

**PROCUREMENT POLICIES AND REGULATIONS
OF STAFFORD COUNTY, VIRGINIA
Revised 07-2020**

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I. IN GENERAL

1. Title.

This Policy shall be known and may be cited as the “Procurement Policies and Regulations of Stafford County, Virginia” (hereinafter “Policy”). This Policy applies to the purchase of goods and services from nongovernmental sources as contained in the Virginia Public Procurement Act, Virginia Code § 2.2-4300, *et seq.*, as amended (“VPPA”). If any provision within this policy conflicts with the VPPA, the provisions of the VPPA shall prevail.

2. Definitions.

For purposes of this Policy, the following terms have the meanings ascribed to them herein, except where the context clearly requires another meaning:

Best value as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the county’s needs.

Board of Supervisors or Board means the Board of Supervisors of Stafford County, Virginia.

Change order means a written order, signed by a person authorized in this Policy or otherwise, directing a contractor to make changes which the changes clause of the contract authorizes to be ordered without the consent of the contractor.

Construction or construction contract means contracts for the building, altering, repair, improvement, or demolition of any public structure or highway, and any draining, dredging, excavation, grading or similar work upon real property.

Contractor means any individual, committee, club, association, or other organization or group of individuals, or any corporation, partnership, sole proprietorship, joint stock company, joint venture, or any other private legal entity, having or proposing a contract with the Board of Supervisors or any Using Department.

Contracts mean all types of County agreements, regardless of what they may be called, for the procurement or disposal of services, supplies, or construction.

County or County of Stafford means Stafford County, Virginia.

County Attorney or County Attorney’s Office means the Stafford County Attorney or his designee(s).

Cooperative Purchase means a purchase from another public body’s contract made in accordance with Code of Virginia Code § 2.2-4304(B), as amended,

Diverse Vendor means any Business meeting the definition of one or more classifications as defined pursuant to Code of Virginia § 2.2-4310. This will be used interchangeably with

“SWAM.”

IFB means an Invitation for Bids.

Informality means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

Nonprofessional services means any services not specifically identified as professional services in the definition of professional services.

Official responsibility means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

Potential bidder or offeror means a person who, at the time the Board negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract and all phases of contract administration.

Professional services means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering and the services of an economist procured by the State Corporation Commission.

Requisition means a document or documents, in a form prescribed by the Chief Financial Officer (hereinafter “CFO”), which constitutes demand by the using department for the provision of supplies, services or construction.

RFP means a request for proposals.

Responsible bidder or offeror means a Business who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

Responsive bidder means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid or Request for Quotes.

Service contract means any work performed by an independent contractor wherein the services rendered does not consist primarily of acquisition of equipment or materials, or the rental of

equipment, materials and supplies.

Single Quote Limit means the dollar threshold up to which a purchase may be made after obtaining a minimum of one quote. The Single Quote Limit is set at \$5,000.

Small Purchase Threshold means the dollar limit below the limit which formal competition is required for a Goods/Services pursuant § 2.2-4303, et seq, as amended.

The Small Purchase Threshold for all goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$200,000, and

Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000.

Professional Services purchases provided the aggregate or the sum of all phases is not expected to exceed \$80,000. (See Section VII of this policy)

Sole Source means a non-competitive purchase made after a determination that there is only one source Practicably available for that which is to be procured.

Supplies means all material, equipment, supplies, printing, and automated data processing and hardware and software.

Using Department means all departments, offices, constitutional officers, agencies, divisions, boards, districts, or services within the County government, deriving their support, in whole or in part, from funds budgeted and appropriated by the Board, specifically including, but not limited to, the school board and the social services department or any other entity whose purchases are executed by or under the purview of the Procurement Division. This term shall include volunteer fire and rescue companies, except as may be otherwise provided in this Policy.

3. Purpose and general application of chapter.

- (a) The regulations contained in this Policy are promulgated by ordinance of the Board pursuant to Code of Virginia, §§ 2.2-4300(C) and 2.2-4302, to effectuate the purposes of those sections with regard to procurement and disposition of supplies, services, and construction for the county.
- (b) Except as otherwise specifically provided, the regulations prescribed in this Policy shall apply to any contract for supplies, services or construction entered into after their effective date, unless the parties agree to their application to a contract solicited or entered into prior to their effective date.
- (c) Except as otherwise specifically provided, the regulations contained in this Policy shall apply to every expenditure of funds appropriated by the Board, by or on behalf of the Board or any Using Department, specifically including, but not limited to, the County school board, constitutional officers of the county, and the social services department of the

county, for the procurement of any supplies, services, or construction, except as otherwise provided by law or this Policy. Such regulations shall apply to all dispositions of County supplies.

4. Compliance with Policy.

All procurements of supplies, services, and construction shall be made in accordance with the provisions of this Policy.

5. Policy does not prevent compliance with conditions of grant, gift, or bequest.

Nothing contained in this Policy shall prevent the Board or any Using Department from also complying with the terms and conditions of any grant, gift, or bequest.

6. Rights of school board as to purchases; Policy not applicable to procurement of capital improvements by school board.

Notwithstanding any other provisions of this Policy, the County school board shall retain its right to specify the goods and services it wishes to purchase and to approve or reject all purchases made on its behalf. Furthermore, this Policy shall not apply to the procurement of capital improvements by the school board which shall be governed by applicable state law.

7. County not to discriminate against persons on basis of race, creed, sex, etc.

The County shall not discriminate against any person on the basis of race, color, creed, religion, national origin, sex, or handicapped status.

8. General powers and duties of County Administrator as purchasing agent.

- (a) The County Administrator shall be the purchasing agent for the County and shall be under the supervision and control of the Board for the faithful execution and performance of such function. He/she shall perform the purchasing function through the finance department, but he/she may delegate such duties to the CFO.
- (b) The County Administrator shall make all procurements and dispositions for the County in such manner and with such exceptions as may be provided for in this Policy. He/she shall have authority to transfer or trade supplies between Using Departments and he/she shall have charge of the storerooms and warehouses of the county.
- (c) The County Administrator is hereby authorized to develop and implement suitable specifications or standards for any or all supplies to be purchased by the county. He/she shall, except where otherwise provided, inspect or provide for the inspection of all deliveries to ensure their compliance with the specifications so established.
- (d) The County Administrator may delegate all authority to act as purchasing agent to the CFO,

except as otherwise provided in this Policy.

9. General powers and duties of CFO under Policy; generally.

- (a) The CFO personally shall interpret the meaning and application of this Policy and his/her decision on questions pertaining thereto shall be final. The CFO may seek the assistance of the County Attorney's office in rendering any decision or interpretation requested.
- (b) The CFO shall maintain complete records pertaining to the performance of the procurement and disposition functions assigned to him by this Policy. With the exception of materials provided in connection with competitive procurements, prior to opening of bids or the award of a contract in competitive negotiations, such records shall be public documents and shall be open for inspection in accordance with the provisions of the Virginia Freedom of Information Act, Code of Virginia, § 2.2-3700 *et seq.*
- (c) The CFO is hereby authorized to delegate any and all of the authority and duties set forth in this Policy not reserved specifically to him/her to such other officers and employees of the county as he/she shall deem appropriate. He/she may designate a person to be purchasing agent, one for the county and the other for the school board, who shall be employees of the finance department, but such designation shall not be deemed to relieve the CFO of responsibility for supervision and control of the purchasing function assigned to him by this Policy.
- (d) Any purchasing agent designated pursuant to this section shall perform such duties as may be assigned by the CFO consistent with this Policy, and shall have charge of the purchasing office of the county.

10. Doing business with small, diverse, minority and disadvantaged business enterprises.

Within the limits of the funds appropriated and the provisions of law, the CFO shall cooperate with the Virginia Department of Small Business and Supplier Diversity Enterprise, as required pursuant to Code of Virginia § 2.2-4310.

11. Initiation and processing of procurements.

A requisition shall be initiated by the Using Department and processed by the purchasing office in accordance with such rules as the County Administrator has listed below:

- (a) The County Administrator is hereby authorized to promulgate, after consultation with the CFO to establish rules for the internal administration of the purchasing office and such other matters as may be provided herein, including the method and manner of administratively processing procurements and sales. Such rules shall be consistent with the laws of the United States and Virginia, and shall have the force and effect of law.
- (b) Rules which may be promulgated by the County Administrator in accordance with subparagraph (a) above shall be in effect from the date on which they are promulgated and

may be amended, altered, or repealed by him as he/she shall deem appropriate. However, copies of all such action by the County Administrator with regard to such rules shall be immediately forwarded to the Board, which may overrule the County Administrator. The Board additionally reserves to itself the authority to amend, alter, or repeal any provision of the rules so promulgated.

(c) The following rules shall be promulgated in regards to the purchasing Policy:

1. The regulations set out in this Policy, shall be kept current, including references to state and federal law, which may be applicable to certain procurements or sales.
2. Specimen copies of all forms, including standard invitations for bids, standard contracts, and standard specifications.
3. Internal operating procedures of the purchasing office, including the manner of processing requisitions and purchase orders, and methods for expediting purchases when the CFO determines them to be necessary.
4. A detailed procedure to be followed for all procurements for the school board to implement the provisions of Paragraph 6 of this Policy.
5. Such other matters as the County Administrator shall deem necessary and proper to the efficient administration of the Procurement Division or which shall be authorized in this Policy.

12. Federally funded purchases, generally.

In addition to complying with all applicable Commonwealth of Virginia law, County Ordinances and County Procurement policies, any Procurement which involves the expenditure of federal funds must comply with the standards set forth in the Code of Federal Regulations, 2 CFR §§ 200.318 – 326 as well as any requirements of any federal grant, as applicable.

13. General requirements for contracts.

- (a) All contracts shall be in a form prepared by the County and approved by the County Attorney or his/her designee, or shall be individually prepared for a specific procurement, and all such contracts and procurement documents shall incorporate provisions of this Policy by reference insofar as they may apply. Nothing herein shall prevent the use of a contract prepared by a vendor, if a standard contract has not been prepared for the procurement or if such use has been approved by the County Attorney's office. Notwithstanding the provisions of this paragraph, the provisions of this Policy shall be deemed incorporated, insofar as they may be applicable, into any contract to which a Using Department or the Board shall be a party, whether specifically referenced therein or not.
- (b) All contracts shall be in the name of the Board, or where appropriate an entity which has independent statutory authority to enter into contracts.

- (c) **Change orders:** The County Administrator may approve any change order which does not involve cumulative changes in the fixed price contract of not more than fifty thousand dollars (\$50,000) or twenty-five percent (25%), whichever is greater.

14. Legal review of contracts.

All proposals, quotes, and contracts that contain additional terms and conditions, are on non-standard forms, or make changes to the County's standard contract language shall be reviewed and approved by the County Attorney's office, prior to award of the contract.

15. Execution of contracts.

- (a) Contracts in the amount of less than fifty thousand dollars (\$50,000) may be entered into by a Using Department under this Policy and shall be executed by the Director of the Using Department, or his/her principal deputy, and by no other person.
- (b) The County Administrator is authorized to execute contracts for less than two hundred thousand dollars (\$200,000) subject to this Policy and subject to the approved budget and appropriated funds.
- (c) Contracts two hundred thousand (\$200,000.00) or more, which are to be entered into directly by the Board shall be signed by the County Administrator or his designee.
- (d) Contracts, less than two hundred thousand dollars (\$200,000) shall consist of all solicitation documents (as applicable), the signed response submitted by the Contractor, the Purchase Order, all of which shall be referred to collectively as the Contract Documents. The Notice of Award shall be executed by the County of Administrator or his designee and posted on the Purchasing website.

16. Contract administration.

- (a) The Using Department shall, unless the CFO shall otherwise direct, inspect and approve or disapprove all deliveries under contracts and the performance thereunder. Discrepancies in deliveries or in the performance of the contract shall initially be brought to the attention of the vendor by the Using Department. The Using Department shall also promptly notify the CFO of any such discrepancies. Failure to satisfactorily resolve any discrepancies that has been identified shall be brought to the attention of the CFO, who shall institute formal complaint with the vendor. If satisfaction is still not forthcoming, the CFO shall contact the County Attorney for further proceedings.
- (b) Notwithstanding any other provision of this Policy, the Board may specifically provide for separate contract administration in construction contracts.

17. Blanket purchase agreements and purchase orders.

- (a) Blanket purchase agreements are requirements-type contracts for supplies, which are regularly required by Using Departments and used on an as-needed basis.
- (b) The CFO may determine those supplies which may reasonably be acquired by the County on such contracts for the use of one or more Using Departments and may require any or all Using Departments to obtain such supplies by requisitions filed against such uniform blanket purchase orders.
- (c) The County Administrator is authorized to promulgate such rules as may be necessary to account for the accumulation of funds among several Using Departments for application against a uniform blanket purchase order.
- (d) Blanket purchase agreements shall be instituted on an annual basis, unless the CFO shall authorize a shorter term. Any such blanket purchase agreement shall be subject to the requirements for bidding which are applicable to the reasonable estimated value of such agreement.
- (e) No blanket purchase agreement shall be of itself construed to constitute a contract with the vendor for the full estimated amount of the annual agreement, and a contractual obligation shall exist with any vendor only to the extent that requisitions shall have actually been made against such agreement.
- (f) It shall be the responsibility of the head of the Using Department to ensure that no unauthorized purchases are made against any properly awarded blanket purchase agreement, and he/she shall report any unauthorized purchase to the CFO, in accordance with this Policy.

18. Decentralized and Centralized Procurement Thresholds

A. Decentralized Single Quote Procurements of less than five thousand dollars (\$5,000).

Procurements of less than five thousand dollars (\$5,000) shall be made directly by the Using Department, utilizing the Purchase Card if a vendor accepts it, and the purchase is not on a contract, with a single written quote, after having made such reasonable investigation into price and other terms as may be necessary by law and or to protect the interests of the County. If a vendor does not accept the purchase card, as may be identified in eVA, a requisition for Purchase Order shall be entered.

B. Decentralized Informal Procurements of five thousand dollars (\$5,000) and greater but less than fifty thousand dollars (\$50,000).

Informal Purchases of five thousand dollars (\$5,000) or more, but less than a fifty thousand dollars (\$50,000), may be made on the open-market from competitive quotations. The using department shall solicit at least three (3) written price quotations by mail, telephone,

fax, electronic mail, or other means. The using department will seek participation from Diversity Vendors and Stafford County Micro Businesses (if available). A record shall be kept of specifications/statement of needs, quotes solicited, quotes received, and justification for vendor selected. A requisition for Purchase Order shall be entered unless Procurement authorizes utilization of the purchase card for these purchases.

C. Centralized Informal Procurements fifty thousand dollars (\$50,000.00) and greater but less than two hundred thousand dollars (\$200,000).

Informal Purchases of fifty thousand dollars (\$50,000) or more, but less than two hundred thousand dollars (\$200,000), shall be made on the open-market from competitive quotations from the Procurement office, unless an administrative exception is authorized delegating the informal purchase to the using department. Procurement shall solicit at least three (3) written price quotations by electronic mail, County Purchasing website, and or eVA (Electronic Virginia), or other means. Procurement will seek participation from Diversity Vendors and/or Stafford County Micro Businesses (if available). A record shall be kept of specifications/statement of needs, quotes solicited, quotes received, and justification for vendor selected. A requisition for Purchase Order shall be entered unless Procurement authorizes utilization of the purchase card for these purchases.

D. Centralized Formal Procurements of two hundred thousand dollars (\$200,000.00) and greater.

Purchases having an aggregate value of two hundred thousand dollars (\$200,000.00) or greater, shall be made using a formal solicitation process by the Procurement Division with public postings on the County Purchasing website, and/or eVA (Electronic Virginia), and or other means, unless otherwise provided in this policy. Procurement will seek participation from Diversity Vendors and Stafford County Micro Businesses (if available).

19. Procurements for Information Technology

Procurements for Information Technology, hardware and/or software, new, upgrade, or additional system components, shall be reviewed and approved by the Information Technology Department prior to soliciting competition and include the following testing procedure requirements to form or as modified by the Chief Information Officer or his/her designee:

20. Joint and Cooperative purchasing.

Pursuant to Virginia Code Section 2.2-4304, all Joint and Cooperative purchases shall be subject to review and approval of Director of Procurement. Approval shall ensure that all applicable requirements are met and that the Cooperative Contract to be used meets the legal and business requirements of the County.

21. Sole source procurements.

Sole source procurements shall be exempt from the regulations of this Policy for competitive

bidding. Where services or supplies are only available from a single source, because of legal requirements, specific patents or copyrights, peculiar qualifications and skills, technical specifications, or other reasons, the CFO may obtain such supplies or services from the sole source. It shall be the responsibility of the Using Department to justify the need for sole source procurement. Upon a determination in writing from the Using Department that there is only one (1) source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The CFO shall issue a written notice stating that only one (1) source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or County Purchasing website. The CFO or his designee is authorized to enter into direct negotiations with the sole source supplier to obtain such terms and conditions as he/she may determine to be in the best interest of the county. He/she shall, shall maintain a record of negotiations with the sole source supplier.

22. Emergency procurements generally.

- (a) Emergency procurements shall be exempt from the regulations of this Policy for competitive bidding.
- (b) For the purposes of this Policy, an emergency shall be deemed to exist when there is a breakdown in any County service or any time that supplies are needed for immediate use in work which may be essential to, or may vitally affect, the public health, safety, or general welfare. An emergency may include work undertaken under court order or in anticipation of court order.
- (c) If an emergency occurs during office hours, the Using Department shall notify the CFO and he/she shall either procure supplies or services directly or authorize the Using Department to do so.
- (d) If an emergency occurs after office hours, the Using Department shall procure necessary supplies or services. The head of the Using Department shall forward a requisition to the purchasing office, within seventy-two (72) hours after the emergency situation, together with a written justification for the procurement and a copy of the delivery record.
- (e) The head of the Using Department shall initially determine in writing whether an emergency exists which justifies the application of these provisions, and shall make a written determination of the basis for the emergency and for the selection of the particular contractor. The purchasing agent shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area and or County Purchasing website as soon thereafter as is practicable. If, upon subsequent review, the CFO personally determines that no emergency actually existed, he/she shall proceed under the regulations pertaining to unauthorized procurements. Prior authorization for emergency procurements shall be obtained from the CFO personally whenever possible.

23. Confirming orders for emergency procurements.

- (a) When any Using Department makes an emergency procurement, it shall execute a requisition. Such requisitions shall be forwarded directly to the purchasing office for review and processing.
- (b) Emergency procurements exceeding two hundred thousand dollars (\$200,000.00) shall be brought to the Board for ratification at its next regular meeting.

24. Review and payment of demands on open accounts, etc.

Demands for payment made on open accounts for supplies, services, or construction or emergency procurements, for which contracts have previously been awarded, shall be forwarded directly to the CFO for review and payment.

25. Public inspection of procurement records.

- (a) Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions 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, Virginia Code § 2.2-3700 *et seq.*
- (b) Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be open to public inspection.
- (c) Any bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids, but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid and proposal records shall be open to public inspection only after award of the contract.
- (d) Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- (e) Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction or prequalification application submitted pursuant to the Virginia Code, § 2.2-4317(B), shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor must invoke the protections of this subparagraph 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.

26. Sale, transfer or other disposal of property.

- (a) The CFO is authorized to sell, trade, transfer, or otherwise dispose of any property which is the property of the Board and is determined to be surplus either to the Using Department

or the County generally.

- (b) The Using Department shall be required to certify what of its property is surplus to it and may be disposed of. The CFO shall determine whether such property is surplus to the County generally. Such determination shall be final. The Using Department shall be responsible for the storage, maintenance, and safekeeping of all supplies in its charge, including surplus property, and for the transportation of surplus property to the site of sale or other disposal.
- (c) The CFO may authorize any Using Department to sell any property certified to be surplus to the County generally; provided that any such sale shall be consistent with this paragraph.
- (d) When the head of the Using Department certifies to the CFO that any property is irreparable or unsalvageable, and that the costs of storage are excessive, and that such property could not be sold for sufficient funds to cover the costs of storage or other disposal, upon receipt of written authorization from the CFO, the head of the Using Department may cause such property to be transported to the County landfill for disposal. The head of the Using Department shall make and keep, for not less than two (2) years, a complete written record of all such dispositions of property.
- (e) The County Administrator may promulgate additional rules governing in-house transfers and trades not inconsistent with this section.
- (f) Sales of surplus property shall be by electronic auction, competitive verbal bids, or by other method. The CFO shall determine which method is likely to obtain the highest price in each case or class of cases, and his decision shall be final.
- (g) Property that has been certified by the head of the Using Department as surplus may be used for trade-in value in connection with any procurement, provided that, if the procurement is required by this Policy to be by competitive sealed bidding, the bidder shall be required to state the value that he/she assigns the property to be traded in as a part of his bid, and to provide prices both with and without trade-in.
- (h) Whenever any person acquires County property disposed of pursuant to this paragraph, and is required to remove the property from premises owned by the county, such person shall execute a written agreement to indemnify and hold the County harmless from any and all liability which may be incurred during removal. Such person shall provide the CFO with evidence of the existence of liability insurance covering the risks potentially involved and, if required by law, workers' compensation insurance.

II. ETHICS AND PUBLIC CONTRACTING

For the purposes of this Policy, all procurements and expenditure of funds, regardless of source shall be governed by the State and Local Government Conflict of Interests Act, Code of Virginia, § 2.2-3100 et seq., and by the Virginia Public Procurement Act, Code of Virginia, § 2.2-4367 et seq.

Provisions of this section supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interest Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Article 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions of this section apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Public Procurement Act and the State and Local Government Conflict of Interests Act.

1. Unauthorized Purchases

- (a) Pursuant to Virginia Code § 15.2-1239, if any Using Department purchases or contracts for any supplies or contractual services contrary to the provisions of this Policy, such purchase order or contract shall be void and the Director, or head of the Using Department shall be personally liable for the costs of such purchase order or contract.
- (b) In addition, any procurement or disposition made by any person in the name of the County or any Using Department, which procurement or disposition is not in compliance with this Policy shall be deemed unauthorized. Any person who makes an unauthorized procurement or sale may be personally liable therefore to the vendor or purchaser of supplies, services or construction. Such sales or procurements shall be voidable, in the discretion of the Board.
- (c) Pursuant to Virginia Code § 15.2-1238, except in the case of emergencies, no purchase order or contract for supplies or services for any county department shall be awarded until the CFO has certified that the unencumbered balance in the appropriation, in excess of all unpaid obligations, is sufficient to defray the cost of such purchase order or contract.
- (d) The CFO shall not prepare or maintain a procurement for any Using Department unless and until he/she has received, in advance, a properly completed requisition or purchase order for which there are budgeted, unencumbered, and appropriated funds sufficient to pay for the proposed procurement, except as may be otherwise provided in this Policy.
- (e) No person shall have the authority to bind the County or any Using Department to any contract, except as provided in this Policy.
- (f) The County Administrator or his/her designee shall not be liable and shall be held harmless for any unauthorized procurement or disposition which was not initiated or approved by him/her.
- (g) The Director of Procurement or Procurement Division employees his/her shall not be liable and shall be held harmless for any purchase, purchase order, field purchase order, or

purchase card order that stemmed from or subsequently found to be an unauthorized purchase, and/or was not reviewed and/or approved by the Procurement Director.

- (h) A determination as to whether any procurement or disposition was unauthorized shall be made, in the first instance, by the purchasing agent. The purchasing agent shall report his/her finding(s) to the CFO, who shall consult with the County Attorney's office. If the CFO personally determines that the procurement or disposition was unauthorized, he/she shall bill the person allegedly responsible for the amount of any damages sustained by the county. The person allegedly responsible shall have a right of appeal to the County Administrator, provided that the appeal is filed, in writing, within fourteen (14) calendar days of the submission of a bill to him/her. Should an appeal be denied, or not taken in a timely fashion, and the bill not be paid, the County Attorney's office shall undertake legal proceedings to recover the money owed.
- (i) Any unauthorized procurement or disposition may be grounds for termination of the responsible employee from County employment or for the imposition of other adverse action which may be provided for in the County personnel regulations.
Pursuant to Virginia Code § 15.2-1240, any violation of subsections (a) and (c) above shall be punishable as a Class 1 misdemeanor.

2. Procurement Responsibilities

County Employees having any involvement in a Procurement Transaction shall practice the highest level of ethical standards and transparency in government, including but not limited to compliance with the Virginia Public Procurement Act, Article 6 –Ethics in Public Contracting (Code of Virginia, § 2.2-4367 et seq.); the State and Local Government Conflict of Interests Act (Code of Virginia, § 2.2-3100 et seq.); and any other applicable Federal, state and local law.

Responsibilities:

- (a) County Employees having any involvement in a Procurement Transaction are expected to familiarize themselves with the requirements of the Virginia Public Procurement Act, Article 6 –Ethics in Public Contracting (Code of Virginia, § 2.2-4368 et seq.) and the State and Local Government Conflict of Interests Act (Code of Virginia, § 2.2-3100 et seq.).
- (b) County Employees having any involvement in a Procurement Transaction shall abide by the following ethical standards in accordance with applicable law:
 - 1) County Employees shall neither ask for, demand, nor agree to accept meals, money or other gifts from Contractors, Vendors, and/or Suppliers.
 - 2) County Employees shall neither ask for nor accept Contractors, Vendors, and/or Suppliers paid travel, unless otherwise approved in advance and in writing by the County Administrator.
 - 3) County Employees shall avoid any conflict of interests or appearance thereof.
 - 4) County Employees shall identify to the Procurement Department any potential conflict of interests and recuse themselves from related Procurement Transactions.

- 5) County Employees shall treat all Contractors, Vendors, and/or Suppliers fairly and show no favoritism for a particular Contractors, Vendors, and/or Suppliers.
- 6) County Employees shall not disclose confidential information, unless disclosure is in accordance with Code of Virginia, § 2.2-4342, other applicable provisions of the Virginia Freedom of Information Act, Code of Virginia, § 2.2-3700, et seq., or by court order.
- 7) County Employees shall act as good stewards of government resources, regardless of the source of funds.
- 8) County Employees involved in Procurement Transactions shall disclose subsequent employment with any bidder, offeror or contractor involved in a Procurement Transaction after separating from the County for a period of one year.
- 9) County Employees shall not misrepresent any material fact in execution of Procurement Transactions.
- 10) County Employees shall not use County contracts for personal purchases.

3. Personal Interests in Procurement Transactions

Except as may be specifically allowed by the State and Local Conflict of Interests Act, no County Employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the County when the employee knows that:

- (a) The County Employee is contemporaneously employed by bidder, offeror, or Contractor involved in the Procurement Transaction;
- (b) The County Employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five (5) percent;
- (c) The County Employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- (d) The County Employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

4. Prohibition on the Solicitation of Gifts

- (a) No County Employee having official responsibility for a procurement shall solicit, demand, accept, or agree to accept a payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged, from a bidder, offeror, Contractor or subcontractor.
- (b) No bidder, offeror, Contractor, or subcontractor shall bestow a payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration

of substantially equal or greater value is exchanged, upon any County Employee having official responsibility for a procurement.

5. Kickbacks

- (a) No Contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything present or promised, unless consideration of substantially equal or greater value is exchanged.
- (b) No subcontractor or Supplier shall make, or offer to make, kickbacks as described in this section.
- (c) No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a County contract.
- (d) If a subcontractor or Supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the County and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.
- (e) No person who, for compensation, prepares an Invitation to Bid or Request for Proposal for or on behalf of the County shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, the County may permit such person to submit a bid or proposal for that procurement or any portion thereof if the County determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the County.

6. Purchase of Building Materials, etc. from Architect or Engineer Prohibited.

- (a) No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure; or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in Virginia Code § 2.2-3101.
- (b) No building materials, supplies, or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies, or equipment to be used in such building or structure to the independent contractor employed by the County to furnish architectural or engineering services in which such person has a personal interest as defined in Virginia Code § 2.2-3101.

(c) The provisions of this section shall not apply in the case of emergency.

7. Certification of Compliance; Penalty for False Statements

(a) The County may require County Employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this section.

(b) Any County employee required to submit a certification as provided in subsection (a) of this section who knowingly makes a false statement in such certification shall be punished as provided in § 2.2-4377 of the Code of Virginia.

8. Misrepresentations

No County Employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

9. Penalty for Violations

Any person convicted of a willful violation of any provision of Article 6 –Ethics in Public Contracting (Code of Virginia, § 2.2-4367 et seq.) shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

III. EXEMPTIONS

Notwithstanding that any item may be exempt as a consequence of this paragraph, any expenditure of two hundred thousand dollars (\$200,000) or more for such item must be approved by the Board, unless such procurement has been previously approved by the Board in connection with the annual budget process, or in the case of emergencies, or renewable term contracts approved biennially.

1. Statutory Exemptions

Article 3 of the Virginia Public Procurement Act (Code of Virginia § 2.2-4343 et seq.) and other applicable law provide specific exemptions from the VPPA and/or from competition for certain types of purchases. All purchases exempted statutorily from the provisions of the VPPA are exempted by this Policy from competition accordingly. Those purchase categories are indicated as Statutory Exemptions in the Exemptions Table and are exempt from competitive requirements. This list shall include any item deemed exempt by the Commonwealth of Virginia which are not specifically listed below.

- (a) Certain Investments- Services related to the management, purchase, or sale of investments, actuarial services, and disability determination services authorized by Virginia Code §§ 15.2-1548, 51.1-124.32, and 51.1-803.
- (b) Children's Services Act (§ 2.2-5200 et seq.)- Goods or personal services purchased for direct use by program recipients (not bulk). Virginia Code § 2.2-4345(A)(14).
- (c) Community Services Boards (§ 37.2-100 et seq.)- Goods or personal services purchased for direct use by program recipients (not bulk). Virginia Code § 2.2-4345(A)(14).
- (d) Election Equipment- Election equipment, software, services, the printing of ballots or statements of results, or other materials essential to the conduct of an election. Virginia Code § 2.2-4346(A).
- (e) Legal Services- Legal services shall include, but not limited to, court costs related to recording deeds plats, or agreements in the land records or filing civil, criminal or appellate actions, witness fees (lay and expert), transcripts, court reporters, exhibits and the like, jury verdicts, settlements, and fines (including fines to state and federal agencies). Virginia Code § 2.2-4344(A)(2).
- (f) Public Assistance and Social Services Programs (as defined in § 63.2-100, et seq.)- Goods or personal services purchased for direct use by program recipients (not bulk). Virginia Code § 2.2-4345(A)(14).
- (g) Textbooks- Textbooks and electronic publications approved by the State Board of Education for use in public schools. Virginia Code § 22.1-238, et seq.
- (h) Utilities- Electricity, Water/Sewer, Miss Utility, Natural Gas; includes the relocation/removal of utility owned facilities, i.e. tracks, pipes, mains, conduits, cables, wires, towers, or other structures, equipment and appliances of any utility. Virginia Code §§ 2.2-4303(G), 2.2-4343(13), 2.2-4345(A)(13), 56-232.1, 33.2-330.

- (i) Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) (VJCCCA)- Goods or personal services purchased for direct use by individuals (not bulk) under the VJCCCA. Virginia Code §2.2-4345(A)(14).

2. Administrative Exemptions

Pursuant to Code of Virginia § 2.2-4303(G), and notwithstanding any other provision of this Policy, the items listed in this paragraph are exempt from the requirements of competitive sealed bidding, but shall comply with other applicable provisions of this Policy. These items may be solicited and contracted for by the CFO as he/she deems appropriate. The list of exempt items may be amended by the Board whenever it deems it appropriate. The CFO, may, however, elect to comply with any or all of the requirements for competitive bidding for the items listed in this section for certain Small Purchases. The following categories of goods and services are exempt from competitive requirements up to the Small Purchase Threshold.

- (a) Advertising (e.g. newspaper, magazine, inserts, radio, television, internet, billboard, etc.).
- (b) Accreditation fees and academic testing services.
- (c) Audit fees.
- (d) Bank service charges.
- (e) Books, manuscripts and pamphlets.
- (f) Booth space at conferences, exhibits, fairs, and product shows.
- (g) Care, search and housing of prisoners.
- (h) Certification and recertification fees for professional certifications.
- (i) Educational films.
- (j) Freight charges.
- (k) Honoria, entertainment (speakers, lecturers, musicians, performing artists).
- (l) Inspection fees and costs.
- (m) Magazine and newspaper dues, subscriptions, publications, reports, etc.
- (n) Memberships and dues (professional organizations, etc.).
- (o) Perishable food.
- (p) Postage.
- (q) Prescription/medicines.
- (r) Registration fees for conferences, seminars, workshops, lectures, etc.
- (s) Special police work. Sheriff or his designee must certify to the CFO that the item(s) are needed for special police work, including undercover police operations.
- (t) State and local government entities.
- (u) Tuition and training

- (v) Travel, and related fees. (e.g. Lodging, Per Diem, Tolls, Parking).
- (w) Used equipment including but not limited to equipment purchased at a public or online auction (auction purchase requires written determination pursuant to § 2.2-4303(H)), or from another Public Body.

3. Non-Procurement Transactions

Certain Non-Procurement transactions may require a requisition or purchase order but are not under the purview of the Procurement Division or subject to requirements of this Policy. Those transactions types are indicated below.

- (a) Business and/or financial transactions to which public procurement regulations do not apply. Examples include debt service payments.
- (b) Bond payments and bond analysis, sale and closing fees. Governed by Public Finance Act, Virginia Code § 15.2-2600, et seq.
- (c) Contributions and donations approved by the Board of Supervisors or School Board as permitted in the Virginia Code.
- (d) Legal settlements (e.g. condemnation, case settlements, court costs).
- (e) Real Estate purchases and leases, right-of-way and easement acquisition payments.
- (f) Refunds unrelated to transactions under the VPPA.
- (g) Reimbursements, not utilized to circumvent this Policy and the procurement process.
- (h) Risk management payments to claimants.
- (i) Award of grants (disbursement of grant funds) by the County to other agencies, public bodies, or tax exempt non-profit charitable organizations.

IV. COMPETITIVE SEALED BIDDING

1. General requirements for procurements of more than two hundred thousand dollars (\$200,000.00).

- (a) All procurements of supplies and services estimated to be two hundred thousand dollars (\$200,000.00) or more shall be made on the basis of sealed competitive bids, except as otherwise provided in this Policy. The CFO shall solicit bids from prospective contractors by advertising Invitation for Bids (“IFB”) prepared as provided in this section, by posting a copy of the IFBs on the County’s Procurement division website and, where required by law or this Policy, or where deemed appropriate by the CFO, or elsewhere to increase competition (i.e. eVA). The CFO may advertise the bid by means of professional or trade publications. All notices shall be designed and intended to obtain as many bidders reasonably able to meet the specifications as possible. The CFO may require the Using Department to identify potential bidders for receipt of notice in accordance with this section.
- (b) Prior to issuing a solicitation, the Finance Department and/or the Budget Office will verify the source of funding for any construction and/or capital project over \$100,000.

2. Preparation and contents of IFBs; equal brand provisions.

- (a) Competitive sealed bids, where required, shall be solicited by IFBs, which shall be prepared by the CFO, with such assistance from the Using Department as he/she shall require. IFBs shall be comprised generally of an invitation, instructions to bidders, plans, and specifications for the supplies or services desired and proposed contracts. IFBs may include such other information as the CFO deems appropriate and necessary.
- (b) IFBs and specifications for all supplies or services shall include the following provisions relating to equal brand products other than those which may be set forth by name or other clear identification in the specifications:
 - (1) The name of a certain brand, make, manufacturer, or definite specifications is to denote the quality standard of article desired, but does not restrict bidders to the specific brand, make, manufacturer, or specification named; it is to set forth and convey to prospective bidders the general style, type, character and quality of article desired, and
 - (2) Wherever in specifications or contract documents a particular brand, make of material, device, or equipment is shown or specified, such brand, make of material, device, or equipment shall be regarded merely as a standard. Any other brand, make of material, device, or equipment which is recognized as the equal of that specified, considering quality, workmanship and economy of operation, and is suitable for the purpose intended, shall be considered responsive to the specifications.

3. Cancellation of IFB.

Any IFB(s) or other solicitation(s) may be canceled when the CFO determines that it is in the

best interests of the County to do so. The reasons therefor shall be made a part of the record in the matter.

4. Prequalification of prospective contractors.

- (a) The CFO is authorized to prequalify prospective contractors prior to any solicitation of bids, whether for supplies, services, insurance, or construction, by requiring prospective contractors to submit such information as the director deems appropriate, including samples, financial reports, and references; provided, however, that opportunity to prequalify shall be given to any prospective contractor who has not been suspended or debarred under the VPPA, and or federal law, if federal funding is used, .
- (b) The CFO may refuse to prequalify any prospective contractor, provided that written reasons for refusing to prequalify are made a part of the record in each case. The decision of the CFO shall be final.
- (c) In considering any request for prequalification, the CFO shall determine whether there is reason to believe that the prospective contractor possesses the management, financial soundness, and history of performance which indicates the apparent ability to successfully complete the plans and specifications of the IFB(s). The CFO may employ standard forms designed to elicit necessary information or may design other forms for the purpose.
- (d) Prequalification of a prospective contractor shall not constitute a conclusive determination that the prospective contractor is responsible and such contractor may be rejected as non-responsible on the basis of subsequently discovered information.
- (e) Failure of a prospective contractor to prequalify with respect to a given procurement shall not bar the contractor from seeking prequalification as to future procurements or from bidding on procurements which do not require prequalification.

5. Submission of sealed bids.

Written sealed bids, where required by this Policy, shall be returned to the CFO or designee. Bid submission may be electronic, and if in hardcopy, in any sealed envelope which is clearly identified by project or procurement name, the name of the bidder, the due date, and the time of bid opening, and which further states plainly that the envelope is not to be opened prior to bid opening. Should any bid be received which is not so identified, the bidder assumes the risk that the submission will be opened prior to bid opening. Bids opened prior to the time of bid opening shall be disqualified.

6. Alternate bids.

Any bidder may submit a bid which he/she knows varies materially from the specifications. Such bid shall be clearly labeled as an ALTERNATE BID and may be provided in addition to, or in lieu of, a responsive bid. Such bids may be accepted only where no responsive bid is received and only when the alternate bid is in substantial compliance with the specifications.

7. Bidder's certification as to price.

All bidders may be required to certify, in writing at the time of bid, that the price being offered to the County in connection with the particular solicitation is the price offered to the bidder's most favored customer(s).

8. Rejection of bids.

The CFO may reject any or all bids.

9. Opening of bids.

Bids shall be opened publicly in the presence of one (1) or more witnesses, at the time and place designated in the IFB(s) or any amendment thereto. Bids which are received after the time designated shall not be opened or considered.

10. Withdrawal of bid after opening.

(a) Any bidder for supplies, services, or construction may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith and the mistake was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error, or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The CFO shall require, and so state in the IFBs, the following procedure for withdrawal of a bid: The bidder must give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

(1) No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%).

(2) If a bid is withdrawn under this paragraph, the lowest responsible and responsive remaining bid shall be deemed to be the low bid.

(3) No bidder who is permitted to withdraw a bid shall, for compensation, supply any material

or labor to, or perform any subcontract or other work agreement for, the person to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

(4) The County will notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the county denies the withdrawal of a bid under the provisions of this section, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the public body shall return all work papers and copies thereof that have been submitted by the bidder.

(b) The CFO may contest withdrawal of any bid by any means provided by law.

11. Evaluation of bids.

Bids shall be evaluated on the basis of requirements which may be set forth in the IFB(s) and which may include criteria to determine acceptability as to inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

12. Waiver of bid informalities.

The CFO may waive any informality in any bid; provided, however, that bids or amendments thereto which are received after the time specified for the opening of bids will neither be opened nor considered.

13. Award of contract generally.

(a) All procurements of supplies or services which are subject to the competitive sealed bidding requirements set forth in this section shall be unconditionally awarded to the lowest responsive and responsible bidder, without alteration or correction, by the CFO, except where authority to award or reject is given to some other person or reserved to the Board, or where only alternate bids are received and handled in accordance with Section IV, Paragraph 8.

(b) The contract shall be awarded with reasonable promptness by written notice to the successful bidder. Nothing herein shall prevent the CFO from giving notice of intention to award to the apparently successful bidder, but such notice shall not constitute award.

14. Procedure when only one responsive and responsible bid received.

In the event that only one (1) responsive and responsible bid is received for supplies or services which require solicitation of competitive sealed bids, the IFB(s) may be canceled and the item(s) rebid, unless the CFO determines that the price bid is reasonable and in the best interests of the county, on the basis of price comparison, value analysis, prior price history, an engineering estimate, or other method which establishes the reasonableness of the price bid.

15. Tie bids.

- (a) In the case of a tie bid, preference shall be given to goods, services, and construction produced in Virginia or provided by Virginia persons, firms, or corporations, if such a choice is available; otherwise the tie shall be decided by lot.
- (b) Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.
- (c) Notwithstanding the provisions of subparagraphs (a) and (b) above, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

16. Negotiations with successful bidder.

If the bid of the lowest responsive and responsible bidder exceeds the available funds for such project, then the Purchasing Administrator or designee may negotiate with the apparent low bidder in order to obtain a contract price within available funding limits.

- (a) Such negotiation may include, but is not necessarily limited to:
 - 1) Reduction of scope, goods, services, insurance, or construction procured;
 - 2) Adjustment of the bid price;
 - 3) Substitution of materials;
 - 4) Changes in the period for project completion.
- (b) The conditions and procedures for such negotiations shall be as follows:
 - 1) Purchasing Administrator or designee and members of the end Using Department shall meet with the apparent low bidder and, in the case of a construction contract, with the architect and/or any engineering consultants as applicable, and such parties shall jointly prepare a list of contract scope modifications that do not impair the original proposed functions(s) of the project.
 - 2) The apparent low bidder shall provide additional details on labor, materials, pricing and/or a Schedule of Values at the County's request and prepare price reductions for review by the Purchasing Administrator or designee and members of the end Using Department and, in the case of construction, by the architect and/or any engineering consultants as applicable.
 - 3) Purchasing Administrator or designee and members of the end Using Department, in the case of construction, the architect and/or any engineering consultants as applicable, shall evaluate each price reduction and shall accept only those reductions

that are considered to be in the best interest of the County.

- 4) If the acceptable price reductions result in a reduced contract price that is within available funding limits, a contract shall be awarded, subject to approval by the Board of Supervisors. The negotiation with the apparent low bidder shall be summarized in a Post Bid Modification and posted with the Notice of Intent to Award or Notice to Award for each contract.
- 5) If the acceptable price reductions do not reduce the cost of the proposal to an amount that is within available funding limits, the bid shall be rejected. The negotiation with the apparent low bidder shall be summarized in a Post Bid Modification document and filed with the Procurement file. A Cancellation Notice will be posted.

Notwithstanding the foregoing, the Purchasing Administrator or the County has the right to cancel any solicitation, to reject any or all bids, even after negotiations with the low bidder and to waive any informality in bids.

17. Record of bids.

Each bid received, with the name of the bidder, shall be entered on a record and each successful bidder shall be specifically noted on such record after the award of the contract.

18. Protest of award-Generally.

- (a) Any bidder or offeror may protest the award of, or the decision to award, a contract to any other bidder or offeror, by submitting a written protest to the CFO within the times specified in this paragraph.
- (b) No protest shall lie for any claim that the selected bidder or offeror is not a responsible bidder or offeror, except as provided in Code of Virginia, § 2.2-4359.
- (c) Any protest, other than one required to be made before the opening of bids or proposals shall be filed not later than ten (10) calendar days after the award or decision to award the contract to the successful bidder or offeror is publicly posted.
- (d) Any protest shall state in writing the basis for the protest and the specific relief requested.
- (e) The CFO shall inform the County Attorney's office of the receipt of any protest and shall provide all relevant information and documentation.
- (f) The CFO shall personally decide all protests within ten (10) days of receipt thereof, and shall issue written findings as provided in this paragraph. His decision shall be final, unless appealed within ten (10) days to the County Administrator. The County Administrator shall conduct a hearing conforming to the requirements of the Code of Virginia, § 2.2-4365. The decision of the County Administrator shall be final unless appealed to the circuit court of the County within thirty (30) days of receipt of the written decision.

- (g) Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten (10) days after posting or publication of the notice of such award.

19. Legal actions.

- (a) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, or was denied prequalification based upon the criteria for denial of prequalification, or denied withdrawal of a bid may bring an action in the appropriate circuit court challenging that decision in accordance with the provisions set forth in the Code of Virginia. The bidder or offeror, actual or prospective, may not institute legal action until all statutory requirements have been met.
- (b) A bidder, offeror, or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided, whose protest of an award or decision to award is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, within ten (10) days in accordance with the provisions set forth in Code of Virginia. The bidder, offeror, or contractor, actual or prospective, may not institute legal action until all statutory requirements have been met.
- (c) A contractor may bring an action involving a contract dispute with the County in the appropriate circuit court.
- (d) Nothing herein shall be construed to prevent the County from instituting legal action against a contractor.

20. Same--Remedies.

- (a) In the event that the CFO determines that a decision to award a contract is arbitrary or capricious, prior to the award of a contract, then the sole relief shall be a finding to that effect and he/she may cancel the proposed award or revise it to comply with law.
- (b) In the event that the CFO makes the determination required in subparagraph (a) after a contract has been awarded, the sole remedy shall be a finding to that effect and relief as provided in the Code of Virginia § 2.2-4360. In no case may the protester be awarded anticipated profits or the costs or expenses of protest or appeal of any decision to the courts.
- (c) In the event that the CFO determines that a protest filed under Section IV, Paragraph 20(a) or (b) is well-founded, he/she may cancel the solicitation or revise it to comply with law.
- (d) The validity of any contract awarded in good faith in accordance with this Policy shall not be affected by any protest or appeal, and award of a contract need not be delayed for the period during which a bidder or offeror may protest; provided that, in the event of a timely

protest, no award shall be made unless the CFO personally determines that it is necessary to proceed to award without delay to protect the public interest, or unless the bid or offer would otherwise expire.

21. Bid bonds.

The CFO may require that each bidder on a competitively bid procurement for supplies or services for one hundred thousand dollars (\$100,000) or more submit with his bid, a certified check, payable to the county, for a sum not to exceed five percent (5%) of the bid total, as a guarantee that the bidder will enter into a contract for the supplies or services sought should he/she be awarded the contract. In lieu of a certified check, it shall be sufficient that the bidder provides an irrevocable letter of credit or corporate surety bond, issued by a company licensed to do business as a surety in Virginia, for a sum equal to the amount of any certified check which would otherwise have been required. The conditions of such bond shall be established by the CFO, unless otherwise established by law. Noncompliance with this section may require the rejection of the bid. Annual bid bonds may be accepted.

22. Payment and performance bonds.

- (a) The CFO may require any bidder for supplies or services to execute a performance bond in an amount equal to one hundred percent (100%) of the contract price solely for the protection of the county, conditioned upon the faithful performance of the work in strict conformity with the contract documents.
- (b) The CFO may require any successful bidder for supplies or services to execute a payment bond in an amount equal to one hundred percent (100%) of the price specified in the contract, conditioned upon the faithful payment of all persons who have and fulfill contracts which are directly with the contractor for performing labor or furnishing materials in the prosecution of the work provided for in any such contract.
- (c) Any performance or payment bond required hereunder shall be in the form of a certified check, irrevocable letter of credit or a bond executed by a surety company authorized to do business as a surety in the commonwealth.

V. COMPETITIVE PROPOSALS

1. Solicitation of proposals generally.

Proposals shall be solicited under this article through RFPs and adequate public notice shall be provided to obtain the widest range of offerors.

2. Preparation and contents of Request for Proposal (RFP).

(a) RFP's shall be prepared by such person as the CFO shall direct.

(b) An RFP shall contain at least the following information:

- (1) The type of supplies or services required;
- (2) A description of the work involved and its location;
- (3) An estimate of when and for how long the services shall be required;
- (4) The type of contract which will be used;
- (5) The date by which proposals shall be submitted;
- (6) A statement that all proposals shall be in writing;
- (7) Statement that information received will not be disclosed to other offerors during selection;
- (8) A statement of the minimum information that the proposal must contain, to include, but not limited to, where appropriate:
 1. The name and the location of the offeror's principal place of business;
 2. If deemed relevant by the draftsman of the RFP, the age of the offeror's business and average number of employees over a previous period of time, as may be specified;
 3. The abilities, qualifications, and experience of all persons who would be assigned to provide the required services or supplies;
 4. A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous, specified period of time, and a list of current references, including telephone numbers, and e-mail addresses who may be contacted with respect to such contracts;
 5. A plan giving as much detail as practical explaining how the required services shall

be performed, how the required services shall be provided, or of what they shall consist; and

- (9) The factors, including the offeror's proposed compensation, to be used in the evaluation and selection process, listed in descending order of their relative importance or accorded a prespecified point value. Such criteria shall include, among other relevant things, proximity to the place where services are to be performed, the offeror's present workload, the applicability of prior experience, and the suitability of the supplies to meet the identified needs.

3. Criteria for evaluation of proposals.

The criteria which shall be used in the evaluation of competitive sealed proposals shall be set forth in the RFP, and shall be strictly adhered to in the selection process. Any such criteria may include judgmental factors, in addition to objective factors, relating to the procurement.

4. Opening and register of proposals.

Proposals shall be opened so as to avoid disclosure of the contents of offers to competing offerors during the process of negotiation. A register of proposals shall be provided in accordance with rules promulgated by the County Administrator.

5. Discussions with responsible offerors.

As shall be provided in the RFPs and as may be further provided in this Policy, discussions may be conducted with responsible offerors who submit proposals determined by the CFO to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion of proposals, and revisions thereto may be made by the offeror after submissions and prior to award, for the purpose of making and obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

6. Negotiations with selected offeror.

- (a) The CFO or a specific designee shall negotiate a contract with the selected offeror, for the required supplies or services at a compensation determined to be fair and reasonable. Assistance in the conduct of negotiations may be requested of the County Attorney.
- (b) Negotiations under this section shall be directed toward:
 - (1) Making certain that the offeror has a clear understanding of the scope of the services or the supplies, specifically the essential requirements involved in providing the required supplies or services;

- (2) Determining that the offeror will make available the necessary personnel and

facilities to perform the services in the required time, or provide the needed supplies;

- (c) Agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services and the scope, complexity and nature of such services or the supplies required.

7. Award of contracts; protests.

Award of a contract shall be made by the County Administrator to the responsible offeror, whose proposal has made the best proposal and provides the best value to the County and with whom negotiations have been successful. The County Attorney shall be consulted with respect to the form and content of the contract with the selected offeror. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror. Should the County Administrator or designee determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

Protests shall be made in accordance with this policy.

VI. SPECIAL PROVISIONS RELATING TO CONSTRUCTION CONTRACTS

1. Application of article.

Contracts for construction shall be governed generally by this Policy, and by the additional regulations set out in this section. Where a regulation set forth in this section is in conflict with any other provision of this Policy, the provisions of this section shall govern.

2. Applicability of state and federal law.

Contracts for construction which are subject to the provisions of state and federal law shall be governed thereby and by the regulations of this Policy, where they do not conflict with such state or federal law.

3. Solicitation of bids.

Bids for construction exceeding the small purchase threshold, shall be solicited by the CFO by means of formal IFBs, instructions to bidders, plans, and specifications for the project and proposed contracts for the work, which shall be prepared by the CFO in consultation with appropriate persons, including architects, engineers and other consultants who may be employed by the County for the purposes of any project.

4. Award of contract; rejection of bids.

- (a) All contracts for construction of two hundred thousand dollars (\$200,000) or more shall be awarded by the Board, in accordance with the regulations governing the award of contracts generally. The Board may reject bids in accordance with § 2.2-4319.
- (b) Construction contracts for less than two hundred thousand dollars (\$200,000) may be awarded by the County Administrator, in accordance with the regulations governing the award of contracts generally, subject to this policy and subject to approved budget and appropriated funds. The County Administrator may reject bids in accordance with § 2.2-4319.
- (c) The County Administrator may direct that the authority provided in this section may be exercised by any other person specified herein.

5. Bid Bonds

- (a) All bids or proposals for construction contracts for one hundred thousand dollars (\$100,000) or more shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he/she will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent (5%) of the bid amount.

- (b) No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid.
- (c) Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than one hundred thousand dollars (\$100,000).

6. Payment and performance bonds.

- (a) The CFO shall require any bidder for a construction contract of one hundred thousand dollars (\$100,000) or more to execute a performance bond in an amount equal to one hundred percent (100%) of the price specified in the contract, solely for the protection of the county, conditioned upon the faithful performance of the work in strict conformity with the plans, specifications and conditions for same.
- (b) The CFO shall require any successful bidder for a construction contract of one hundred thousand dollars (\$100,000) or more to execute a payment bond in an amount equal to one hundred percent (100%) of the price specified in the contract. This shall be conditioned upon the faithful payment of all persons who have and fulfill contracts directly with the contractor for performing labor or furnishing materials provided for in such contract.
- (c) Any performance or payment bond required hereunder shall be in the form of a certified check, irrevocable letter of credit, or a bond executed by a surety company authorized to do business as a surety in the commonwealth.

7. Special provisions for design-build, and construction management contracts.

- (a) Notwithstanding any other provisions of this Policy, the Board may authorize the use of design-build, or construction management type contracts for construction. When such authorization has been given, it shall not be necessary to Bid the work through an Invitation for Bid, nor shall the provisions of this Policy, with respect to construction, be applicable.
- (b) The County Administrator, in consultation with the County Attorney, may solicit such work through competitive negotiations pursuant to the VPPA. Any such contract shall be submitted to the Board for approval prior to execution of the contract documents. The County Administrator may designate any person to administer the contract on behalf of the County.

VII. SELECTION OF PROFESSIONALS

1. Applicability of article.

- (a) This article governs the selection of professional services by Using Departments and by the Board.

This article shall apply to those Using Departments subject to the provisions of this Policy.

- (b) The procedure set forth in this section is recommended for any procurement of professional services, but shall be required only for professional services reasonably estimated to cost eighty thousand dollars (\$80,000) or more.

2. Determination of need and procurement for Professional services; approving authority.

- (a) The head of the Using Department in the area most directly affected by the need for professional services shall determine, in the first instance, the need for professional services to the appropriate approving authority, as provided herein.
- (b) If the funds necessary for acquisition of professional services have not previously been budgeted and appropriated by the Board, the Using Department shall prepare a request for such action and forward it to the County Administrator for approval and presentation to the Board. The Board shall either approve or disapprove the request, in whole or in part. Approval shall constitute authorization for the Using Department to obtain the identified professional services, in accordance with this article.
- (c) When the Board approves a request, as provided in subparagraph (b), or when the funds for professional services have already been included in a Using Department's budget and appropriated in accordance with that budget, such services may be acquired by an approving authority as follows:
 - (1) Professional services estimated to cost less than eighty thousand dollars (\$80,000) shall be obtained by the head of the using department or his designee by obtaining a written proposal from the firm. Proposal information shall be forwarded to the Procurement Division for review and approval.
 - (2) Professional services estimated to cost eighty thousand dollars (\$80,000) or more, shall be obtained only by the issuance of a written RFP pursuant to § 2.2-4302.2 (4).

3. Format for RFP.

RFPs for professional services shall be pursuant to VPPA 2.2-4302.2 et. seq, as amended.

4. Distribution of RFP; advertising for prospective offerors.

The person charged with responsibility for the RFP for professional services shall ensure that

it is widely-distributed among persons and firms reasonably able to provide the required services, pursuant to the VPPA 2.2-4302.2 2.2-4302.2 et. seq, as amended.

5. Receipt and handling of proposals.

Proposals submitted under this section shall be dated and the time received shall be recorded thereon. Proposals shall not be publicly opened nor disclosed to any person not a member of the evaluation committee referred to in Section VII, Paragraph 7, except the County Administrator or County Attorney or their designees. Nothing contained in any offer shall be open for public inspection until such time as an award has been made, except as may be otherwise required by the Virginia Freedom of Information Act, Code of Virginia, § 2.2-3700 *et seq.*

6. Evaluation of proposals.

- (a) Following distribution of the RFP under this section, the approving authority shall appoint an evaluation committee, which shall review and evaluate any proposals which are received and prepare a recommendation to the approving authority.
- (b) The evaluation committee shall evaluate proposals solely on the basis of the evaluation factors, which were set out in the RFP.

7. Discussions with offerors.

- (a) The evaluation committee appointed pursuant to this article shall conduct individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. The offeror shall be encouraged on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror.
- (b) The evaluation committee may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with Virginia Code § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors.
- (c) For architectural or engineering services, the evaluation committee shall not request or require offerors to list any exceptions to proposed contractual terms and conditions until after the qualified offerors are ranked for negotiations.
- (d) At the conclusion of discussion, on the basis of evaluation factors published in the RFP and all information developed in the selection process to this point, the evaluation committee shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.
- (e) A record shall be kept and maintained for a reasonable time of all such discussions.

- (f) No information may be conveyed to any offeror which was submitted by any other offeror in the conduct of discussions under this section.

Proposals may be modified or withdrawn at any time prior to the conclusion of the discussions entered into under this section.

8. Selection of best qualified offerors.

- (a) Following discussions provided for herein to determine the qualifications of the offerors, the evaluation committee shall select, in the order of their respective qualifications ranking, two or more acceptable offerors deemed to be the best qualified to provide the required services.
- (b) The evaluation committee shall forward its recommendations to the appropriate approving authority as provided in this paragraph, which authority shall select the best-qualified offeror.

9. Submission of cost or pricing data by selected offeror.

The offeror selected by the approving authority may be required to submit cost or pricing data to the person responsible for the preparation of the RFP at a time specified prior to the commencement of negotiations.

10. Negotiations with the selected offeror.

- (a) At the conclusion of the discussion phase, negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the County, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.
- (b) Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the RFP, the County may award contracts to more than one offeror.
- (c) Should the County determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

11. Award of contract/Notice of Award.

If a contract can be agreed upon with the best-qualified offeror pursuant to negotiations provided for above, the contract shall be awarded to that offeror.

12. Failure of negotiations to produce contract.

- (a) If a contract cannot be agreed upon between the County and the best-qualified offeror under this section, a written record stating the reasons therefor shall be placed in the file and the CFO or designee shall advise the offeror of the termination of negotiations.
- (b) Upon failure of negotiations to produce an acceptable contract, the County negotiator may enter into negotiations with the next most-qualified offeror as determined by the evaluation committee's recommendation to the approving authority under this section. If negotiations with such offeror again fail, the negotiator shall terminate the negotiations and commence them with the next most-qualified offeror.
- (c) If all negotiations fail to produce a contract with any of the three (3) most-qualified offerors, the evaluation committee may make additional recommendations to the approving authority.

13. Records of negotiations.

The CFO or designee shall keep detailed records of any negotiations which were entered into in accordance with any provision of this section.

VIII. DEBARMENT OR SUSPENSION OF PROSPECTIVE CONTRACTORS

1. Authority.

- (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the CFO personally, after consultation with the Using Department and the County Attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of three (3) years or less.
- (b) The CFO, after consultation with the Using Department and the County Attorney, shall have authority to suspend a person from consideration for award of contracts, if there is probable cause for debarment. The suspension shall be for a period of three (3) months or less.

2. Grounds.

The grounds for debarment or suspension pursuant to this section include the following:

- (a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- (b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor with the county.
- (c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
- (d) Violation of contract provisions, as set forth below, of a character which is regarded by the CFO to be so serious as to justify debarment action:
 - (1) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- (e) Any other cause that the CFO determines to be so serious and compelling as to affect responsibility as a contractor with the County, including debarment by another governmental entity.

3. Decision generally.

The CFO shall issue a written decision to debar or suspend. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the debarred or suspended person involved of his rights to review as provided in this section.

4. Copy of decision to be furnished to person involved.

A copy of the decision under Section VI, Paragraph 3, shall be mailed or otherwise furnished immediately to the debarred or suspended person.

5. Finality of decision; appeal.

A decision under this section shall be final, unless fraudulent or the debarred or suspended person appeals in writing to the County Administrator within fourteen (14) calendar days of notice of disbarment or suspension. The County Administrator shall conduct a hearing at which the debarred or suspended person may be present and present evidence. The decision of the County Administrator shall be final.