cost estimates relating to a proposed procurement transaction prepared by or for an agency shall not be open to public inspection (*Code of Virginia*, § 2.2-4342B).
 - b. Any bidder upon request, shall be given an opportunity to inspect bid records within a reasonable time after opening and evaluation of bids, but prior to award, except in the event the agency decides to reject all bids or offers and rebid (*Code of Virginia*, § 2.2-4342C). Information read aloud at a public bid opening will be furnished upon request.
 - c. Any offeror who responds to an RFP, upon request shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiation of proposals are complete but prior to award, except in the event the buying agency decides not to accept any of the proposals and to resolicit.
 - d. Bids and proposal records shall be open to the public only after award.
 - e. Any inspection of procurement records shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - f. Trade secrets or proprietary information submitted for a procurement transaction shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the bidder or offeror must invoke the protection of *Code of Virginia*, § 2.2-4342F, in writing, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary. It is an agency's responsibility to establish and enforce procedures to protect vendor proprietary information with the same degree of protection that would be provided for confidential information of the Commonwealth. The classification of an entire bid or proposal document, line item prices and/or total bid or proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the bidder or offeror refuses to withdraw an entire classification designation, the bid will be considered nonresponsive or the proposal will be rejected.
 - g. To protect the Commonwealth and its employees from possible claims for damages because of the improper release of information, agencies and institutions shall not release any information that a bidder, offeror, or contractor has claimed to be a trade secret or proprietary information, unless ordered to do so by a court of competent jurisdiction. If a party seeking information disagrees with the designation of it as proprietary or a trade secret, upon concurrence of the agency's attorney advisor, the party seeking the information may be advised that they will have to obtain a court order and request to be named as a defendant in the suit involving the bidder, offeror, or contractor which designated the information as proprietary as well as the agency or institution.
 - h. **Small Purchase Records.** Unsealed bids and unsealed proposal records 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* only after award of the contract.

VENDORS Manual

- 1.9 **Open Records.** Procurement proceedings, records, contracts, and orders are public records, open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the *Virginia Freedom of Information Act (Code of Virginia, § 2.2-3700 et seq.)*. Cost estimates relating to a proposed procurement transaction prepared by or for a state agency shall not be open to public inspection (*Code of Virginia, § 2.2-4342B*). Bid and proposal records are not available to the public for inspection until after the award except that any bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening and evaluation of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to rebid.

Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiation of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to resolicit.

Despite the preceding restrictions as to when bidders, offerors, and the general public may inspect bid and proposal records, once bids have been publicly opened and their prices announced, the names of the bidders and their bid prices may be disclosed to anyone. Likewise, the identity of offerors submitting proposals in the competitive negotiation process may be disclosed.

Unsealed bid and unsealed proposal records 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 only after award of the contract.

Any inspection of records shall be subject to reasonable restrictions to ensure the security and integrity of the records (*Code of Virginia, § 2.2-4342E*).

A procuring agency may make reasonable charges for the copying, search time and computer time expended in the supplying of procurement records in response to a public request. The charge shall not exceed the actual cost to the procuring agency of supplying such records. Upon request the procuring agency will furnish in advance an estimate of the charges for supplying procurement records (*Code of Virginia, § 2.2-3704F*).

Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the bidder or offeror must invoke the protections of the *Code of Virginia, § 2.2-4342F*, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire bid or proposal document, line item prices and/or total bid or proposal prices as proprietary or trade secrets is not acceptable. If, after being given reasonable time, the bidder or offeror refuses to withdraw an entire classification designation, the bid or proposal will be rejected.

Code of Virginia – related sections

FOIA section

§ 2.2-3705.1.12. Information relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such information would adversely affect the bargaining position or negotiating strategy of the public body. Such information shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this subdivision shall not apply, and any release of information relating to such transactions shall be governed by the Virginia Public Procurement Act.

VPPA section

§ 2.2-4342. F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.