

# **PROCUREMENT POLICIES AND REGULATIONS OF STAFFORD COUNTY, VIRGINIA**



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## ARTICLE 1 GENERAL

### 1.1 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, services, construction, and insurance 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. The Policy shall also apply to all dispositions of surplus County property, other than real property.

### 1.2 Definitions

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

*Aggregate value* means the estimated total value of a purchase, calculated by adding together the contract costs and the sum of all possible phases and contract renewal terms, to arrive at a total contract value. Notwithstanding the foregoing, construction contracts may be separated into phases based on funding or scope requirements, and as approved by the Board.

*Best value* as the overall combination of quality, price, and various elements of required goods, services, insurance, and where permitted, construction, that in total are optimal relative to the County’s need, as predetermined in the solicitation.

*Board of Supervisors or Board* means the Board of Supervisors of Stafford County, Virginia, the governing body of Stafford County, Virginia.

*Change Order* means a written modification or amendment to a contract issued by the Procurement Division as authorized by this Policy, that changes the price of the contract, scope of the work, time of performance, or any other provision of the contract. Change orders may also be referred to as contract amendments.

*Construction* means 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, or any type of corporation, partnership, limited liability company, association, or sole proprietorship, association, or other organization or group of individuals, having or proposing a contract with the County.

*Contract(s)* means a legally binding agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. Contracts may include all types of agreements, regardless of what they may be called, for the procurement or disposal of goods, services, goods, insurance, or construction.

*Constitutional Officer* means the Stafford County, Virginia Sheriff, Clerk of the Circuit Court, Commonwealth’s Attorney, Commissioner of the Revenue, or Treasurer.

*Construction management contract* means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner and may also include, if provided in the contract, the furnishing of construction services to the owner.

*Complex project* means a construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes competitive sealed bidding not practical.

*County* or *County of Stafford* means Stafford County, Virginia, a political subdivision of the Commonwealth of Virginia, governed by the Board of Supervisors, and consisting of all of the County's authorized using departments, divisions, branches, sections, agencies, offices, boards, districts, and entities.

*County Attorney* or *County Attorney's Office* means the County Attorney of Stafford County, Virginia or his/her designee(s).

*Cooperative Procurement* means a purchase from another public body's contract made in accordance with Virginia Code § 2.2-4304(B), as amended.

*Design-build contract* means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, or other item specified in the contract.

*Field Purchase Order* means an alternate payment method in the County's financial system for purchases outside of the procurement process that may be used under certain infrequent or specific conditions.

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

*Invitation for Bids (IFB)* means a formal invitation document that is released to the public requesting bids for defined goods and services needed by a public body, to be provided in accordance with provisions defined in the IFB. This method of procurement is used when the requirements can be clearly defined, negotiations are not necessary, price is the major determining factor for award selection, and where required by law. An award is made to the responsible bidder submitting the lowest responsive bid.

*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 person or business who is engaged in the sale or lease of goods, or the sale of services, insurance, or construction, of the type to be procured, and who at such time is eligible and qualified in all respects to provide such goods or perform such services, 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 goods, services, insurance, or construction. Procurement includes all functions that pertain to the obtaining of any good, service, insurance, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract and all phases of contract administration.

*Procurement file* means a secure file, either in manual or electronic form, which contains all related documents of a specific procurement and maintained with controlled access within the Procurement Division or Using Department.

*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.

*Purchase Card (P-Card)* means a credit card assigned to and utilized by selected authorized users to purchase defined goods and/or services within established dollar thresholds.

*Purchase Order (PO)* means a procurement document issued to purchase goods, services, insurance, or construction.

*Request for Information* means a planning tool used to request and gather information primarily to assist in the development of a solicitation document.

*Request for Quotation (RFQ)* means an informal invitation document that is released to the public requesting quotations for defined goods, services, insurance or construction needed by a public body, to be provided in accordance with the provisions of the RFQ.

*Request for Proposal (RFP)* means a formal invitation document that is released to the public requesting proposals for goods, services, insurance, and when permitted construction, needed by a public body to be provided in accordance with the provisions of the RFP. This method of procurement is used when the requirements cannot be clearly defined, negotiations are necessary, price is not a major determining factor for award selection, and where required by law.

*Requisition* means a document or documents, in a form prescribed by the Chief Director of Financial Services or his/her designee, which constitutes demand by the Using Department for the provision of goods, services, insurance, or construction.

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

*Services* 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 \$10,000.

*Small Purchase Threshold* means when purchasing goods, services, insurance, or construction pursuant Virginia Code § 2.2-4303, *et seq.*, as amended, the dollar limit before which formal competition is required. Purchases below the Small Purchase Threshold may be procured without a formal Invitation for Bid or Request for Proposal; however, such purchases must be procured in accordance with this Policy. The Small Purchase Thresholds for the County are specified below:

<i>Small Purchase Threshold</i>	<i>Type of Commodity</i>
\$200,000	Goods, nonprofessional services, insurance, and non-transportation-related construction, if the aggregate value is not expected to exceed \$200,000.
\$25,000	Transportation-related construction, if the aggregate value is not expected to exceed \$25,000.
\$80,000	Professional services, if the aggregate value is not expected to exceed \$80,000.

*Sole Source* means a source of supply for goods, services, insurance, or construction that can only be practicably provided by a sole person or sole business.

*SWaM* means small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations.

*Using Department* means all County-authorized departments, divisions, branches, sections, agencies, offices, boards, districts, volunteer agencies, or entities that requisition goods, services, insurance, or construction with funds budgeted and appropriated by the Board of Supervisors.

### **1.3 Purpose and General Application**

- (a) The regulations contained in this Policy are promulgated pursuant to Stafford County Code Sec. 20-3 and Virginia Code §§ 15.2-1235, 2.2-4300(C), and 2.2-4302, to effectuate the purposes of those sections with regard to procurement and disposition of goods, services, insurance, and construction for the County.
- (b) Except as specifically provided in this Policy, all procurements of goods, services, insurance, and construction shall be made in accordance with the provisions of this Policy.
- (c) Unless provided by separate resolution, agreement, or other appropriate legal action by the Board, or as authorized by the Virginia Code, these regulations shall apply to procurements by any sanitary district, service district, authority, Constitutional Officer, or other entity of the County which, in whole or in part, uses funds budgeted and appropriated by the Board of Supervisors (collectively referred to as “County Entities”). County Entities shall comply with all aspects of the Policy, and shall be subject to all requirements of any other Using Department. In the event of a separate resolution, agreement, or action, or Virginia Code authority, such County Entities shall provide in all respects for their own procurement under such regulations as they may lawfully adopt.
- (d) 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.



#### **1.4 General Powers and Duties of the County Administrator**

- (a) In accordance with Virginia Code § 15.2-1543, the County Administrator shall be the purchasing agent for the County and shall be under the supervision and control of the Board of Supervisors for the faithful execution and performance of such function. He/she shall perform the purchasing function through the Department of Finance. He/she may delegate duties to the Chief Director of Financial Services or his/her designee.
- (b) The County Administrator shall establish and promulgate regulations in accordance with and implementing the Virginia Public Procurement Act, Virginia Code § 2.2-4300, *et seq.* (VPPA). All regulations shall be kept current, including references to state and federal law, which may be applicable to certain procurements or sales.
- (c) Regulations which may be promulgated by the County Administrator in accordance with subparagraph (b) immediately above shall be in effect from the date on which they are promulgated and may be amended, altered, or repealed by the County Administrator as he/she shall deem appropriate. However, copies of all such actions by the County Administrator with regard to such rules shall be immediately forwarded to the Board, which may overrule the County Administrator by a majority vote of the Board. The Board additionally reserves to itself the authority to amend, alter, or repeal any provision of the rules so promulgated.

#### **1.5 General Powers and Duties of Chief Director of Financial Services**

- (a) The Chief Director of Financial Services (“CDFS”) or his/her designee shall make all procurements and dispositions for the County in such manner and with such exceptions as may be provided for in this Policy. The CDFS shall have authority to transfer or trade goods between Using Departments and he/she shall have charge of the storerooms and warehouses of the County.
- (b) The CDFS or his/her designee shall interpret the meaning and application of this Policy. The CDFS or his/her designee may seek assistance from the County Attorney’s Office in rendering any decision or interpretation requested.
- (c) With approval of the County Administrator, the CDFS, shall develop and implement rules for the internal administration of the Department of Finance, Procurement Division (“Procurement Division”) including the method and manner of administratively processing requisitions, purchase orders, purchase cards, cooperative procurements, sole source and emergency procurements, solicitations, and surplus sales, and such other matters as may be provided herein.
- (d) The CDFS or his/her designee shall maintain complete records pertaining to the performance of the procurement and disposition functions assigned to him/her by this Policy.
- (e) The CDFS or his/her designee shall annually review County contract pricing, contractor performance, and compliance with contract terms; County buying processes and spending patterns; and seek opportunities to realize cost savings and increase efficient contract management.
- (f) The CDFS is 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. The CDFS may designate a person to be purchasing agent, who shall be employees of the Department of Finance, but such designation shall not be deemed to relieve the CDFS of responsibility for supervision and control of the procurement functions assigned to him/her by this Policy.

- (g) The Procurement Division Director shall perform such duties as may be assigned by the CDFS consistent with this Policy, and shall have charge of the Procurement Division.

#### **1.6 Equal Opportunity; SWaM**

- (a) The County shall not discriminate against any person on the basis of race, religion, color, sex, national origin, age, disability, status as a service-disabled veteran, political affiliation, or other basis prohibited by state law.
- (b) The County shall not discriminate against faith-based organizations.
- (c) Within the limits of the funds appropriated, and as required by Virginia Code § 2.2-4310, and the other applicable federal or state law, the CDFS shall cooperate with the Virginia Department of Small Business and Supplier Diversity in promoting the purposes of that department.

#### **1.7 Federally-Funded Purchases**

In addition to complying with all applicable laws of the Commonwealth of Virginia, County Ordinances and Resolutions, and this Policy, any procurement which involves the expenditure of federal funds must comply with the Procurement Standards set forth in the Code of Federal Regulations, 2 CFR §§ 200.318 – 327, and any amendments thereto, and any other applicable federal regulations, as well as any requirements of any federal grant or program, as applicable.

#### **1.8 General Requirements for Contracts; Legal Review**

- (a) All contracts shall be in a form prepared by the County and approved as to form by the County Attorney or his/her designee, and shall be individually prepared for a specific procurement. All such contracts and procurement documents shall incorporate provisions of this Policy by reference insofar as they may apply. Nothing contained herein shall prevent the use of a contract prepared by a vendor, if such contract complies with VPPA, and is approved by the County Attorney's Office.
- (b) All bids, 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.
- (c) All contracts shall be in the name of the Board or where appropriate, the entity which has independent statutory authority to enter into contracts.

#### **1.9 Signature Authority Thresholds for Contracts**

- (a) County officials and employees may execute contracts on behalf of the Board within the following thresholds, subject to budgeted and appropriated funds and approval of the Procurement Division:

<i>Total Contract Value</i>	<i>Authorized Signatory</i>
Less than \$50,0000	Director of the Using Department
\$50,000 – \$200,000	County Administrator or Deputy County Administrator
More than \$200,000	Board, signed by the County Administrator or his/her

	designated Deputy County Administrator
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- (b) Total contract value is the aggregate value of the contract, determined by calculating the total contract costs over the initial contract term and all possible renewal terms.
- (c) All contracts shall be in a form approved by the County Attorney's Office prior to execution.

#### **1.10 Methods of Procurement**

Unless otherwise exempted by this Policy, competition is required for the purchase of all goods, services, insurance, and construction, as provided below.

##### **(a) Procurements of Less than \$10,000**

1. Procurements of goods, services, insurance, and construction estimated to have an aggregate value less than \$10,000 shall be made directly by the Using Department by obtaining a single quote on the open market, after having made such reasonable investigation into price and other terms as may be necessary by law and to protect the interests of the County.
2. Purchases shall be made using the Purchase Card if a vendor accepts it. If a vendor does not accept the Purchase Card, a Field Purchase Order, entered in accordance with Department of Finance policies, or a requisition for Purchase Order shall be entered.

##### **(b) Procurements of \$10,000 or More but Less Than \$50,000**

1. Except as otherwise provided in this Policy, procurements of goods, services, insurance, and construction estimated to have an aggregate value between \$10,000 and less than \$50,000 shall be made directly by the Using Department.
2. The Using Department shall solicit at least three written price quotations by mail, telephone, fax, electronic mail, or other means. The Using Department shall seek participation from SWaM vendors and Stafford County businesses (if available). A record shall be kept of specifications/statement of needs, quotes solicited, quotes received, and justification for vendor selected.
3. A requisition for Purchase Order shall be entered unless the Procurement Division authorizes use of the Purchase Card for these purchases.

##### **(c) Procurements of \$50,000 or More but Less Than \$200,000**

1. Except as otherwise provided in this Policy, procurement of goods, services, insurance, and construction estimated to have an aggregate value between \$50,000 and less than \$200,000 shall be made directly by the Procurement Division by obtaining competitive quotes on the open-market by soliciting at least three price quotations by mail, telephone, fax, electronic mail, or other means. Procurement may also solicit by posting a Request for Quotes (RFQ), unless an administrative exemption is authorized by Procurement delegating the informal purchase to the using department.
2. If a Request for Quote is issued, the Procurement Division shall post the RFQ publicly on the County's Procurement Division website, and/or the Commonwealth of Virginia Department of General Services' central electronic procurement website, and/or other means.
3. The Procurement Division will seek participation from SWaM Vendors and Stafford County businesses (if available). The Using Department shall submit a list of any known bidders/offerors to the Procurement Division in order to maximize competition. A record

shall be kept of specifications/statement of needs, quotes solicited, quotes received, and justification for vendor selected.

(d) Procurements of \$200,000 or More

1. Procurements of goods, services, insurance, and construction estimated to have an aggregate value of more than \$200,000, shall be procured by competitive sealed bidding or competitive negotiations, or as otherwise permitted by this Policy.
2. The Procurement Division shall post the solicitation publicly on the Commonwealth of Virginia Department of General Services' central electronic procurement website or the County's Procurement Division website. Requests for Proposals must also be advertised in a newspaper of general circulation in the area in which the contract is to be performed if the Commonwealth of Virginia Department of General Services' central electronic procurement website is not used for the public posting.
3. The Procurement Division will seek participation from SWaM Vendors and Stafford County businesses (if available). The Using Department shall submit a list of any known bidders/offerors to the Procurement Division in order to maximize competition.

(e) Contract Splitting Prohibited. The procurement of goods, services, insurance, or construction, as required by this Policy, shall not be artificially divided or split among procurement transactions in order to avoid competition or to reduce the perceived aggregate value of the transaction. The Procurement Division will assist Using Departments in evaluating the use of proper procurement methods. Using Departments shall provide the Procurement Division with budget information, records of past expenditures, or other related information upon request.

## **1.11 Procurement of Construction**

- (a) The preferred method of procuring construction is by the competitive sealed bidding procedures set forth in Article 4 of this Policy. Notwithstanding the foregoing, non-transportation-related construction may be procured by the methods of procurement listed in Paragraph 1.10 (a) – (c), if the sum of all phases is not expected to exceed \$200,000. Transportation-related construction may be procured by the methods of procurement listed in Paragraph 1.10 (a) and (b), if the sum of all phases is not expected to exceed \$25,000.
- (b) Construction may be procured by competitive negotiation upon a written determination made in advance by the CDFS that competitive sealed bidding is either not practicable or not fiscally advantageous to the public:
  1. For a fixed-price design-build or construction management contract; or
  2. For the construction of highways and any draining, dredging, excavation, grading, or similar work upon real property.
- (c) A record detailing the basis of the CDFS's determination to use competitive negotiation shall be made and maintained in the procurement file.
- (d) Construction projects may also be procured under the Public-Private Transportation Act of 1995 (PPTA), Virginia Code § 33.2-1800, *et seq.*, the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA), Virginia Code § 56-575.1, as set forth in the respective County PPTA and PPEA policies, or Construction Management or Design-Build Procedures set forth in Article 7 of this Policy.
- (e) See Article 7 for additional requirements for construction.

#### **1.12 Procurement of Professional Services**

- (a) Professional services estimated to have an aggregate value exceeding \$80,000 shall be by competitive negotiation pursuant to Article 6 of this Policy. Professional services estimated to have an aggregate value that does not exceed \$80,000 may be obtained by the head of the Using Department or his/her designee by obtaining a written proposal from the firm. Proposal information shall be forwarded to the Procurement Division for review and approval.
- (b) Additional requirements for professional services are provided in Article 6 of this Policy.

#### **1.13 Procurement of Information Technology**

Procurements for Information Technology, hardware and/or software, new, upgrade, or additional system components, shall be reviewed and approved by the Department of Information Technology. IT Department personnel shall review and approve contracts for hardware and software in accordance with the Department of Information Technology's requirements.

#### **1.14 Joint and Cooperative Procurement**

- (a) In accordance with Virginia Code § 2.2-4304 and its exceptions, the County may purchase from another public body's contract even if it did not participate in the solicitation process, if the solicitation specified that the procurement was being conducted on behalf of other public bodies.
- (b) The County may participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more public bodies for the purpose of combining requirements to increase efficiency, reduce the cost of goods and services, or to reduce County administrative costs.
- (c) With exception for goods and services procured from the Commonwealth of Virginia Department of General Services (DGS) and software or hardware directly ordered from the Virginia Information Technology Agency (VITA), an executed Rider Agreement must accompany any cooperative purchase of goods or services.

#### **1.15 Sole Source Procurements**

- (a) Where services or goods are only practicably available from a single source, either because of legal requirements, specific patents or copyrights, peculiar qualifications and skills, technical specifications, or other reasons, such goods or services may be procured from the sole source.
- (b) It shall be the responsibility of the Using Department to justify the need for sole source procurement and shall complete the Sole Source Request Form.
- (c) Upon a determination from the Procurement Division that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competition. Once a contract is fully negotiated and executed, notice of the sole source procurement shall be posted on the County's Procurement Division website.
- (d) Approved sole source procurements shall be exempt from the regulations of this Policy for competitive bidding.

#### **1.16 Emergency Procurements**

- (a) In case of emergency, a contract may be awarded without competition, however, such procurement shall be made with such competition as is practicable under the circumstances.
- (b) For the purposes of this Policy, an emergency shall be deemed to exist when there is (i) a breakdown in any County service; (ii) at any time that goods, services, insurance, or construction

are needed for immediate use in work which may be essential to, or vitally affect, the public health, safety, or general welfare of the County and its inhabitants; or (iii) work undertaken under court order or in anticipation of court order.

- (c) If an emergency occurs during office hours, the Using Department shall complete the Emergency Justification Form and submit it to the Procurement Division. The Procurement Division will either procure goods/services directly or authorize the Using Department to do so.
- (d) If an emergency occurs after office hours, the Using Department shall procure necessary goods, services, insurance, or construction. The head of the Using Department shall forward the Emergency Justification Form and a requisition to the Procurement Division within 72 hours after the emergency situation. Emergency procurements exceeding \$200,000 shall be brought to the Board for ratification at its next regular meeting.
- (e) Notices of emergencies shall be posted on the County's Procurement Division website as soon thereafter as is practicable. If, upon subsequent review, the CDFS or designee 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 CDFS or his/her designee whenever possible.

#### **1.17 Contract Administration**

- (a) The Using Department shall, 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 Procurement Division of any such discrepancies. Failure to satisfactorily resolve any discrepancies that have been identified shall be brought to the attention of the Procurement Division. The Procurement Division will provide guidance to the Using Department and if deemed necessary will institute a formal complaint with the vendor. If satisfaction is still not forthcoming, the Procurement Division Director shall contact the County Attorney for further proceedings.
- (b) Notwithstanding any other provision of this Policy, separate contract administration may be procured for construction contracts.

#### **1.18 Requirements Contracts**

- (a) Requirements contracts, also known as blanket contracts, are contracts for goods and/or services, which are regularly required by Using Departments and used on an as-needed basis.
- (b) The Procurement Division Director may determine those goods and/or services which may be acquired by the County on requirements contracts for the use of one or more Using Departments, and may require any or all Using Departments to obtain such goods and/or services from such contracts.
- (c) The CDFS or his/her designee 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 requirements contract.
- (d) Any such contract shall be subject to the requirements for competition which are applicable to the estimated value of such contract. Requirements contracts shall never exceed the appropriated funds available for the types of goods or services available to the Using Department(s).

- (e) It shall be the responsibility of the head of the Using Department to ensure that no unauthorized purchases are made against any properly awarded requirements contract, and he/she shall report any unauthorized purchase to the Procurement Division Director, in accordance with this Policy.

#### **1.19 Contract Amendments**

- (a) Fixed-price contracts may include provisions for modification of the contract by issuance of a change order during performance, but no contract may be increased by more than 25% of the original amount of the contract award or \$50,000, whichever is greater, without the advance written approval by the Board of Supervisors.
  - 1. Change orders that do not increase the contract by more than 25% or \$50,000, whichever is greater, may be executed by the County Administrator or his/her designee.
  - 2. The CDFS or his/her designee may approve change orders which do not increase the contract by more than 2% or \$1,000, whichever is greater, so long as no individual change order or no aggregate amount of change orders exceed \$50,000.
- (b) Modifications or renewals of contracts shall be approved by the Procurement Division, which will issue a contract amendment memorializing the changes or renewal term.

#### **1.20 Demands for Payment**

Demands for payment made on open accounts for goods, services, or construction or emergency procurements, for which contracts have previously been awarded, shall be forwarded directly to the CDFS or his/her designee for review and payment.

#### **1.21 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 or proposer, upon request, shall be afforded the opportunity to inspect bid/proposal records within a reasonable time after the opening of all bids/proposals, but prior to award, except in the event that the County decides not to accept any of the bids/proposals and to reopen the solicitation. 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, vendor, 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, vendor 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. However, a bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (i) an entire bid or proposal, (ii) any portion of a bid or proposal that does

not contain trade secrets or proprietary information; or (iii) line item prices or total bid or proposal prices.

#### **1.22 Surplus and Trade-Ins**

- (a) The CDFS 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, in accordance with this Policy and as authorized by the Virginia Code.
- (b) The Using Department shall be required to complete the Surplus Property Form to certify what of its property is surplus and may be disposed of. The CDFS 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) Sales of surplus property shall be by electronic auction, competitive sealed bids, or by other method authorized by Virginia Code §§ 15.2-1235(C) and -1236. The CDFS shall determine which method is most appropriate and such decision shall be final.
- (d) 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 competitive procurement, provided that trade-ins are permitted in the solicitation. The County Administrator may promulgate additional rules governing in-house transfers and trades not inconsistent with this section.
- (e) When the head of the Using Department certifies to the CDFS that any property is irreparable or unsalvageable, the costs of storage are excessive, and 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 CDFS, 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 years, a complete written record of all such dispositions of property.
- (f) With exception for employees, whenever any person acquires surplus County property, such person is required to (i) remove the property from the County premises, (ii) execute a written agreement to indemnify and hold the County harmless from any and all liability which may be incurred during removal, and (iii) provide evidence of the existence of liability insurance covering the risks potentially involved and, if required by law, workers' compensation insurance.
- (g) County employees are prohibited from bidding on County surplus items for their personal use while on County work time and/or from a County computer or electronic device.
- (h) Animals especially trained for police work may be sold at a price of \$1 to the handler who last was in control of the animal. In addition, the immediate survivor of any full-time sworn law-enforcement officer who (i) was killed in the line of duty or (ii) died in service and had at least 10 years of service, may be permitted to purchase the service animal at a price of \$1. Any such sale shall not be deemed a violation of the State and Local Government Conflict of Interests Act (Virginia Code § 2.2-3100, *et seq.*).



## **ARTICLE 2**

### **ETHICS AND PUBLIC CONTRACTING**

#### **2.1 Applicability**

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.* (COIA), and by the VPPA.

Provisions of this section supplement, but do not supersede, other provisions of law including, but not limited to, COIA, 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 VPPA or COIA.

#### **2.2 Unauthorized Purchases**

- (a) Pursuant to Virginia Code § 15.2-1239, if any Using Department purchases or contracts for any goods 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 goods, 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 goods or services for any County Using Department shall be awarded until the CDFS or designee 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 CDFS or designee 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 Procurement Division Director or Procurement Division employees 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 is subsequently found to be an unauthorized purchase, and/or was not reviewed and/or approved by the Procurement Division Director.
- (h) A determination as to whether any procurement or disposition was unauthorized shall be made, in the first instance, by the Procurement Division Director. The Procurement Division Director shall report his/her finding(s) to the CDFS who shall consult with the County Attorney's Office. If the

CDFS 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 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.

## **2.3 Procurement Responsibilities**

- (a) 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 VPPA, Article 6 –Ethics in Public Contracting (Virginia Code § 2.2-4367, *et seq.*), COIA, and any other applicable federal, state and local law.
- (b) County employees having any involvement in a procurement transaction are expected to familiarize themselves with the requirements of VPPA, Article 6 –Ethics in Public Contracting, and COIA.
- (c) County employees having any involvement in a procurement transaction shall abide by the following ethical standards in accordance with applicable law:
  - 1. Except as permitted by COIA, 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 Division 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 particular contractors, vendors, and/or suppliers.
  - 6. County employees shall not disclose confidential information, unless disclosure is in accordance with Virginia Code § 2.2-4342, other applicable provisions of the Virginia Freedom of Information Act, Virginia Code § 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.

## **2.4 Personal Interests in Procurement Transactions**

Except as may be specifically allowed by COIA, 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 5%;
- (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.

## **2.5 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.

## **2.6 Kickbacks**

- (a) No vendor, 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 vendor, contractor or subcontractor 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 contractor, vendor, or subcontractor 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 IFB or RFP 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.

## **2.7 Prohibited Purchases of Building Materials, etc. by Architect or Engineer**

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

## **2.8 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 Virginia Code § 2.2-4377.

## **2.9 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.

## **2.10 Penalty for Violations**

Any person convicted of a willful violation of any provision of VPPA, Article 6 –Ethics in Public Contracting, 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.

## **ARTICLE 3 EXEMPTIONS**

### **3.1 Applicability**

Notwithstanding that any item may be exempt as a consequence of this paragraph, any expenditure of \$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.

### **3.2 Statutory Exemptions**

Article 3 of the VPPA and other applicable law provide specific exemptions from the VPPA and/or from competition for certain types of purchases. The following list includes purchases that are exempted statutorily from the provisions of the VPPA, however this list is not exhaustive and includes any other items deemed exempt by the Commonwealth of Virginia which are not specifically listed below.

- (a) Government Sources- Procurements from governmental sources. Purchases of services exceeding \$25,000 from another governmental agency shall be publicly posted on the County's Procurement Division website if listed on the Commonwealth of Virginia Department of Planning and Budget commercial activities list. The County also shall provide the opportunity for comment by or the submission of information from the private sector on each such intended purchase. Virginia Code §§ 2.2-614.4(C) and (D) and 2.2-4300 (B)
- (b) 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.
- (c) Children's Services Act ( Virginia Code § 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).
- (d) Community Services Boards (Virginia Code § 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).
- (e) 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).
- (f) Legal Services- Legal services shall include, but are 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).
- (g) Public Assistance and Social Services Programs (as defined in Virginia Code § 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).
- (h) Textbooks- Textbooks and electronic publications approved by the State Board of Education for use in public schools. Virginia Code § 22.1-238, *et seq.*
- (i) 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(A)(13), 2.2-4345(A)(13), 56-232.1, 33.2-330.

- (j) Virginia Juvenile Community Crime Control Act (Virginia Code § 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).

### **3.3 Administrative Exemptions**

Pursuant to Virginia Codes § 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 or competitive negotiation for single or term contracts, but shall comply with other applicable provisions of this Policy. These items may be solicited and contracted for by the Procurement Division Director as he/she deems appropriate. The list of exempt items may be amended by the Board whenever it deems it appropriate. The Procurement Division Director 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 Procurement Division Director that the item(s) are needed for special police work, including undercover police operations.
- (t) Tuition and training.
- (u) Travel, and related fees. (e.g. lodging, per diem, tolls, parking).
- (v) Used equipment purchased at a public or online auction (auction purchase requires written determination pursuant to Virginia Code § 2.2-4303(H)), or from another public body.
- (w) Wetland or stream mitigation credits from mitigation banks authorized by the U.S. Army Corps of Engineers and Virginia Department of Environmental Quality.

### **3.4 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) Insurance 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.

## **ARTICLE 4**

### **COMPETITIVE SEALED BIDDING**

#### **4.1 Applicability**

The following provisions shall apply to goods, services, construction, and insurance estimated to be \$200,000 or more, which shall be procured through competitive sealed bids, except as otherwise provided in this Policy.

#### **4.2 IFB Preparation; Provisions**

- (a) The Procurement Division shall prepare an IFB after obtaining requirements and a requisition from the Using Department. The IFB shall clearly, accurately, and completely state the provisions (terms and conditions) and technical and descriptive requirements of the procurement for the intended purpose. Specifications and scopes of work shall not be unreasonably restrictive, so as to not unnecessarily restrict competition, and shall allow for alternatives within reasonable levels and ranges as approved by the Using Department. The procurement must satisfy competitive bidding requirements and maximize competition.
- (b) IFB Format. IFBs shall include all pertinent documents, whether attached or incorporated by reference. An IFB shall generally be comprised of the following items, however the Procurement Division Director may require such other information as he/she deems appropriate and necessary:
  - 1. Bid Form;
  - 2. Instructions to Bidders (pertinent dates/times/locations);
  - 3. Site Inspection and Pre-Bid Conference Information, when necessary;
  - 4. General Provisions/Mandatory Provisions;
  - 5. Qualifications of Bidders (Experience, Certifications, Licenses);
  - 6. Specifications/Scope of Work;
  - 7. Special Provisions, when necessary;
  - 8. Pricing Schedule/Pricing Structure;
  - 9. Forms/Signature Page; and
  - 10. Other Pertinent Documents (Plans, Maps, Photos, Samples, etc.).
- (c) IFBs for construction shall be prepared by the Procurement Division in consultation with appropriate persons, including the end Using Department, architects, engineers and other consultants who may be employed by the County for the purposes of any project.

#### **4.3 Public Notice of IFB**

The Procurement Division shall solicit bids from prospective contractors by providing public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting public notice of the IFB on the County's Procurement Division website, the Commonwealth of Virginia Department of General Services' central electronic procurement website, or as otherwise required by law or this Policy. In addition, the Procurement Division Director 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 public notice may also be published in a newspaper of general circulation.



#### **4.4 Brand Names and Equal Products**

Unless otherwise provided in the IFB:

- (a) 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
- (b) 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 at the sole discretion of the Procurement Division Director in consultation with the Using Department.

#### **4.5 Preference for Energy-Efficient and Water-Efficient Goods**

When in the course of procuring goods, if two or more bids for products that are Energy Star certified meet Federal Energy Management Program (FEMP)-designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are WaterSense certified, the County may only select among those bids unless, before selecting a different bid, the County provides a written statement that demonstrates the cost of the products that are Energy Star certified, meet FEMP-designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are WaterSense certified was unreasonable.

#### **4.6 Prequalification of Bidders**

- (a) The Procurement Division Director is authorized to prequalify prospective contractors prior to any solicitation of bids for goods, services, or insurance by requiring prospective contractors to submit such information as the Procurement Division 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) See Article VI of the Policy for prequalification requirements for construction.

#### **4.7 Amendments to IFBs**

If changes or clarifications to an IFB are necessary, a written addendum shall be issued by the Procurement Division. In addition, the County may, but is not required to, consider extending the due date for receipt of bids.

#### **4.8 Performance and Payment Bonds**

- (a) Performance Bonds: the Procurement Division Director may require any successful bidder for goods or services to execute a performance bond in an amount equal to 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) Payment Bonds: the Procurement Division Director may require any successful bidder for goods or services to execute a payment bond in an amount equal to 100% of the price specified in the contract, conditioned upon the faithful payment of all persons who have and fulfill contracts that 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 of Virginia.

#### **4.9 Alternate Bids, Additives and Deductions**

- (a) Alternate Bids: If permitted in the IFB, a bidder may submit a bid that varies from the bid requirements. 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 bid may be considered when the alternate bid is in substantial compliance with the bid requirements, such as including a base bid amount. When an alternate bid is received that substantially varies from the IFB requirements and the Using Department determines that it is in the County's best interest to consider those variances, then the IFB must be cancelled, requirements revised, and a new IFB issued reflecting the revised requirements.
- (b) Additives and Deductions: If permitted in the IFB, a bidder may include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Unless otherwise specified in the IFB, whenever additive or deductive items are included in a bid, the low bid shall be based on the lowest bid price on the base contract without consideration of the additive or deductive bid items. The contract award shall include the base bid and any additive or deductive items may be added to or reduced from the scope of work and total contract price. Nothing herein, shall preclude the County from adding to or deducting from the scope of work after contract award.

#### **4.10 Bid Submissions**

Written sealed bids, where required by this Policy, shall be returned to the Procurement Division as instructed in the IFB. If electronic bid submissions are permitted, the appropriate method of submission shall be stated in an IFB; no bids shall be accepted via e-mail. If bids are required to be submitted in hardcopy, they shall be submitted in a sealed envelope 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.

#### **4.11 Opening Bids**

All bids, either electronic or hard copy, received by the due date and time shall be opened publicly, at the time and place designated in the IFB or any addendum issued thereto.

#### **4.12 Late Bids**

Bids which are received after the time designated in the IFB shall not be opened nor considered for contract award.

#### **4.13 Withdrawal of Bids**

- (a) Any bidder for goods, services, insurance, or construction, other than a contract for construction and maintenance of public highways, may withdraw its 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.

- (b) If a bid contains both clerical and judgment mistakes, a bidder may withdraw its 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.
- (c) The Procurement Division Director shall require, and so state in the IFB, the following procedure for withdrawal of a bid:
  - 1. The bidder must give notice in writing of its claim of right to withdraw its bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.
  - 2. 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.
- (d) If a bid is withdrawn, the lowest responsible and responsive remaining bid shall be deemed to be the low bid.
- (e) 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 bidder 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.
- (f) The Procurement Division will notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the Procurement Division Director 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 Procurement Division shall return all work papers and copies thereof that have been submitted by the bidder.
- (g) A bidder may appeal the decision of the Procurement Division Director in accordance with Article 8, section 8.2 of this Policy

#### **4.14 Evaluation of Bids**

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

#### **4.15 Procedure When Only One Responsive and Responsible Bidder**

In the event that only one responsive and responsible bid is received, the IFB may be canceled and the item(s) rebid, unless the Procurement Division Director 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.

#### **4.16 Tie Bids.**

- (a) When two or more responsible bidders submit bids, which are responsive and contain identical prices, preference shall be given to the bidder whose principal place of business is in Stafford County (“Stafford County bidder”). In the event that there is no Stafford County bidder, or that this does not resolve the tie, preference shall be given to the bidder whose principal place of business is in the Commonwealth of Virginia (“Virginia bidder”).
- (b) In the event that there is no Virginia bidder, or that this does not resolve the tie, preference shall be given to bidders that produce the goods or services in the Commonwealth of Virginia, otherwise the tie shall be decided by lot.
- (c) Whenever the lowest responsive and responsible 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 shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered.
- (d) Notwithstanding the provisions of subsections (a) and (b), 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.
- (e) For the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

#### **4.17 Waiver of Bid Informalities**

The Procurement Division Director may waive any informality in any bid; provided, however, a late bid shall not be considered an informality.

#### **4.18 Rejection of Bids**

The Procurement Division Director may reject any or all bids as deemed in the best interest of the County. A written record of the rejection, including reason(s) for it, shall be kept in the procurement file.

#### **4.19 Bids Exceeding Available Funds**

- (a) If the bid of the lowest responsive and responsible bidder exceeds the available funds for such project, then the Procurement Division Director or his/her designee may negotiate with the apparent low bidder in order to obtain a contract price within the available funding limits. Such negotiation may include, but is not necessarily limited to the following:
  - 1. Reduction of scope, goods, services, insurance, or construction procured;
  - 2. Adjustment of the bid price;
  - 3. Substitution of materials; and
  - 4. Changes in the period for project completion.
- (b) The conditions and procedures for such negotiations shall be as follows:

1. Procurement Division Director or his/her 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 Procurement Division Director or his/her 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. Procurement Division Director or his/her 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 shall be posted.
- (c) Notwithstanding the foregoing, the Procurement Division Director 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.

#### **4.20 Cancellation of an IFB**

Any IFB may be canceled when the Procurement Division Director 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 and kept in the procurement file.

#### **4.21 Contract Award**

- (a) The Procurement Division Director shall award a bid in whole or in part, to any bidder whose bid is determined to be the lowest responsive and responsible bid. Awards can be made by line item, by category, group, or by the overall lowest total cost, as set forth in the IFB. Specific line items, categories, or group may be deleted from award consideration if in the County's best interest.
- (b) Where provided in the IFB, the Procurement Division Director may award multiple contracts for the same procurement. Procedures for the utilization of multiple contractors shall be addressed in the IFB.
- (c) The contract(s) shall be awarded with reasonable promptness by written notice to the successful bidder(s). Nothing herein shall prevent the Procurement Division Director from giving notice of the intention to award to the apparent successful bidder, but such notice shall not constitute award

## **ARTICLE 5**

### **COMPETITIVE NEGOTIATION**

#### **5.1 Applicability**

The following provisions shall apply to the procurement of goods, services, insurance, and construction, as permitted in Article 1, Paragraph 1.11 (b), by competitive negotiation. Competitive negotiation procedures may be used when requirements cannot be clearly defined, negotiations are necessary, price is not a major determining factor for award selection, and as permitted by law. When required by this Policy or law, the CDFS or his/her designee, shall provide a written determination that competitive negotiation shall be required because competitive sealed bidding is either not practicable or not fiscally advantageous to the public.

#### **5.2 RFP Preparation**

- (a) The Procurement Division shall prepare a Request for Proposal (RFP) after the Using Department submits a requisition with requirements. The RFP shall (i) describe the County's requirements in general terms, and (ii) clearly describe the evaluation criteria to be used to evaluate proposals and award the contract(s).
- (b) RFP Contents. An RFP shall contain at least the following information:
  - 1. The type of goods or services required;
  - 2. A description of the work involved and its location;
  - 3. The type of contract and contract term;
  - 4. The date by which proposals shall be submitted;
  - 5. A statement that all proposals shall be in writing;
  - 6. A statement that information received will not be disclosed to other offerors during selection;
  - 7. A statement of the minimum information that the proposal must contain, to include, but not limited to, where appropriate:
    - i. The name of offeror and the location of the offeror's principal place of business;
    - ii. The age of the offeror's business and average number of employees over a previous period of time as may be specified;
    - iii. The abilities, qualifications, and experience of all persons who would be assigned to provide the required goods, services, insurance, or construction;
    - iv. A listing of other contracts under which goods, services, insurance, construction similar in scope, size, or discipline to the RFP's requirements were performed or undertaken within a previous, specified period of time, and a list of current references, including telephone numbers, and email addresses who may be contacted with respect to such contracts; and
    - v. A plan, giving as much detail as practical, explaining how the required goods, services, insurance, construction shall be performed or provided or of what they shall consist; and
  - 8. The RFP shall include the factors, including 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 may include, among other relevant things, the offeror's present workload, the applicability of prior experience, qualifications, methodology/approach and the suitability of the goods to meet the identified needs. RFPs for professional services shall not require the offeror's proposed compensation.

### **5.3 Public Notice of RFP**

- (a) The Procurement Division shall solicit proposals from prospective offerors by providing public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting public notice of the RFP on the County's Procurement Division website, the Commonwealth of Virginia Department of General Services' central electronic procurement website, or as otherwise required by law or this Policy. Requests for Proposals must also be advertised in a newspaper of general circulation in the area in which the contract is to be performed if the Commonwealth of Virginia Department of General Services' central electronic procurement website is not used for the public posting.
- (b) In addition, the Procurement Division Director may advertise the RFP by means of professional or trade publications. All notices shall be designed and intended to obtain as many offerors reasonably able to meet the requirements as possible.

### **5.4 Evaluation Committee**

Prior to issuing the RFP, the Procurement Division will work with the Using Department to establish an Evaluation Committee that shall review and evaluate proposals received in response to the RFP.

### **5.5 Amendments to RFP**

A written addendum shall be issued by the Procurement Division for necessary corrections, additions or deletions to the RFP.

### **5.6 Receipt and Opening of Proposals**

- (a) Proposals shall only be submitted to and received by the Procurement Division.
- (b) Proposals shall be dated, and, if received by the Procurement Division by hand delivery, delivery service, mail, or locked drop box, the time of receipt shall be recorded.
- (c) Proposals shall not be publicly opened or disclosed to any person that is not a member of the Evaluation Committee, non-voting technical advisors, or the Procurement Division, except the County Administrator, County Attorney, CDFS, or their designees.
- (d) Nothing contained in any offer shall be open for public inspection until such time as an award has been made, except as may be required by the Virginia Freedom of Information Act, Virginia Code § 2.2- 3700, *et seq.* and/or Virginia Code § 2.2-4342.

### **5.7 Late Proposals**

Proposals that are received after the date and time designated in the RFP or subsequent amendments shall be considered late and shall not be opened or considered.

### **5.8 Evaluation of Proposals**

The Evaluation Committee shall review and evaluate proposals and prepare a recommendation for the Procurement Division and Using Department. The evaluation criteria shall be set forth in the RFP and shall be strictly adhered to in the selection process.

### **5.9 Discussions with Responsible Offerors**

- (a) As provided in the RFP, discussions may be conducted with responsible offerors who submit proposals determined by the Evaluation Committee to have a reasonable chance of being selected for award. 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.
- (b) At the conclusion of the discussions, the Evaluation Committee shall select in the order of preference two (2) or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors stated in the RFP, including price if so stated in the RFP. Should the Evaluation Committee 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.

### **5.10 Negotiations**

- (a) The Procurement Division Director or his/her designee shall negotiate a contract with the selected offeror(s), for the required goods, services, insurance, or construction 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 the following:
  - 1. Making certain that the offeror has a clear understanding of the scope of the RFP, specifically the essential requirements involved in providing the required goods, services, insurance or construction;
  - 2. Determining that the offeror will make available the necessary personnel and facilities to perform services or construction, or provide the goods or insurance, in the required time; and
  - 3. 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 goods, services, insurance or construction required.

### **5.11 Record of Negotiations**

The Procurement Division shall keep detailed records of any negotiations that were entered into in accordance with this section. The record of these negotiations shall be kept in the procurement file.

### **5.12 Contract Award**

- (a) Award of a contract shall be made to the responsible offeror, who has made the best proposal and provides the best value to the County and with whom negotiations have been successfully completed, once approved by the Board of Supervisors.
- (b) The County Attorney shall be consulted with respect to the form and content of the contract with the selected offeror.
- (c) When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.



**5.13 Cancellation of RFP**

Any RFP may be canceled when the Procurement Division Director 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 and kept in the procurement file.

## **ARTICLE 6**

### **SELECTION OF PROFESSIONALS**

#### **6.1 Applicability**

Except as otherwise provided in the Policy, the following provisions shall apply to the procurement of professional services, which shall be procured by competitive negotiation as described in Article 5 of this Policy, as modified by the provisions of this Article 6.

#### **6.2 RFP Format for Professional Services**

An RFP shall be used to solicit professional services. The RFP shall specify the services needed and the factors which will be used in evaluating the proposal. Proposers shall not be required to submit estimates of costs or man-hours prior to the discussion phase, as further described in section 6.5 below.

#### **6.3 Receipt and Handling of Proposals**

Proposals submitted under this Article shall be dated and the time received shall be recorded. Proposals shall not be publicly opened nor disclosed to any person not a member of the Evaluation Committee, referenced in Article 5, except the County Administrator, County Attorney, CDFS, 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, Virginia Code § 2.2-3700, *et seq.*

#### **6.4 Evaluation of Proposals**

- (a) The Evaluation Committee shall review and evaluate any proposals which are received and prepare a recommendation to the Procurement Division and Using Department.
- (b) The Evaluation Committee shall evaluate proposals solely on the basis of the evaluation factors, which were set out in the RFP.

#### **6.5 Discussion with Offerors**

- (a) The Evaluation Committee shall engage in 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. Offerors shall be encouraged to elaborate on their qualifications and performance data and/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 Evaluation Committee in addition to the review of the professional competence of the offeror. Repetitive informal interviews shall be permissible
- (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, to move forward to the contract negotiation phase.
- (e) No information may be conveyed to any offeror which was submitted by any other offeror in the conduct of discussions under this section.
- (f) Proposals may be modified or withdrawn at any time prior to the conclusion of the discussions entered into under this section.

#### **6.6 Submission of Cost or Pricing Data**

The offerors recommended for selection by the Evaluation Committee may be required to submit cost or pricing data to the Procurement Division prior to the commencement of negotiations.

#### **6.7 Negotiations with Selected Offerors**

- (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 and on terms acceptable to the County.
- (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 Evaluation Committee 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.

#### **6.8 Records of the Discussion and Negotiation Phases**

The assigned Procurement Division Contracts Officer shall keep detailed records of any discussions or negotiations which were entered into in accordance with any provision of this Article in the procurement file.

#### **6.9 Failure of Negotiations to Produce Contract.**

- (a) If a contract cannot be agreed upon between the County and the best-qualified offeror, a written record stating the reasons therefor shall be placed in the procurement file and the Procurement Division shall advise the offeror of the termination of negotiations.
- (b) Upon failure of negotiations to produce an acceptable contract, negotiations may be entered 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, negotiations with that offeror shall be terminated and then commence with the next most-qualified offeror.
- (c) If all negotiations fail to produce a contract with any of the three most-qualified offerors, the Evaluation Committee may make additional recommendations to the Procurement Division and Using Department.

#### **6.10 Contract Award**

- (a) If negotiations with the best qualified offeror are successful, the contract should be awarded to that offeror.
- (b) Professional services estimated to cost or have a value of \$200,000 or more shall be contracted only with the approval of the Board of Supervisors, unless the Board specifically delegates this authority by Resolution. Having funds budgeted and appropriated does not supplant Board approval of the contract.

#### **6.11 Architectural and Professional Engineering Term Contract Limitations**

A contract for architectural or professional engineering services relating to multiple projects may be awarded if (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the RFP, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach \$10 million, whichever occurs first. The project fee for any single project shall not exceed \$2.5 million. Contract terms shall be limited to one year, with three optional one-year renewal terms. When an RFP indicates that one or more contracts may be awarded, the RFP shall contain procedures for the distribution of work amongst the firms. Such distribution procedures shall not require the selected firms to compete for individual projects based on price.

## **ARTICLE 7**

### **SPECIAL PROVISIONS FOR CONSTRUCTION CONTRACTS**

#### **7.1 Applicability**

The following provisions shall apply to the procurement of construction, which shall be procured in accordance with Article 1, Paragraph 1.11, as modified by the provisions of this Article 7.

#### **7.2 Applicability of State and Federal Law**

For contracts for construction of any building or for an addition to or improvement of an existing building for which State funds of \$50,000 or more, either by appropriation, grant-in-aid or loan, are used or to be used, all or part of the cost of construction shall be procured pursuant to competitive sealed bidding or competitive negotiation as provided in Paragraph 1.11(b). Other construction contracts which are subject to state and federal law, shall be governed by this Policy where they do not conflict with such state and federal law.

#### **7.3 Owner**

The owner of construction projects for the County shall be the Board of Supervisors of Stafford County, Virginia, and its officers and employees.

#### **7.4 Prequalification**

- (a) Pursuant to Virginia Code § 2.2-4317, any prequalification of vendors for construction shall be pursuant to a written prequalification process adopted by the County.
- (b) The application form for prequalification shall set forth the criteria upon which the qualifications of vendors shall be evaluated. The application form shall only request information as is appropriate for an objective evaluation of all vendors under such criteria. Such form shall show the vendor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the vendor may be considered a trade secret or proprietary information if designated in accordance with subsection D of Virginia Code § 2.2-4342. However, a bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (i) an entire prequalification application; (ii) any portion of a prequalification application that does not contain trade secrets or proprietary information; or (iii) prequalification application price.
- (c) Advance notice shall be given of the deadline for the submission of prequalification applications and shall be sufficiently in advance of the date set for the submission of bids so as to allow the established prequalification process to be accomplished.
- (d) At least thirty (30) days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Procurement Division shall notify, in writing, each vendor who has submitted a prequalification application, whether the vendor has been pre-qualified. In the event that a vendor is denied prequalification, the written notice to the vendor shall state the reasons for the denial of prequalification and the factual basis of such reasons. A decision denying prequalification under the provisions of this subsection shall be final and conclusive unless vendor appeals the decision as provided in Article 8.

- (e) The Procurement Division Director may deny prequalification if it finds one of the following:
1. The vendor does not have sufficient financial ability to perform the contract that would result from the procurement. If a bond is required to ensure performance of a contract, evidence that the vendor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the vendor to perform the contract resulting from such procurement.
  2. The vendor does not have appropriate experience to perform the construction project in question.
  3. The vendor or any officer, director, or owner thereof has had judgments entered against them within the past 10 years for breach of contract for construction, including, but not limited to, design-build or construction management.
  4. The vendor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the County or other public bodies without good cause.
  5. The vendor or any officer, director, owner, project manager, procurement manager or chief financial officer thereof has been convicted of a crime related to construction or contracting within the last 10 years.
  6. The vendor or any officer, director, or owner thereof is currently suspended or debarred from bidding by the County, the state, or an agency of the federal government.
  7. The vendor failed to provide in a timely manner any information relevant to subsections 1 through 6 of this section requested by the Procurement Division Director.
- (f) 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.
- (g) 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.

### **7.5 Job Order Contracting**

- (a) Job Order Contracts (JOC) for construction are multi-year fixed unit-price contracts which provide for the issuance of task orders to accomplish smaller projects, including alterations, renovations, building repairs and parking improvements for County facility projects.
- (b) The Board may award a single JOC contract which provides for multiple task orders to accomplish construction projects up to \$500,000 per project. JOC contracts are subject to the limitations outlined in the VPPA.

### **7.6 Changes and Modifications to Construction Contracts**

- (a) A construction contract may include provisions for modification of the contract by issuance of a change order during performance, but no fixed-price contract may be increased by more than 25% of the original amount of the contract award or \$50,000, whichever is greater, without the advance approval of the Board of Supervisors.
- (b) Subject to the provisions of subsection 7.6(a), the signatory to the contract may execute written change orders provided:
1. No additional appropriations are required; and

2. Modifications or change order to contracts shall be approved by the Procurement Division, in concurrence with the Using Department, prior to commencement of work.
- (c) Unilateral modifications may be issued by the Procurement Division as provided in the construction contract.

### **7.7 Bid Bonds**

- (a) All bids or proposals for construction for \$100,000 or more shall be accompanied by a bid bond from a surety company that is authorized to do business in the Commonwealth of Virginia, certified check payable to the County, or irrevocable letter of credit, as a guarantee that if the contract is awarded to the bidder, the bidder will enter into the contract for the work specified in the bid. The amount of the bid bond, certified check, or letter of credit shall not exceed 5% of the bid amount.
- (b) The Procurement Division Director may require that each bidder on a competitively bid procurement for goods or services for \$100,000 or more submit with his bid a bid bond from a surety company that is authorized to do business in the Commonwealth of Virginia, a certified check payable to the County, or an irrevocable letter of credit, for a sum not to exceed 5% of the bid total, as a guarantee that the bidder will enter into a contract for the goods or services sought should the bidder be awarded the contract.
- (c) Noncompliance with this section shall require the rejection of the bid. Annual bid bonds may be accepted. 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.
- (d) 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 \$100,000.

### **7.8 Performance and Payment Bonds**

- (a) Performance Bonds: The Procurement Division Director shall require any bidder for a construction contract of \$100,000 or more to execute a performance bond in an amount equal to 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) Payment Bond: The Procurement Division Director shall require any successful bidder for a construction contract of \$100,000 or more to execute a payment bond in an amount equal to 100% of the price specified in the contract. Payment bonds shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work..
- (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 of Virginia.

### **7.9 Retainage**

Unless otherwise required by state or federal law, in any contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the County shall pay the contractor at least 95% of the earned sum when payment is due. The County may retain up to 5%

of the earned sum to assure faithful performance of the contract by the contractor. All amounts withheld by the County may be included in the final payment to the contractor.

#### **7.10 Construction Management Construction Contracts**

- (a) In accordance with the provisions of Virginia Code § 2.2-4382, the following procedures outline the standard two-step competitive negotiation process, as defined below, to be used when contracting for Construction Management (CM) construction contracts.
  - 1. CM as Agent - Alternate construction delivery method to competitive sealed bids. The County holds two contracts: a contract for professional architectural/engineering design services, and also a two-part contract with a CM as Agent Contractor. The CM as Agent Contractor sources subcontractors to complete 90% of the work. The County contracts with the subcontractors as the Owner, and the CM as Agent manages the work as agent for the County. CM must procure subcontracts by publicly advertised, competitive bidding to the maximum extent practicable. Work performed by wholly-owned subsidiaries of the CM shall be considered as self-performed.
  - 2. CM at Risk - Alternate construction delivery method to competitive sealed bids. The County holds two contracts: a contract for professional architectural/engineering design services, and also a two-part contract with the CM at Risk Contractor. The CM at Risk Contractor enters into subcontracts for 90% of the work, provides a guaranteed maximum price (GMP) for the construction and all related services, and is “at risk” for constructing the entire project within the agreed-upon GMP. CM must procure subcontracts by publicly advertised, competitive bidding to the maximum extent practicable. Work performed by wholly-owned subsidiaries of the CM shall be considered as self-performed.
- (b) Criteria and Approval for Use of CM Construction Contracts: CM construction contracts may be approved for use on projects where the project cost is expected to be less than the project cost threshold established in the procedures adopted by the Secretary of Administration for the Commonwealth of Virginia for utilizing CM construction contracts, provided that (i) the project is a complex project and (ii) the project procurement method is approved in writing by the Procurement Division Director or his/her designee and maintained in the procurement file. The writing shall be made in advance that competitive sealed bidding is not practicable or fiscally advantageous and such writing shall document the basis for the determination to utilize CM. These justifications for use of the CM method shall be included in the Request for Qualifications (RFQ) and in the procurement file.
- (c) CM Selection Procedures: The following procedures shall be used in selecting a CM and awarding a contract.
  - 1. Prior to making a determination as to the use of CM for a specific construction project, the County shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the County regarding the use of CM for the specific project and (ii) assist the County with the preparation of the Request for Proposal (RFP) and the evaluation of such proposals.
  - 2. Evaluation Committee: An evaluation committee shall be established which shall consist of at least three County staff members, including a licensed architect or engineer, either under the employment of the County or under contract with the County.
  - 3. Basis of Award: The basis of award of the contract shall be in accordance with Virginia Code § 2.2-4382 and price shall be a critical component of the selection process.



4. Selection of Qualified Offerors (STEP I): On projects approved for CM, the County shall conduct a prequalification process as follows to determine which offerors are qualified to receive RFPs:
  - i. The County shall prepare a Request for Qualifications containing the County's facility requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate Request for Qualifications responses and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. If required for the project, offerors shall have a licensed Class "A" contractor registered in the Commonwealth of Virginia as part of the project team.
  - ii. The Evaluation Committee shall evaluate each responding firm's Request for Qualifications responses and any other relevant information and shall determine those deemed qualified with respect to the criteria established for the project.
  - iii. The Request for Qualifications evaluation process shall result in a short list of three to five offerors to receive the RFP. If available, the short list shall include a minimum of one Virginia Department of Small Business and Supplier Diversity (DSBSD) Certified Small Business that meets the minimum requirements for prequalification. An offeror may be denied prequalification only as specified under Virginia Code § 2.2-4317, but the short list shall also be based upon the Request for Qualifications criteria.
  - iv. The Request for Qualifications evaluation process shall evaluate an offeror's experience for a period of 10 prior years to determine whether the offeror has constructed, by any method of project delivery, at least three projects similar in program, size and scope. Prior construction management experience or previous experience with the County shall not be required as a prerequisite for award of a contract.
  - v. At least 30 days prior to the date established for the submission of proposals, the County shall provide in writing to each offeror which sought prequalification whether that offeror has been prequalified. Prequalified offerors that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons. Notwithstanding the foregoing, the County reserves the right to reject all responses to the Request for Qualifications and cancel the RFP.
5. Selection of Construction Manager (STEP II):
  - i. The County shall send a RFP to the offerors on the short list and request submission of formal proposals. The criteria for award shall be included in the RFP.
  - ii. The Evaluation Committee will evaluate and rank the proposals based upon the criteria contained in the RFP. After evaluation and ranking of the proposals, the Evaluation Committee shall:
    - a. Conduct negotiations with two or more offerors submitting the highest ranked proposals; or
    - b. Should the Evaluation Committee 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 recommendation may be provided to negotiate and award a contract to that offeror.

- iii. The Evaluation Committee shall make its recommendation on the selection of a CM based on its evaluations and negotiations. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the RFP. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror. The award decision will be posted on the County's Procurement Division website.
- (d) With exception for infrastructure projects, construction management contract entered into by the County shall contain provisions requiring that (i) no more than 10% of the construction work, as measured by cost of the work, will be performed by the CM with its own forces and (ii) the remaining 90% of the construction work, as measured by the cost of the work, be performed by subcontractors of the CM, which the CM shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable.

### **7.11 Design-Build Contracts**

- (a) In accordance with the provisions of Virginia Code § 2.2-4382, the following procedures outline the standard two-step competitive negotiation process, as defined below, to be used when contracting for Design-Build (D-B).
- (b) D-B Selection Procedures: The following procedures shall be used in selecting a D-B firm and awarding a contract.
  - 1. Prior to making a determination as to the use of D-B for a specific construction project, the County shall have in its employment or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the County regarding the use of D-B for the specific project and (ii) assist the County with the preparation of the RFP and the evaluation of such proposals.
  - 2. A written determination made in advance by the Procurement Division Director or his/her designee that competitive sealed bidding is not practicable or fiscally advantageous and such writing shall document the basis for the determination to utilize D-B. These justifications for use of the D-B method shall be included in the Request for Qualifications and maintained in the associated procurement file.
  - 3. Evaluation Committee: An Evaluation Committee shall be established, consisting of at least three County staff members, including a licensed professional architect or engineer, either under the employment of the County or under contract with the County.
  - 4. Basis of Award: The basis of award of the contract shall be in accordance with Virginia Code § 2.2-4382 and price shall be a critical component of the selection process. The County may seek guidance on methods for award from the Commonwealth of Virginia's Division of Engineering and Buildings Construction and Professional Services Manual (CPSM).
  - 5. Selection of Qualified Offerors (STEP I): On projects approved for D-B, the County shall conduct a prequalification process as follows to determine which offerors are qualified to receive RFPs:
    - i. The County shall prepare an Request for Qualifications containing the County's facility and construction requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate Request for Qualifications responses and other relevant information, including any unique capabilities for qualifications that will be required of the contractor. All offerors shall have a licensed Class "A" contractor and

an architect or engineer registered in the Commonwealth of Virginia as part of the project team.

- ii. The Request for Qualifications shall be posted on the Commonwealth of Virginia Department of General Services' central electronic procurement website, and on the County's Procurement website at least 30 days prior to the date set for receipt of qualification proposals.
  - iii. The Evaluation Committee shall evaluate each responding firm's Request for Qualifications responses and any other relevant information and shall determine which offerors are fully qualified and suitable for the project.
  - iv. The Request for Qualifications evaluation process shall result in a short list of three to five offerors to receive the RFP. If available, the short list shall include a minimum of one Virginia Department of Small Business and Supplier Diversity (DSBSD) Certified Small Business that meets the minimum requirements for prequalification. An offeror may be denied prequalification only as specified under Virginia Code § 2.2-4317, but the short list shall also be based upon the Request for Qualifications criteria.
  - v. The Request for Qualifications evaluation process shall evaluate an offeror's experience for a period of 10 prior years to determine whether the offeror has constructed, by any method of project delivery, at least three projects similar in program, size and scope.
  - vi. At least 30 days prior to the date established for the submission of proposals, the County shall provide in writing to each offeror which sought prequalification whether that offeror has been prequalified. Prequalified offerors that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons. Notwithstanding the foregoing, the County reserves the right to reject all responses to the Request for Qualifications and cancel the RFP.
6. Selection of Design-Build Contractor (STEP II):
- i. The County shall send a RFP and request submission of formal proposals. The criteria for award shall be included in the RFP.
  - ii. Sealed Technical Proposals and separately-sealed Cost Proposals shall be submitted to the County in accordance with the requirements stated in the RFP. Sealed Cost Proposals shall be secured by and kept sealed until evaluation of the Technical Proposals and the design adjustments are completed by the Evaluation Committee.
  - iii. The Evaluation Committee will evaluate the Technical Proposals based on the criteria contained in the RFP. In addition, the County may require that offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the Evaluation Committee during design development.
  - iv. Based on the adjustments made to the Technical Proposals, the offeror may amend its Cost Proposal. In addition, an offeror may submit cost modifications to its original sealed Cost Proposal which are not based upon revisions to the Technical Proposals.
  - v. The Evaluation Committee shall evaluate (and rank if technical rankings are to be considered as a criterion for award) the technical proposals. Should the Evaluation committee 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, they may recommend that a contract be negotiated and awarded to that offeror. Otherwise, the County shall open the cost proposals and apply the criteria for award as specified in the RFP.

- vi. The Evaluation Committee shall make its recommendation for the selection of a D-B based on its evaluations of the technical and cost proposals and all amendments thereto. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the RFP. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror. The award decision will be posted on the County's Procurement Division website. Upon request, documentation of the process used for the final selection will be made available to the unsuccessful offerors.

## **ARTICLE 8**

### **LEGAL ACTIONS AND REMEDIES**

#### **8.1 Ineligibility of Bidder, Offeror, or Contractor**

- (a) Any bidder, offeror, or contractor refused permission to participate, or disqualified from participating in public contracts shall be notified in writing by the Procurement Division Director.
- (b) Prior to the issuance of a written determination of disqualification or ineligibility, the Procurement Division Director shall (i) notify the bidder, offeror, or contractor in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder, offeror, or contractor an opportunity to inspect any documents that relate to the determination, if so requested by the bidder, offeror, or contractor within five business days after receipt of the notice.
- (c) Within 10 business days after receipt of the notice, the bidder, offeror, or contractor may submit rebuttal information challenging the evaluation. The Procurement Division Director shall issue his/her written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the Procurement Division received such rebuttal information.
- (d) This decision shall be final unless the bidder, offeror, or contractor appeals the determination within 10 calendar days after receipt of the decision in accordance with Virginia Code § 2.2-4364.
- (e) If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

#### **8.2 Appeal of Denial of Withdrawal of Bid**

- (a) A decision by the Procurement Division Director denying withdrawal of a bid pursuant to Article 4, section 4.14 of this Policy shall be final and conclusive unless the bidder appeals the decision within 10 calendar days after receipt of the decision in accordance with Virginia Code § 2.2-4364.
- (b) If no bid bond was posted, a bidder whose request to withdraw their bid was denied, shall, prior to appealing, deliver a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid to the Procurement Division. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- (c) If, upon appeal, it is determined that the decision to deny withdrawal of a bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the IFB, the sole relief shall be withdrawal of the bid.

#### **8.3 Appeal of Determination of Nonresponsibility**

- (a) Following public opening and announcement of bids received on an IFB, the Procurement Division shall evaluate the bids and determine whether the apparent low bidder is responsible. If the Procurement Division Director determines that the apparent low bidder is not responsible, it shall proceed as follows:
  - 1. The Procurement Division Director shall notify the apparent low bidder in writing of the results of the evaluation, disclose the factual support for the determination, and allow the

apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder, within five business days after receipt of the notice.

2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Procurement Division Director shall issue a written determination of responsibility based on all information in the possession of the County, including any rebuttal information, within five business days of the date the rebuttal information is received. At the same time, the Procurement Division Director shall notify, with return receipt requested, the bidder in writing of his/her determination of nonresponsibility.
- (b) Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 business days to the County Administrator or his/her designee. The County Administrator or his/her designee shall issue a written decision within 10 business days of receipt of the appeal. The decision of the County Administrator shall be final, unless bidder appeals the decision in accordance with Virginia Code § 2.2-4364.
- (c) The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

#### **8.4 Protest of Award or Decision to Award**

- (a) Any bidder may protest the award or decision to award a contract by submitting a protest in writing to the County Administrator or his/her designee, no later than 10 calendar days after the award or the announcement of the decision to award is posted, whichever occurs first. If the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in the procurement file that are subject to inspection under Virginia Code § 2.2-4342, then the time within which the protest shall be submitted shall expire 10 calendar days after those records are available for inspection by such bidder or offeror under Virginia Code § 2.2-4342.
- (b) The written protest shall include the basis for the protest and the relief sought. No protest shall lie for a claim that the selected bidder is not a responsible bidder. The County Administrator or his/her designee shall issue a decision in writing within 10 calendar days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder appeals within 10 calendar days of receipt of the written decision from the County Administrator or his/her designee in accordance with Virginia Code § 2.2-4364.
- (c) Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this section shall not be affected by the fact that a protest or appeal has been filed.
- (d) An award need not be delayed for the period of time a bidder is allowed to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

#### **8.5 Contractual Disputes**

- (a) Any dispute concerning a question of fact as a result of the contract shall be decided by the County Administrator or his/her designee who shall render his/her decision in writing and mail or otherwise forward a copy to the contractor within 90 days of the receipt of the claim. The decision of the

County Administrator or his/her designee shall be final and conclusive unless the contractor appeals the decision in accordance with Virginia Code § 2.2-4364. The contractor may not institute a legal action, prior to receipt of the County Administrator's or his/her designee's decision on the claim, unless the County Administrator or his/her designee fails to render such a decision within the time specified.

- (b) The contractor's contractual claims, whether for money or other relief, shall be submitted in writing to the County Administrator or his/her designee no later than 60 days after the final payment; however, written notice of the contractor's intention to file such a claim shall have been given at the time of the occurrence or beginning of the work upon which claim is based. Nothing herein shall preclude the contractor from submission of an invoice for final payment within a certain amount of time after completion and acceptance of the goods or services. Pendency of claims shall not delay payment of amounts agreed due in the invoice for final payment.

### **8.6 Legal Actions**

- (a) No suit in law or equity based on any County contract may be filed against the County by any person or business, unless and until all statutory requirements and provisions have been met.
- (b) A contractor may bring an action involving a contract dispute with the County in the appropriate circuit court as specified in the Virginia Code. If a contractor initiates the County's dispute procedures specified in the solicitation or contract, those procedures shall be exhausted prior to instituting legal action, unless the Board of Supervisors agrees otherwise.
- (c) Nothing herein shall be construed to prevent the County from instituting legal action against a contractor.

### **8.7 Remedies**

- (a) If prior to an award the County Administrator or his/her designee determines that a decision to award a contract is arbitrary or capricious, 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 County Administrator or his/her designee makes the determination after contract award, that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County Administrator or his/her designee. Where the award has been made and performance has begun, the County Administrator or his/her designee may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. 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 County Administrator or his/her designee determines that a protest 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 of time during which a bidder or offeror may protest; provided that, in the event of a timely protest, no award shall be made unless the County Administrator or his/her designee 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.

- (e) Where the County determines, after a hearing held following reasonable notice to all bidders or proposers, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Virginia Code § 2.2-4367, the County may enjoin the award of the contract to a particular bidder or proposer.



## **ARTICLE 9**

### **DEBARMENT OR SUSPENSION**

#### **9.1 General**

- (a) The County may debar or suspend a person or business from contracting opportunities or from conducting business with the County to protect the County's interest and to protect the integrity of the County's procurement process from such person or business that displayed improper, unethical, or illegal conduct while contracting, or attempting to contract, with the County, based on sufficient documentation obtained that such conduct has occurred.
- (b) Suspension or debarment actions are discretionary actions. Suspension sanctions may be imposed for less serious offenses while debarment sanctions may be imposed for more serious offenses. The Procurement Division Director, in consultation of the CDFS, County Attorney, and Using Department, shall determine the sanction and time period of the sanction which shall be imposed against such person or business.
- (c) Based on the seriousness of the offense, the suspension period shall not exceed one year and the debarment period shall not exceed three years.
- (d) Suspension or debarment does not relieve the person or business of its responsibilities for any existing obligations to the County.

#### **9.2 Grounds**

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

- (a) Any conduct deemed improper or unethical by the Procurement Division Director, or deemed illegal conduct by law enforcement, while contracting with, or attempting to contract with, the County;
- (b) Failing to disclosure a condition constituting a conflict of interest by any officer, director, owner, or partner when responding to a solicitation;
- (c) Misrepresentation(s) in a bid or proposal to appear responsive or responsible;
- (d) Bribery or attempting to bribe a County employee(s) for procurement favors. Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future on a County employee(s) who has official responsibilities for public procurement;
- (e) A bidder, offeror, or contractor, who displays abusive or obscene language or displays threatening actions toward any County employee(s), agent(s), or volunteer(s), or member(s) of the public, during any procurement process or while performing under a County contract;
- (f) Refusal to fulfill a binding bid or proposal;
- (g) Refusal to fulfill a contractual requirement(s), resulting in a breach of contract;
- (h) Chronic documented unsatisfactory performance under a County contract, except where unsatisfactory performance was caused by acts beyond the contractor's control;
- (i) Non-compliance with a critical requirement under a County contract. A suspension sanction may be imposed upon a contractor as a temporary, less severe action, to allow such contractor to come into compliance with the contract. This temporary action may be used when in the best interest of the County;
- (j) Intentional invoicing for a good(s) or service(s) that was not provided;
- (k) Intentional overcharging for a good(s) or service(s) when established County contract pricing exists;

- (l) Demanding any kickback(s) from its suppliers, subcontractors, or competitors;
- (m) Falsifying County procurement-related documents;
- (n) Court judgment against any officer, director, owner, or partner finding a criminal offense involving a County procurement(s);
- (o) Court judgment against any officer, director, owner, or partner finding fraud against the County;
- (p) Court judgment against any officer, director, owner, or partner finding collusion involving a County procurement(s);
- (q) Court judgment against any officer, director, owner, or partner finding a violation of State or Federal antitrust law(s);
- (r) Conviction under any State or Federal statutes 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; or
- (s) Person or business that is under suspension sanction or debarment sanction from another public body. County sanctions will be imposed until such sanctions have expired or are lifted from such other public body 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.

### **9.3 Decisions and Appeals**

- (a) Debarment and suspension actions shall be in writing and shall describe the reasons for such action and the start date of the debarment or suspension. A written notice of pending action must be issued to such person or business, including information about the appeals process. Such notice shall be mailed certified/receipt requested or delivered in person and a receipt of the notice obtained from such person or business.
- (b) The County shall give such person or business that is accused of improper, unethical, or illegal conduct, an opportunity to appeal such debarment or suspension to the County Administrator within 14 calendar days after receipt of such notice. The County Administrator shall conduct an informal hearing within 10 calendar days at which the debarred or suspended person may be present and present evidence.
- (c) The County Administrator's decision on whether to uphold the suspension or debarment of such person or business shall be final.