



Virginia
Regulatory
Town Hall

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Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Lottery
Virginia Administrative Code (VAC) citation	11 VAC 5 - 20
Regulation title	Administrative Regulations
Action title	The State Lottery Department will purchase goods and services in accordance with procedures contained in The Virginia Lottery Purchasing Manual.
Date this document prepared	January 20, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The proposed regulations and purchasing manual will establish requirements that more closely track the delegated purchasing dollar thresholds and general purchasing practices used by state government;

The Lottery's fundamental obligation to the citizens of the Commonwealth has been kept firmly in mind as these proposed regulations and purchasing manual have been drafted. We will continue to ensure that all procurements are accomplished in a manner that provides all potential vendors with a fair opportunity to participate in an impartial and objective selection process.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Lottery Board approved the proposed revised State lottery Procurement Regulation (11 VAC 5-20-200 *et seq.*) initially March 28, 2001, and most recently agreed to going forward with the Fast Track adoption procedures on November 2, 2005.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Virginia Code § 58.1-4007A authorizes the State Lottery Board to promulgate regulations “relative to departmental procurement which include standards of ethics for procurement consistent with the provisions of Article 6 (§ 2.2-4367 *et seq.*) of Chapter 43 of Title 2.2 and which ensure that department procurement will be based on competitive principles.”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this proposed regulatory change is to amend the Lottery’s regulations pertaining to the procurement process. With the goal of creating more expeditious and adaptable procedures, the current procurement regulations will be removed from the Administrative Code and replaced with language that references a Virginia Lottery Purchasing Manual. This change will allow the Lottery to amend the Purchasing Manual to meet changing business needs. For example, our current procurement regulations have not been changed since 1988 and are inconsistent with limits established by the Department of General Services, Division of Purchases and Supply.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast tract process is being used because we fully expect the regulations to be non-controversial. That expectation is based on the following:

1. the proposed regulations and purchasing manual will establish requirements that more closely track the delegated purchasing dollar thresholds and general purchasing practices used by state government;
2. the change approved by the General Assembly to clarify the Lottery's exemption from the Virginia Public Procurement Act (HB 1027, 2004) was passed overwhelmingly in the 2004 session

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The most substantive changes in the proposed regulations are the purchasing dollar thresholds. The current dollar levels requiring competition are \$2,000 for goods and \$5,000 for services with formal sealed bidding and competitive negotiations required at \$15,000 and above. Proposed thresholds mirror the limits used state government and will require competition for goods and services starting at \$5,001 with formal sealing bidding and competitive negotiations required at \$50,000 and above.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The advantages of the proposed regulatory change ensures that the Virginia Lottery has a fundamental obligation to the general public to ensure that its procurements are conducted in a fair and impartial manner without any impropriety or appearance of impropriety. Virginia Lottery procurement policies and procedures ensure that all qualified vendors have access to business opportunities and that no vendor is arbitrarily or capriciously excluded. Competitive procurement does not guarantee that a preferred brand or vendor will be selected. When conducted properly, competitive procurement responds to user needs, enhances citizen confidence in the integrity of government operations and obtains favorable prices.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

No applicable federal requirements apply.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The proposed change will have no affect on localities.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Enter statement here

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	No associated costs
Projected cost of the regulation on localities	No associated costs
Description of the individuals, businesses or other entities likely to be affected by the regulation	No individuals, businesses or other entities will be affected by the regulations. The use of a procurement manual and elimination of burdensome regulations is likely to cause the Lottery’s procurement process to be more efficient and provide faster turnaround for potential vendors.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	No individuals, businesses or other entities will be affected by the regulations
All projected costs of the regulation for affected	No associated costs

<p>individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No viable alternatives

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There are no assessed impacts that will result from this regulatory action.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
11 VAC 5-20-200	Introduction Page 2		No major changes
11 VAC 5-20-210	Chapter 14 Chapter 2	Purchase for goods less than \$2,000 is exempt from	Raise this dollar amount to \$5,000 to be consistent with other State Agencies in

		competition; SWAM business participation	Virginia; Enhanced/Defined the Lottery's goals and procedures for SWAM business participation
11 VAC 5-20-220		A Request for Information may be used by the Lottery to determine available sources	Deleted: This information pertains to practices and procedures and should not be listed as regulation
11 VAC 5-20-230	Chapter 16	Competitive Negotiation	No major changes to is method of procurement
11 VAC 5-20-240	Chapter 15	Competitive Sealed Bidding	No major changes to this method of procurement
11 VAC 5-20-250	Chapter 17 Sole Source Procurement	\$15,000 posting requirement	Raised posting requirement to \$50,000 to be consistent with other State Agencies in Virginia
11 VAC 5-20-260	Chapter 18 Emergency Procurement	\$15,000 posting requirement	Raised posting requirement to \$50,000 to be consistent with other State Agencies in Virginia
11 VAC 5-20-270	Chapter 14 Small Purchases	Goods - \$2,000 - \$15,000 Services \$5,000 - \$15,000	Raised the dollar levels for goods and services to \$5,001 - \$50,000 to be consistent with other State Agencies in Virginia
11 VAC 5-20-280		Procurement of Non Professional Services	Deleted: The procurement of nonprofessional and professional services will be handle the same depending on method of procurement
11 VAC 5-20-290		Procurement of Professional Services	Deleted: The procurement of nonprofessional and professional services will be handle the same depending on method of procurement
11 VAC 5-20-300		Guidelines for procurement of Professional Services	Deleted: The procurement of nonprofessional and professional services will be handle the same
11 VAC 5-20-310		Bid and Proposal due dates and times	Deleted: This information pertains to practices and procedures and should not be listed as regulation
11 VAC 5-20-320		Questions on Bids	Deleted: This information pertains to practices and procedures and should not be listed as regulation
11 VAC 5-20-330	Chapter 15 Chapter 16	Modify / Withdraw Proposals for Bids	No major changes
11 VAC 5-20-340		Rejection of Bids	Deleted: This information pertains to practices and procedures and should not be listed as regulation
11 VAC 5-20-350		Testing of Product	Deleted: This information pertains to practices and procedures and should not be listed as regulation
11 VAC 5-20-360		Proposal Bid or Performance Security	Deleted: This information pertains to practices and procedures and should not be listed as regulation
11 VAC 5-20-370		Assignment of Contract	Deleted: This information pertains to practices and procedures and should not be listed as regulation
11 VAC 5-20-380		Strikes, Lockouts or Acts of God	Deleted: This information pertains to practices and procedures and should not be listed as regulation
11 VAC		Remedies	Deleted: This information pertains to

5-20-390			practices and procedures and should not be listed as regulation
11 VAC 5-20-400		Administration of Contracts	Deleted: This information pertains to practices and procedures and should not be listed as regulation
11 VAC 5-20-410		Vendor Background	Deleted: This information pertains to practices and procedures and should not be listed as regulation
11 VAC 5-20-420	Chapter 1	Ethics	No significant changes
11 VAC 5-20-430	Chapter 15	Preferences	No significant changes
11 VAC 5-20-440 - 520	Chapter 25	Appeals, Protests and Remedies	No significant changes

Enter any other statement here