

How Mandatory is the VPPA?

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Background – Objectives of the VPPA

- Consolidation of State & Local Purchasing Rules
- Establishment of Competitive Procurement Principles
- Legislate a Code of Ethics of Public Purchasing
- Establish *Flexibility* in a Universal Procurement Act



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Flexibility? – Why Does the Act Need This?

- State – “We are Different”
- Local – “No – We are Different”



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Different Applications - Different Approaches

Accomplished through Article 3, § 2.2-4343 of the
VPPA entitled

Exemptions and Limitations



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§ 2.2-4343, Subdivision 10

- Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to the procurement of goods and services by such governing body and its agencies, except as stipulated in Subdivision 12.



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§ 2.2-4343, Subdivision 12

- Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § 2.2-4303, and § 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4331.1, and 2.2-4367 through 2.2-4377 *shall apply*, to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.



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Does This Mean What I Think it Does?

- Yes – Cities, Counties, and Towns can develop their own procurement regulations and **ONLY** have to adopt the MANDATORY parts of the VPPA as identified in Subdivision 12.



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So – What Else Does This Mean?

- Subdivision 9

The VPPA does not apply to Towns under 3,500 in population.

- Subdivision 11

Schools may adopt their own alternative procurement procedures as stipulated in Subdivision 12.



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Show me 'MANDATORY'

- *Mandatory* is not in the VPPA
- No – The subdivision identifies the parts that SHALL APPLY
- Therefore, if it's not listed as a *shall apply*, It's not Mandatory.

BUT...



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First But . . .

- Should Your Alternative Procedures **ONLY** be comprised of the **MANDATORY** requirements?



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Second But . . .

- Can I Amend or Rewrite the Non-Mandatory Requirements of the VPPA in my entities Alternative Procedures?



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Third But . . .

- What's Wrong with all of the VPPA for my Entity?
- Maybe Nothing
- But – it may not be flexible for you.
- Let's look at the VPPA – You Decide.



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Present Framework of the VPPA

- Art. 1 – General Provisions
- Art. 2 – Contract Formation & Admin.
- Art. 3 – Exemptions & Limitations
- Art. 4 – Prompt Pay
- Art. 5 – Remedies
- Art. 6 – Ethics in Public Contracting



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First Impressions

- See anything that discusses:
- Informal Bids?
- Sealed Bids?
- RFP's for Non-Professional Services?
- Terms & Conditions?
- Etc. Etc. Etc.



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Example of Gloucester's Alternative Procedures

- Art. 1 – In General
- Art. 2 – Competitive Bidding
- Art. 3 – Competitive Negotiation
- Art. 4 – Debarment
- Art. 5 – Appeals & Remedies for Protests
- Art. 5 – Ethics in Public Contracting



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Highlights of Article 1 (General)

- Establishes authority of Purchasing Dept.
- Permits cooperative procurement.
- Permits delegation of authority.
- Describes methods of procurement.
- Surplus property disposition method.
- Identifies few exemptions.



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Highlights of Article 2 (Competitive Bidding)

- Describes the stages of sealed bidding.
 - Pre-qualification
 - Pre-Bid Meetings
 - Submission, opening & tabulation of bids
 - Award of Bids
 - Bonds
 - Term Contracts



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Highlights of Article 3 (Competitive Negotiation)

- Describes stages of competitive negotiation process.
- Discusses RFP's
 - Notice
 - Receipt of Proposals
 - Award



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Highlights of Article 4 (Debarment)

- Authority to Debar or Suspend
- Decision to Debar or Suspend
- Notice of Decision
- Finality of Decision



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Highlights of Article 5 (Appeals & Remedies for Protests)

- Withdrawal of Bid Procedure
- Protest of Award Procedure
- Contractual Dispute (“Claims”) Process
- Legal Actions Procedure
- Administrative Appeal Process



Highlights of Article 6 (Ethics)

- Prohibitions to public employees in procurement process. (Conflict)
- Gifts.
- Kickbacks.
- Penalty for Violation.



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Seeing is Believing

- Questions
- Gloucester County Procurement Ordinance
 - <http://library.municode.com/index.aspx?clientID=10843&stateID=46&statername=Virginia>
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