

# COUNTY OF YORK

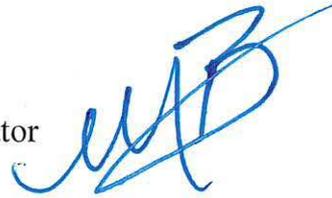
## MEMORANDUM

**DATE:** December 6, 2024

**TO:** York County Board of Supervisors

**FROM:** Mark L. Bellamy, Jr., County Administrator

**SUBJECT:** Updated Purchasing Ordinance



A public hearing has been scheduled for December 17, 2024, to consider updates to Purchasing Ordinance No. O24-20. Some of the proposed changes are required updates in accordance with the Virginia Public Procurement Act (VPPA). Other revisions include administrative changes for clarity, adjustments to Board approval limits to align with recent Board resolutions, and increases in approval limits to reflect budget growth and inflation. Below is a summary of the proposed substantive changes, along with the rationale for the recommendation. In addition to the changes summarized below, the County Attorney has recommended the existing purchasing ordinance be codified. Accordingly, a copy of the red-lined purchasing ordinance is attached in addition to the newly drafted code section. The codified version is organized slightly differently for consistency with the existing Code.

Article No.	Revision Proposed	Reason for Change
1-10	Raise the purchase threshold requiring Board of Supervisor approval for goods or services not previously included in the approved Capital Improvements Program (CIP) from over \$50,000 to over \$100,000; and raise the purchase threshold requiring Board of Supervisor approval for goods or services previously included in the approved Capital Improvements Program (CIP) from over \$100,000 to over \$250,000.	<p>Since the purchase authority limits were last updated in 2012, the County’s general fund operating budget has grown significantly, increasing by 54% from \$122 million to \$188 million in 2025. Similarly, the Capital Improvements Budget has grown over 200% increasing from \$7 million in 2012 to \$27 million in 2025. The proposed increase in purchase authority reflects this growth.</p> <p>Over the past decade, inflation and annual CPI adjustments have eroded the purchasing power of the original \$50,000 and \$100,000 limit. Updating the limit to \$100,000 and \$250,000 ensures that the authority keeps pace with current economic conditions and the rising costs of goods and services.</p>

		<p>Increasing the limit ensures our purchasing processes remain efficient and responsive to the county's growing operational needs, enabling us to better serve our community. The current \$50,000 limit often requires routine purchases and project awards to be placed on the Board agenda for approval, adding a delay of two weeks or more. Increasing the limit will streamline the approval process, enabling projects to move forward more quickly without compromising oversight as the County Administrator reviews all purchases over \$25,000.</p> <p>All purchases under the revised limit will continue to adhere to the Board-adopted budget, ensuring no additional spending beyond what has already been authorized and planned.</p> <p>Raising the limit will reduce administrative burden for both staff and the Board by eliminating the need for minor purchase approvals to undergo Board review, allowing the Board to focus on higher-level strategic decisions.</p>
1-10	<p>Increase the purchase threshold requiring Board of Supervisors' approval for a single vehicle, raising the limit from \$50,000 to \$75,000.</p>	<p>This change aligns with current Board actions for vehicle purchases under the Virginia Sheriff's Association cooperative contract, and purchases of Super-Duty vehicles, as well as recent model year price increases received from vehicle dealerships.</p>
1-12	<p>Add language to clarify signing authority for contracts and agreements</p>	<p>Clarifies who is authorized to sign procurement documents.</p>

2-1	Revision allows bidders to submit bids both electronically and in person.	To align with the VPPA and makes submitting bids easier for companies that may not be able to deliver their bid in person.
2-1	Revision allows cost of service to be considered as an evaluation criteria for Professional and other than Professional services.	The Purchasing Ordinance does not currently allow price information to be considered when evaluating responses to Request for Proposals. This addition will allow the County to consider price in addition to other evaluation criteria.
2-2	Revision allows offerors to submit proposals electronically and in person.	To align with the VPPA and streamlines submission requirements for companies.
3-5	Raise the single transaction limit for Purchasing Cards (P-Cards) from \$1,500 to \$2,500.	As stated above, the costs for goods and services have increased significantly over the past decade. Increasing the P-Card limit helps streamline procurement for everyday operational needs, ensuring timely and efficient purchases.
3-5	Language is proposed to allow for the use of Category B vendors for the purchase of Professional Architectural and Engineering Services through the use of the Commonwealth of Virginia's Department of General Services Division of Purchase and Supply (DGS/DPS).	The Category B procedure is specifically for smaller professional services projects not to exceed \$80,000. The Commonwealth has vetted firms to provide professional A&E services work for smaller projects so that an agency/entity would not have to go through a lengthy competitive procurement process to contract for these services.
3-6	Raise single project limit for architectural and professional engineering term contracts from \$500,000 to \$1,000,000.	Updated to keep pace with current economic conditions and the rising costs of goods and services.

7-4	A modification to the bonding requirements for indefinite delivery indefinite quantity contracts (IDIQ) is being made which will require the Contractor to furnish a bond in the amount of the <u>specific project</u> , as opposed to the sum of the annual cap for the total work that may be authorized under the contract.	This change will protect the County during its construction projects and will also ease the financial burden on a Contractor.
13-1 to 13-5	A new section for Construction Management Contracts is proposed to be added to the existing Design-Build Contracts section which includes definitions and procedures for both Contract Management Contracts as well as Design-Build Contracts.	To align with the VPPA
14-1	Revisions to State and Federally funded procurements details the processes and standard that are required to be followed in order to be in compliance with federal law for State and Federally Funded procurements.	Earlier this year, the Office of Management and Budget (OMB) revised the federal Uniform Guidance (2 CFR Part 200). Because OMB periodically changes their requirements, Article 14 Section 14.1 of the County's Purchasing Ordinance is being changed to <u>incorporate by reference</u> the CFR 200. This will make future changes to the Purchasing Ordinance easier to incorporate when future updates are made to the federal Uniform Guidance are made.

Please let me know if you have any questions or would like any additional information.

Dudley/3717

**PURCHASING POLICY**  
**AS APPROVED BY**  
**BOARD OF SUPERVISORS**  
**ORDINANCE NO 243-320**

## ARTICLE 1. OVERVIEW

- 1-1. Short Title: This ordinance may be cited as the York County Procurement Policy, and shall supersede and replace all prior versions.
- 1-2. Purpose: The purpose of this policy is to increase public confidence in purchasing by York County, to provide for fair and equitable treatment of all persons involved in public purchasing by the County, to maximize the purchasing value of public funds, to foster competition in the procurement process to the maximum feasible extent, and to provide for a centralized purchasing system of quality and integrity for the County.
- 1-3. Authority: This policy is adopted pursuant to §§ 2.2-4343(10) and 15.2-1231 of the Code of Virginia and ~~is intended to supersede~~supersedes the operation of the Virginia Public Procurement Act as it applies to the procurement actions of the departments, agencies, officers, and employees subject to this policy, except as required by Code of Virginia § 2.2-4343(A)(12).
- 1-4. Intent: This policy is intended to provide for centralized competitive purchasing and procurement from all non-governmental sources by all departments, officers, elements and employees of the County, including specifically, but not limited to, the York County School Board, the York-Poquoson Department of Social Services, Constitutional Officers, and the York County Library.
- 1-5. Application: Unless otherwise excepted, this policy shall apply to all procurements from non-governmental sources or contracts for the purpose of procuring goods, services, insurance, and construction involving the expenditure of public funds.
  - 1-5.1. When any procurement involves the expenditure of state or federal assistance, grant, loan, or contract funds the procurement shall be conducted in accordance with the procedures set forth in Article 14 of this policy, or any other mandatory federal or state requirements which are not reflected in this policy if the receipt of such funds is conditioned upon compliance with the mandatory procedures.
  - 1-5.2. This policy shall not prohibit compliance with the terms and conditions of any grant, gift, or bequest that are otherwise consistent with law.
  - 1-5.3. This policy shall not apply to contracts existing on its effective date and such contracts may be performed or extended according to their terms.
  - ~~1-5.3.~~1-5.4. Unless otherwise restricted by this policy, the Purchasing Agent may utilize competitive procurement methods that are consistent with the Virginia Public Procurement Act (VPPA) when in the best interest of the County.
- 1-6. Implementation: This policy shall be in effect immediately upon its passage.
- 1-7. Contracts or Purchases Made in Violation of this Policy: Except as provided herein, no official, elected or appointed, nor any employee, shall purchase or contract for any goods, services, insurance, or construction on behalf of the County. Any purchase or contract made contrary to the provisions of this policy shall be void, and the County will

not be bound thereby. Any person who makes such a procurement or disposition may be personally liable therefore to the vendor or purchaser of the goods, services, or construction involved. The Purchasing Agent shall not execute a purchase order if such procurement has not been in compliance with this policy and the procedures developed pursuant to it; unless, in the public's best interest, a circumstance warrants issuance of a purchase order, such circumstances to be documented in the procurement record.

- 1-8. Delegation of Authority to Purchasing Agent: The Purchasing Agent shall serve as the principal public purchasing official for the County and shall be responsible, under the supervision of the Board, for the procurement of all goods, services, insurance, and construction as well as the management and disposal of surplus materials. The Purchasing Agent may delegate authority to a duly authorized agent or agents. The authority of the Purchasing Agent shall specifically, but without limitation, include the authority to select the method of procurement to be used and the authority to negotiate and execute contracts on behalf of the County for any and all procurements or for the disposition of materials. The Purchasing Agent shall conduct all purchasing activities in accordance with the provisions of this policy.

If deemed by the Purchasing Agent to be in the County's best interest, regulations and procedures may be established that are more stringent than those specified in this policy.

The Purchasing Agent shall prepare forms and administrative regulations for the purpose of implementing the provisions of this policy. Such forms and regulations shall be deemed a part of this policy and shall direct the actions of those to whom this policy applies.

Documentation of competitive pricing or other documentation required by this policy, including a complete copy of the solicitation for competitive bids or proposals, shall be retained along with other papers related to the procurement in the office of the Division of Purchasing. The documentation may be retained electronically as may be permitted by the records retention guidelines promulgated by the Library of Virginia. Such documentation shall be retained until the acquisition of goods is completed or the services have been rendered and after such time may be destroyed in accordance with County and State procedures governing records retention.

The Purchasing Agent shall establish procedures to ensure that County interactions with potential ~~offerors~~ bidders, offerors and selected contractors are conducted in a fair and professional manner. The Purchasing Agent may, for the convenience of the County, maintain a bidders list containing the names of prospective offerors. The maintenance of such list shall not be construed as the acceptance of an obligation to notify any or all of the prospective bidders or offerors on such list of procurement transactions by the County.

- 1-9. Definitions: As used in this policy, the following words and phrases shall have the meanings set forth below:
  - 1-9.1. Approving Authority – the Board of Supervisors or the County School Board or the York-Poquoson Social Services Board, as appropriate.

- 1-9.2. Best Value - the overall combination of quality, price, and various elements of required services that in total are optimal relative to the County's needs, as predetermined in the solicitation.
- 1-9.3. Board or Board of Supervisors – the Board of Supervisors of York County, Virginia.
- 1-9.4. Business - any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.
- 1-9.5. Competitive Negotiation - a method of procurement defined in section 2-2.
- 1-9.6. Competitive Sealed Bidding - a method of procurement defined in section 2-1.
- ~~1-9.7.~~ Construction – building, altering, repairing, improving or demolishing any structure, building, or roadway, and any draining, dredging, excavation, grading or similar work upon real property, but generally does not apply to routine maintenance, repair, or operation (MRO) of existing real property, if the expected costs do not exceed \$50,000.
- ~~1-9.7.~~ 1-9.8. Construction contract – a contract relating to the construction, alteration, repair, or maintenance of a building, structure, or appurtenance to such building or structure, including moving, demolition, and excavation connected with such building or structure, or any provision contained in any contract relating to the construction of projects other than buildings.
- ~~1-9.8.~~ 1-9.9. Construction management contract – a contract in which a party is retained by the County to coordinate and administer contracts for construction services for the benefit of the County and may also include, if provided in the contract, the furnishing of construction services to the County.
- ~~1-9.9.~~ 1-9.10. Construction Manager at Risk (CMR) – a project delivery system where the Construction Manager, acting as the County's general contractor, is contracted to advise the designer and builder, and to deliver a project within a guaranteed maximum price (GMP).
- ~~1-9.10.~~ 1-9.11. County – the County of York, Virginia, a political subdivision of the Commonwealth of Virginia, and shall include all entities listed in section 1-4, above, and all other departments, public bodies corporate, agencies, sanitary districts and officers of the County to which this policy applies. It shall also include any other entity that has chosen to participate in this policy and has entered into a cooperative procurement agreement with the County.
- ~~1-9.11.~~ 1-9.12. County Administrator – the County Administrator of York County, or, a duly authorized designee.
- ~~1-9.12.~~ 1-9.13. Design-build contract – a contract between the County and another party in which the party contracting with the County agrees to both design and build the structure, or other item specified in the contract.
- ~~1-9.13.~~ 1-9.14. Employment services organization – an organization that provides employment services to individuals with disabilities.
- ~~1-9.14.~~ 1-9.15. Goods – all material, equipment, supplies, printing, and automated data processing hardware and software.
- ~~1-9.15.~~ 1-9.16. Informality – a minor defect or variation of a bid or proposal from the exact requirements of a solicitation for goods, services or construction, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

- ~~1-9.16.~~1-9.17. Job Order Contracting – a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities and specifications in the book as the basis of its pricing. The method of selection may be made either through competitive sealed bidding or competitive negotiation.
- ~~1-9.17.~~1-9.18. Multiphase professional service contract – a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.
- ~~1-9.18.~~1-9.19. Nonprofessional services – any services not specifically identified as professional services in the definition of professional services.
- ~~1-9.19.~~1-9.20. Offeror – unless expressly indicated otherwise, shall mean both a bidder, i.e., a person who submits a competitive sealed bid in response to an Invitation to Bid, or a person who submits a proposal in response to a Request for Proposals.
- ~~1-9.20.~~1-9.21. Potential bidder or offeror – a person who, at the time the County negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.
- ~~1-9.21.~~1-9.22. Professional Services – 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.
- ~~1-9.22.~~1-9.23. Purchasing Agent – the County Administrator of York County, Virginia, or any person designated by the County Administrator to implement all or a portion of this policy.
- ~~1-9.23.~~1-9.24. "Responsible bidder" or "Responsible offeror" means a person 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
- ~~1-9.24.~~1-9.25. "Responsive bidder" or "Responsive offeror" – a person who has submitted a bid or proposal that conforms in all material respects to the Invitation to Bid or Request For Proposals.
- ~~1-9.25.~~1-9.26. Reverse Auctioning - a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for opening
- ~~1-9.26.~~1-9.27. Services – any work performed by an independent contractor wherein the service rendered does not consist primarily of the acquisition of equipment or materials or the rental of equipment, materials, or supplies
- ~~1-9.27.~~1-9.28. State Code: The Code of Virginia

~~1-9.28.~~1-9.29. Using Agency – any officer, employee, or other entity of the County requiring any goods, services, insurance, or construction to be procured under the policies and procedures established by this policy.

1-10. Approvals.

- 1-10.1. All purchases in excess of \$25,000 shall be specifically approved by the County Administrator, or the Approving Authority's designee, prior to the placement of a firm order. Purchases of \$25,000 or less may be approved by the Purchasing Agent or its designee.
- 1-10.2. Purchases of goods or services not previously included in the approved Capital Improvements Program (CIP) in excess of ~~\$50,000~~\$100,000, and purchases of goods and services previously included in the approved CIP in excess of ~~\$100,000~~\$250,000, shall be specifically approved by the Board of Supervisors or the appropriate Approving Authority prior to placement of a firm order.
  - 1-10.2.1. Excluded from the above approval requirement set out in section 1-10.2 are:
    - 1-10.2.1.1. the purchase of vehicles, wherein the cost of a single unit does not exceed ~~\$5075,000~~
    - 1-10.2.1.2. the bulk purchase of fuels for the Department of Public Works
    - 1-10.2.1.3. the acquisition of Public Utility Services (Data Access services, phone ("land-line" only)/water/electricity/gas)
    - 1-10.2.1.4. annual software licensing or maintenance contracts when the initial software acquisition was approved by the Board of Supervisors or the appropriate Approving Authority, such purchases being subject to fund availability
    - 1-10.2.1.5. individual projects to be performed under an established Board approved annual services agreement for professional services
- 1-10.3. The Board shall be notified no later than the Board's next regular meeting of any purchases of goods and services previously included in the approved CIP that are in excess of ~~\$50,000~~\$100,000 but not more than ~~\$100,000~~\$250,000.
- 1-10.4. If Board approval is required, emergency or exigency purchases may be approved after the fact. The request for approval shall identify the method of price competition used in the procurement.
- 1-10.5. This policy is not intended to require review or approval by the Board of specific items procured by the York County School Board, the York-Poquoson Department of Social Services, the Constitutional Officers, the York County Library, or public bodies who have by agreement become subject to this policy, when sufficient funds have been appropriated to such entity or officer for the purpose of the procurement and this policy has been followed. The Purchasing Agent with regard to such entities and officers shall, however, by signing all purchase orders for such procurements prior to the placement of a firm order, certify compliance with this policy and procedures issued pursuant to it.

- 1-11. Contract Requirements and Legal Review: The terms and conditions of procurements in excess of \$25,000 shall be reviewed and approved as to form by the County Attorney prior to issuance by the Purchasing Agent. Contracts signed by all parties and containing, or incorporating by reference, all applicable terms and conditions shall be required for procurements of services, goods, or construction in excess of \$25,000. Whenever a contract, signed by all parties and containing, or incorporating by reference, all applicable terms and conditions is to be used in a procurement, it and all amendments and changes thereto shall be approved as to form by the County Attorney.
- 1-12. Authority to Sign Contracts and Agreements: All procurement contracts and agreement in excess of \$25,000 shall be specifically signed by the County Administrator or its designee, or the Approving Authority's designee, prior to the placement of a firm order. All procurement contracts and agreement of \$25,000 or less may be signed by the Purchasing Agent or its designee. Contracts, agreements, letters of engagement, specifically for legal services, may be signed by the County Attorney.

## ARTICLE 2: SOLICITATION PROCESS

2-1 Process for Competitive Sealed Bidding: The process for Competitive sealed bidding shall include the following elements:

2-1.1 Issuance of a written invitation to bid containing or incorporating by reference specifications and contractual terms and conditions applicable to the procurement. When it is impractical to prepare initially a purchase description to support an award based on price, an invitation to bid may be issued requesting submission of unpriced offers to be followed by an invitation to bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2-1.2 Public notice of the invitation to bid at least ten (10) calendar days prior to the date set for receipt of bids by posting a link to the solicitation on the county's website. In addition, bids may be solicited directly from potential offerors.

~~2-1.2~~2-1.3 Bidders shall submit bids in the manner specified in the Invitation For Bids ["IFB"]. When so specified, the County may allow submissions of bids through either electronic means or paper submission. Bids shall not be opened until the designated time specified in the IFB for the submission of bids.

~~2-1.3~~2-1.4 Public opening and announcement of all bids received.

~~2-1.4~~2-1.5 Evaluation of the bids based on requirements set forth in the invitation and the provisions of this policy. The following non-exhaustive list of factors shall be considered, in addition to price, when determining the lowest responsible bidder and the responsiveness of the bid:

- (a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required.
- (b) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
- (c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- (d) The quality of performance of previous contracts or services.
- (e) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service.
- (f) The sufficiency of financial resources and ability of the bidder to perform the contract or provide the service.
- (g) The quality, availability and adaptability of the goods or services to the particular use required.
- (h) The ability of the bidder to perform future maintenance and service for use of the subject of the contract.
- (i) The number and scope of conditions attached to the bid.

- (j) Any other condition or criteria included in the solicitation, its terms, conditions or the solicitation's instructions.

~~2-1.5~~2-1.6 Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided for in the invitation to bid, awards may be made to more than one bidder. In the event only one bid is received and the Purchasing Agent in consultation with the using agency makes a determination that it would not be in the best interest of the County to re-bid the procurement, such determination shall be in writing and shall be provided to the approving authority when approval by other than the Purchasing Agent is required.

2-2 Process for Competitive Negotiation: The process for Competitive Negotiation shall include the following elements:

2-2.1 Issuance of a written request for proposal (RFP) indicating in general terms what is sought to be procured and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the offeror. In addition, the RFP shall identify and list, in order of importance, the evaluation criteria that will be used in making a decision of award.

2-2.1.1 When soliciting for ~~Professional Services~~ Professional or other than Professional services, costs for services ~~shall not~~may be an evaluation criteria, ~~nor shall and the~~ The RFP may request ~~estimates of man hours or cost for service. At the discussion stage, nonbinding estimates of total project costs, including any cost or financial information, including~~ but not limited to, life-cycle costing and actual or nonbinding estimates of price for services may be discussed. Such cost or financial information may be negotiated during the discussion and negotiation stages.

2-2.2 Public notice of the request for proposal at least ten (10) calendar days prior to the date set for receipt of proposals by posting a link to the solicitation on the county's website. In addition, proposals may be solicited directly from potential offerors.

2-2.3 Offerors shall submit proposals in the manner specified in the Request For Proposals ["RFP"]. When so specified, the County may allow submissions of proposals through electronic means and/or paper submission. Proposals shall not be opened until the designated time specified in the RFP for the submission of proposals.

~~2-2.3~~2-2.4 Evaluation and Award:

~~2-2.3.1~~2-2.4.1 A panel shall be established by the using agency, and shall consist of a representative of the Purchasing Division, and not less than three County representatives to evaluate proposals and recommend award.

~~2-2.3.2~~2-2.4.2 On-the basis of the initial responses to and the evaluation factors identified in the RFP, at least two (2) offerors deemed to be the most qualified, responsible and suitable or having proposed the best solution for which the RFP was issued shall be selected. Individual discussions shall then be had with each such offeror. Repetitive discussions shall be permissible. Offerors shall be encouraged to elaborate on their proposed solution and/or qualifications, scope of work, performance data, or expertise pertinent to the proposed

project as well as any alternative concepts. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. Discussions may encompass non-binding estimates of total project costs, including, where appropriate, design, construction, and life cycle costs. Methods to be used in arriving at a price for services may also be discussed. Price of service may be discussed and considered but will not be the sole determining factor in proceeding with negotiations. The evaluation panel shall identify and rank at least two of the offerors with whom the Purchasing representative will negotiate.

~~2-2.3.2.1~~2-2.4.2.1 For professional services, negotiations shall be led by the Purchasing Division representative, 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 ~~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.

~~2-2.3.2.2~~2-2.4.2.2 For other than professional services, negotiations shall be led by the Purchasing Division representative, and may be conducted simultaneously with ~~different~~multiple offerors. Award shall be made to the offeror with whom negotiations, in the County's opinion, resulted in the best proposal and provides the best value.

~~2-2.3.3~~2-2.4.3 When the terms and conditions of multiple awards are so provided for in the request for proposal, awards may be made to more than one offeror.

~~2-2.3.4~~2-2.4.4 Should the County determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

~~2-2.3.5~~2-2.4.5 Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the County shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the County require awarding the contract.

- 2-3 Pre-Bid and Pre-Proposal Conferences: When deemed necessary by the Purchasing Agent, a pre-bid or pre-proposal conference with prospective bidders / offerors may be held prior to the date established for submitting a bid or proposal. Such conferences are for the purpose of detecting unclear provisions, removing or editing restrictive language, and in the discretion of the Purchasing Agent identifying alternative specifications, methods or means to the benefit of the County, or for increasing competition or providing greater value for the County. After such conference, when appropriate, the Purchasing Agent

may issue a written addendum to the solicitation, clarifying or revising specifications or other submittal and contract requirements. Bidders shall not rely upon any oral instructions.

- 2-4 Use of brand names: Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
- 2-5 Comments or Questions Regarding Invitations for Bid or Requests for Proposal: Should a prospective bidder or offeror find any discrepancy in, or omissions from, the specifications, request for proposal, or other contract documents, or should he be in doubt as to their meaning, he shall at once notify the specified contact person who may issue a written Addendum to the solicitation. The Addendum shall be made available in the same manner as the original solicitation documents were offered. Bidders shall not rely upon any oral instructions.
- 2-6 Offeror's Responsibilities: By submitting a bid or proposal an offeror agrees and warrants that it has examined all contract documents and, if appropriate, the subject of the contract, and where the specifications require a given result to be produced, that the specifications are adequate and the required results can be produced under the specifications in the contract. Omissions from the specifications shall not relieve the offeror from the responsibility of complying with the general terms and intent of the contract as indicated by the specifications. Once the award has been made, failure to have read all the conditions, instructions, and specifications of the contract will not be cause to alter the original bid, quote, or proposal, or for the offeror to request additional compensation.
- 2-7 Signatures on Offers or Bids: The firm, corporation, or individual name of the offeror must be signed to any proposals or bids submitted. In the case of a corporation, the title of the officer signing must be stated and each officer must be duly authorized. In the case of a partnership, the signature of at least one of the partners must follow the firm name using the term "member of the firm" or "general partner."

**ARTICLE 3: METHODS OF PROCUREMENT**

- 3-1 All contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.
- 3-2 Professional services shall be procured by competitive negotiation.
- 3-3 Goods, services other than professional services, and insurance may be procured by competitive sealed bidding or competitive negotiation.
- 3-3.1 Upon a written determination made in advance by the Purchasing Agent that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services. The basis for this determination shall be documented in writing.
- 3-4 Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances:
- 3-4.1 On a fixed price design-build or construction management basis as provided in Article 13 of this policy; or
- 3-4.2 For the construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made in advance by the Purchasing Agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the County, which writing shall document the basis for this determination.
- 3-5 Exceptions to Competition Requirements: Section 3-1 through 3-4.2 of this policy shall not apply and no price competition other than specified in this section is required in the following procurement transactions:
- 3-5.1 The purchase of items under procurement contracts made available to the County by the Commonwealth of Virginia or to purchases made available to the County through other state, federal, or public entities, or through a cooperative purchasing organization establishing cooperative contracts for the public sector and utilizing competitive methods consistent with this policy;
- 3-5.2 Contracts for legal services, expert witnesses, and other services associated with litigation, regulatory proceedings, or other legal matters;
- 3-5.3 Purchases for special police work when the Sheriff certifies that the purchases are needed for undercover law enforcement operations;
- 3-5.4 Contracts and purchases by the Economic Development Authority with respect to any item of cost of an “authority facility” or “facilities” as defined in § 15.2-4902 of the State Code;
- 3-5.5 Upon a determination by the Purchasing Agent in writing, which writing shall state the basis for such determination, 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. The Purchasing Agent shall conduct appropriate negotiations as to price, delivery, and terms. A record of the sole source procurement shall be maintained listing the contractor's name, the amount, and qualifying circumstances. The Purchasing Agent shall provide a copy of the written determination to the County Administrator or other appropriate Approving Authority when approval is required by Section 1-10 of this policy.

- 3-5.6 In cases of emergency or exigency provided, however, such procurement shall be made with such competition as is practicable under the circumstances. A written statement by the Purchasing Agent of the basis for the emergency or exigency and for the selection of the particular supplier shall be included in the papers relating to the procurement. The Purchasing Agent shall develop appropriate procedures regarding emergency or exigency purchases. The term "emergency" as used in this subparagraph means a situation where there exists a threat to public health, welfare, or safety or when an unforeseen circumstance causes disruption of an essential service. The term "exigency" as used in this subparagraph means that there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the County, and the use of competitive procurement proposals would prevent or unreasonably delay the procurement action required to address the situation.
- 3-5.7 Agreements or contracts entered into between the County and private parties for cost participation or cost sharing in the extension or construction of public utilities or the provision of other public services. Any such agreements must be approved by the Board.
- 3-5.8 Travel advances, travel reimbursements, or travel expenses;
- 3-5.9 Lodging and conference facilities, meals, beverages, entertainment, awards, or similar purchases in conjunction with official county functions or meetings.
- 3-5.10 Payments for services to jurors, board and commission members, sports officials, and medical examiners;
- 3-5.11 Contracts for local telephone service (excepting cellular and paging services), or other regulated utility services;
- 3-5.12 Interdepartmental or interagency expenses or purchases;
- 3-5.13 Contracts of employment;
- 3-5.14 Advertising and legal notices – [not to include advertising associated with marketing](#);
- 3-5.15 Dues and subscriptions;
- 3-5.16 Employee educational expenses;
- 3-5.17 Textbooks, library books, and other library items for circulation to, or use by students, acquired by the public schools;
- 3-5.18 Public library books and other library items for circulation to, or use by the public;
- 3-5.19 Services rendered to or payments received by clients of the Department of Social Services;
- 3-5.20 Foster home placements;
- 3-5.21 Treatment services provided to clients by the Department of Community Services;
- 3-5.22 Clinical supervision services for counselors in County employment;
- 3-5.23 Occupational therapy, physical therapy, student evaluations;

- 3-5.24 Mail and mail-related costs (e.g. postage meter expense, stamps, etc.), but not mailing equipment or non-governmental services;
- 3-5.25 Instructional/specialty educational materials, promotional items, crafts.
- 3-5.26 The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance and aggregates shall not be made by reverse auctioning.
- 3-5.27 Notwithstanding any other provision of this policy, upon a determination by the Purchasing Agent that the purchase of certain designated goods from a public auction sale is in the best interest of the County, such items may be purchased at auction sale. The Purchasing Agent shall document the basis for any such determination.
- 3-5.28 The purchase of goods or services that are produced or performed by:
- 3-5.28.1 Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired
- 3-5.28.2 Employment services organizations that offer transitional or supported employment services serving individuals with disabilities
- 3-5.29 Public assistance and social services programs as defined in § 63.2-100 of the State Code, community services boards as defined in § 37.2-100 of the State Code; services under the Children's Services Act (§ 2.2-5200 et seq. of the State Code) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq. of the State Code) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 2.2-4303 of the State Code.
- 3-5.30 Contracts for certain essential election materials and services.
- 3-5.31 The selection of services related to the management, purchase, or sale of authorized investments, including but not limited to actuarial service.
- 3-5.32 The procurement of goods and services not exceeding \$50,000, and not otherwise excluded from competition pursuant to section 3-5.1 through 3-5.31 shall be made as follows:
- 3-5.32.1 For purchases in the amount of \$5,000 or less, [a Purchase Order and](#) multiple quotes are not required; however, price reasonableness shall be considered prior to making a purchase.
- 3-5.32.1.1 Purchases ~~under \$1,500~~[of \\$2,500 or less](#) may be acquired using the County-provided credit card ("purchase card" or "(PCard)"). The use of a PCard includes the following stipulations:
- No cash advances (prohibited by security settings).
  - No 'Gift Card' purchases for Employee Recognition Program ~~(IRS regulations require taxes be withheld)~~. Any requests of that nature must be made on a purchase requisition form for coordination with the payroll office.
  - ~~No P~~[purchases of "equipment maintenance" or "lease agreements"](#). [These](#) services should ~~also~~ be requested on a purchase requisition form ~~(NOT on a PCard)~~ so that an accurate record of coverage can be maintained by staff.

- ~~No Cell phones should be requested on a purchase requisition form (NOT on a PCard) utilizing the appropriate contract.~~
  - The Purchasing Agent may allow for the use of a PCard in amounts greater than ~~\$1,500~~\$2,500 on an exception basis, when deemed to be in the County's best interest, and approved by the cardholder's department head or County Administration. All School Division spending parameter adjustments must be approved by the School Division's Chief Financial Officer.
- 3-5.32.2 For purchases in excess of \$5,000 but not greater than \$25,000, at least three suppliers shall be contacted. Written quotations or proposals shall be required.
- 3-5.32.3 For purchases in excess of -\$25,000 but not greater than \$50,000, the Purchasing Agent or his designee shall obtain quotes or proposals through an informal process, and whenever practical publish the quoting opportunity on the website utilized by the County for the posting of solicitations.
- 3-5.32.4 When a procurement transaction is made under Section 3-5.32 of this policy, the purchase shall be made from the Responsive and Responsible bidder quoting the lowest price, best value or proposing the most suitable solution, unless the Purchasing Agent documents in writing a determination that, in the best interest of the County, such purchase should be made from another supplier at a higher price. Such determination for purchases in excess of \$5,000 shall be approved by the County Administrator or the approving authority's designee.
- 3-5.32.5 Purchases that in the aggregate or in the sum of all phases are expected to be in excess of \$50,000 shall be made by either competitive sealed bidding or competitive negotiation.
- 3-5.32.6 No using agency shall artificially divide contract requirements so as to avoid any dollar limitations set forth in this policy.
- 3-5.32.7 Nothing in this policy shall prevent the use of competitive sealed bidding or competitive negotiation in procurements under \$50,000, if deemed appropriate by the Purchasing Agent.
- 3-5.33 Maintenance or license agreements on prior Board-approved purchases.
- 3-5.34 Purchases paid fully with non-public funds [i.e.: including but not limed to sponsorships, donations, school activity funds, etc.]
- 3-5.35 Professional Services, where fees are expected to be under \$80,000, when made consistent with the Commonwealth's Department of General Services/Division of Purchase and Supply (DPS) Category B procedures
- 3-5.35.1 Applicable to both single and term contracts
- 3-5.35.2 Procedure
- 3-5.35.2.1 Prepare a Scope of Work.
- 3-5.35.2.2 From the pool of firms on file with DPS for Category B procedures, first present opportunity to a micro business if available. If no micro business in the category exist, are willing to participate, or are appropriately qualified, then the initial opportunity may be presented to a certified small business. When selecting firms to contact, avoid favoritism or the appearance of favoritism. Consideration should be given to number and value of previous contracts awarded to each firm.

- 3-5.35.2.3 Conduct telephone or personal interviews with representatives of the firm to determine current personnel qualifications, location relative to the work, expertise, workload, capability to meet the proposed schedule, past performance on similar projects and ability to provide the service within budgeted costs.
- 3-5.35.2.4 Determine if the A/E is qualified for the work and, if so, negotiate the fee for services. Make award following standard operating procedures, including appropriate approvals.
- 3-5.35.2.5 If unable to negotiate an acceptable fee with the firm, then repeat the process until an acceptable fee is obtained.

### 3-6 Architectural and professional engineering term contracting; limitations

- 3-6.1 A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by the County, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.
- 3-6.2 Such contracts may be renewable for four additional one-year terms at the option of the County. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.
- 3-6.3 The sum of all projects performed in a one-year contract term shall not exceed \$10 million, and no single project shall exceed ~~\$500,000~~\$1,000,000.
- 3-6.4 Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) the procedures for distributing multiple projects among the selected contractors during the contract term are established prior to issuance of the Request for Proposals.

### 3-7 Job Order Contracting

- 3-7.1 A job order contract may be awarded for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first. Contractors may be selected through either competitive sealed bidding or competitive negotiation.
- 3-7.2 Such contracts may be renewable for four additional one-year terms at the option of the County. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed the maximum threshold amount.
  - 3-7.2.6 The maximum threshold amount shall be \$6 million in a one-year contract term.
  - 3-7.2.7 Subject to the maximum threshold amount, no individual job order shall exceed \$500,000.
- 3-7.3 For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

- 3-7.4 Order splitting with the intent of keeping a job order under the maximum dollar amounts is prohibited.
- 3-7.5 The County shall not issue or use a job order, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in § 54.1-400 of the State Code. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$50,000 per job order, and (iii) do not exceed \$600,000 per contract term.
- 3-8 Joint and Cooperative Procurement.
- 3-8.1 The County may participate in, sponsor, conduct, or administer a joint procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction.
- 3-8.2 The County may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association, or from any authority, department, agency or institution of the Commonwealth even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies.
- 3-8.2.1 Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.
- 3-8.3 Consistent with Code of Virginia § 2.2-4304.D.3, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases, the County may purchase goods and non-professional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.
- 3-9 Requirements for state-aid projects: No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of not more than \$50,000 in the aggregate of for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation.
- 3-10 Modification of Contracts: Contracts entered into by the County may include provisions for modification of the contract during performance but no fixed price contract may be increased by more than 25 percent of the amount of the contract or \$50,000, whichever is greater, without prior approval by the Board or other approving authority. Following such approval, the Contract price will consist of the original Contract amount plus all such approved modifications. Any such modifications shall not exceed appropriations

available for the project. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

## **ARTICLE 4: COMPLIANCE REQUIREMENTS**

### **4-1 Discrimination prohibited.**

- 4-1.1 In the solicitation or awarding of contracts, the County shall not discriminate against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by ~~state~~-law relating to discrimination in employment.
- 4-1.2 The Purchasing Agent may establish programs to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions.
- 4-1.3 The programs used to facilitate participation may incorporate definitions as identified in State Code section 2.2-4310.F.

### **4-2 Employment discrimination by contractor prohibited; required contract provisions. The County shall include in every contract of more than \$10,000 the following provisions:**

- 4-2.1 During the performance of this contract, the contractor agrees as follows:
  - 4-2.1.1 The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - 4-2.1.2 The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - 4-2.1.3 Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
  - 4-2.1.4 The contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

### **4-3 Compliance with federal, state, and local laws and federal immigration law; required contract provisions: The County shall provide in every written contract a statement that that the contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.**

### **4-4 Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth:**

- 4-4.1 The County shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.
- 4-4.2 Pursuant to competitive sealed bidding or competitive negotiation, the County shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50

- to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall be required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.
- 4-4.3 Any bidder or offeror described in subsection 4-4.2 that fails to provide the required information shall not receive an award unless a waiver of this requirement is granted by Purchasing Agent, and documented in the procurement file.
- 4-4.4 Any business entity described in subsection 4-4.1 that enters into a contract with the County pursuant to this policy shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.
- 4-4.5 The County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- 4-5 Drug-free workplace to be maintained by contractor; required contract provisions: The County shall include in every contract over \$10,000 the following provisions:
- 4-5.1 During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- 4-5.2 For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
- 4-6 Contractor's Classification of Employees; Civil Penalty; Debarment: As required by § 58.1-1900 and 58.1-1902 of the state code:
- 4-6.1 For the purposes of state code titles 58.1 (Taxation), 40.1 (Labor and Employment), 60.2 (Unemployment Compensation), and 65.2 (Workers Compensation), if an individual performs services for an employer for remuneration, that individual shall be considered an employee of the party that pays that remuneration unless such individual or his employer demonstrates that such individual is an independent contractor. The Virginia Department of Taxation (the "Department" for purposes of this section 4-6) shall determine whether an individual is an independent contractor by applying Internal Revenue Service guidelines.
- 4-6.2 In the event that the Department notifies the County pursuant to state code §58.1-1902 that an employer has failed to properly classify an individual as an employee under the provisions of state code § 58.1-1900, the County shall not award a contract to such employer or to any firm, corporation, or partnership in which the employer has an interest in the following manner:

- 4-6.2.1 For a period of up to one year, as determined by the Department, from the date of the notice for a second offense.
- 4-6.2.2 For a period of up to three years, as determined by the Department, from the date of the notice for a third or subsequent offense.

## ARTICLE 5: PREQUALIFICATION

### 5-1 Prequalification generally; prequalification for construction

Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. The Purchasing Agent shall promulgate written procedures to implement this Article 5.

#### 5-1.1 Any prequalification of prospective contractors for construction by the County shall include:

5-1.1.1 The County's issuance of a Request For Qualifications (RFQ) or a Request For Proposals (RFP) to solicit an application from prospective contractors desiring prequalification. The RFQ or RFP shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The RFQ or RFP shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 2.2-4342 of the State Code.

5-1.1.2 In all instances in which the County requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification application. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction to allow the procedures set forth in this Article to be accomplished.

5-1.1.3 At least 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 County shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

5-1.1.4 A decision by the County denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 2.2-4357. of the State Code.

#### 5-1.2 The County may deny prequalification to any contractor only if the County finds one of the following:

5-1.2.1 The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor 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 County shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

5-1.2.2 The contractor does not have appropriate experience to perform the construction project in question;

5-1.2.3 The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

- 5-1.2.4 The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the County without good cause. If the County has not contracted with a contractor in any prior construction contracts, the County may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The County shall not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
- 5-1.2.5 The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 15 of this policy, (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;
- 5-1.2.6 The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
- 5-1.2.7 The contractor failed to provide to the County in a timely manner any information requested by the County relevant to subdivisions 5-1.3.1 through 5-1.3.6 of this subsection.
- 5-1.3 The provisions of subsections 5-1.1 and 5-1.2 shall not apply to prequalification for contracts let under § 33.2-209, 33.2-214, or 33.2-221 of the State Code

## ARTICLE 6: MISCELLANEOUS

- 6-1 Negotiation with lowest responsible bidder: Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the lowest acceptable bid exceeds available funds, the Purchasing Agent may negotiate with the bidder to obtain a contract price within available funds.
- 6-1.1 The Purchasing Agent may require a bidder or offeror to clarify its bid or offer or acknowledge by written confirmation that the minimum requirements of the specifications are included in the offeror's bid or proposal.
- 6-2 Cancellation or Rejection of Bids.
- 6-2.1 An invitation to bid, a request for proposal, any other solicitation, or any and all bids or proposals received may be canceled or rejected when the Purchasing Agent determines that it is in the best interest of the County to do so. The reasons therefore shall be made a part of the contract file. Any bid which is incomplete, conditional, obscure, or which is not in conformance with the specifications may be rejected or any such irregularities may be waived at the option of the Purchasing Agent provided they do not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction to be procured.
- 6-2.2 No bidder shall be permitted to alter, modify or amend its bid after the time fixed for submission of bids.
- 6-2.3 No bid received after the time fixed for submission of bids shall be opened or considered.
- 6-2.4 No statement or notation whatsoever, written, printed, typed or otherwise set out on any bid or offer envelope, including any addition or deduction in contract price, shall be recognized or considered in the review and tabulation of any bid or offer or for any other purpose.
- 6-2.5 If the solicitation is cancelled prior to the opening of bids or proposals, a bidder or offeror who has already submitted their bid/proposal may request that it be returned, and the sealed document will be returned to them (at their expense). Any remaining submittals not returned to the submitting bidder or offeror shall remain permanently sealed in the procurement file. File retention and disposal shall be in accordance with applicable records destruction policy.
- 6-2.6 If the solicitation is cancelled after the opening of bids or proposals, the documents will not be returned to the bidder or offeror, but shall be re-sealed and retained by the Purchasing Agent in the procurement file. File retention and disposal shall be in accordance with applicable records destruction policy.
- 6-3 Tie Bids: In the case of a tie bid, preference shall be given to goods, services, and construction produced in Virginia or provided by Virginia persons, firms, or corporations (with bidders situated within the County of York given first preference) if such a choice is available; otherwise the tie shall be decided by lot. Where all bidders are Virginia persons, firms, or corporations (or, alternatively, if all bidders are non-Virginia persons, firms, or corporations), the tie shall also be decided by lot. For purposes of this section, a Virginia person, firm or corporation means a person, firm or corporation organized pursuant to Virginia law or maintaining a principal place of business in Virginia.
- 6-4 Withdrawal of Bids or Proposals.
- 6-4.1 A bidder or an offeror may withdraw or cancel a bid or proposal at any time prior to the time set for receipt of bids or proposals.

6-4.2 After the time set for receipt of bids or proposals, the bidder or offeror may not withdraw for a period of sixty (60) calendar days, unless otherwise specified in the solicitation document or as provided below.

6-4.2.1 After the time set for receipt of bids or proposals, a bidder or offeror seeking withdrawal of a bid for construction shall give notice in writing to the Purchasing Agent of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

6-4.2.2 After the time set for receipt of bids or proposals, a bidder or offeror seeking withdrawal of a bid for non-construction shall give notice in writing to the Purchasing Agent of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

6-4.2.3 The basis for seeking withdrawal of a bid or proposal shall be based solely on a mistake in the bid or proposal, provided it 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.

~~6-4.3.0 Any bidder or offeror may be required to clarify its bid or offer or acknowledge by written confirmation that the minimum requirements of the specifications are included in the offeror's bid or proposal.~~

~~6-4.4~~ 6-4.3 No bid shall 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.

~~6-4.5~~ 6-4.4 If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

~~6-4.6~~ 6-4.5 No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm 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.

~~6-4.7~~ 6-4.6 The Purchasing Agent shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the Purchasing Agent denies the withdrawal of a bid under the provisions of this section, he shall state in such notice the reasons for his 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 Purchasing Agent shall return all work papers and copies thereof that have been submitted by the bidder.

6-5 Cost Plus Percentage of Cost Contracts: Contract provisions allowing for "cost plus a percentage of cost" shall be avoided.

6-6 Recycled goods and products

6-6.1 Any person who believes that particular goods or products with recycled content are functionally equivalent to the same goods or products produced from virgin materials may petition the Purchasing Agent to include the recycled goods or products in its procurement process. The petitioner shall submit, prior to or during the procurement pro-

cess, documentation that establishes that the goods or products (i) contain recycled content and (ii) can meet the performance standards set forth in the applicable specifications. If the Purchasing Agent determines that the documentation demonstrates that the goods or products with recycled content will meet the performance standards set forth in the applicable specifications, it shall incorporate the goods or products into its procurement process.

- 6-6.2** The Purchasing Agent shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of goods and products with recycled content and shall, in developing new procedures and specifications, encourage the use of goods and products with recycled content.

## ARTICLE 7: SECURITY PROVISIONS

### 7-1 Retainage on construction contracts

7-1.1 In any public contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

7-1.2 Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

### 7-2 Deposit of certain retained funds on certain contracts; penalty for failure to timely complete

7-2.1 The County, when contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the solicitation an option for the contractor to use an escrow account procedure for utilization of the County's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the solicitation document and Contract shall be executed and submitted to the County within fifteen calendar days after notification. If the escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

7-2.2 In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement in a form acceptable to the county attorney. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The escrow agreement and all regulations adopted by the County shall be substantially the same as that used by the Virginia Department of Transportation.

7-2.3 This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

7-2.4 Any such public contract for construction with the County, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified amount for each day exceeding the completion date stated in the contract.

7-2.5 Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

### 7-3 Public construction contract provisions barring damages for unreasonable delays declared void

7-3.1 Any provision contained in any public construction contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the County,

its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

7-3.2 Subsection 7-3.1 shall not be construed to render void any provision of a public construction contract that:

7-3.2.1 Allows the County to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;

7-3.2.2 Requires notice of any delay by the party claiming the delay;

7-3.2.3 Provides for liquidated damages for delay; or

7-3.2.4 Provides for arbitration or any other procedure designed to settle contract disputes.

7-3.3 A contractor making a claim against the County for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the County and shall pay it for a percentage of all costs incurred by the County in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

7-3.4 The County denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the County shall be equal to the percentage of the contractor's total delay claim for which the County's denial is determined through litigation or arbitration to have been made in bad faith.

#### 7-4 Bid Bonds

7-4.1 Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the ~~State~~ [Virginia](#) Code that are in excess of \$350,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

7-4.2 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 bond.

7-4.3 Nothing in this section shall preclude the County from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for nontransportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the ~~State~~ [Virginia](#) Code and partially or wholly funded by the Commonwealth.

#### 7-5 Performance and payment bonds

7-5.1. Upon the award of any (i) nontransportation-related public construction contract exceeding \$500,000 awarded to any prime contractor or (ii) transportation-related project authorized pursuant to Article 2 (§ [33.2-208](#) et seq.) of Chapter 2 of Title 33.2 of the Virginia code exceeding \$350,000 that is partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds:

- 7-5.1.1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications, and conditions of the contract, unless the contract is an indefinite delivery or quantity contract.
  - 7-5.1.2. A payment bond in the sum of the contract amount, unless the contract is an indefinite delivery or quantity contract. The bond 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.
  - 7-5.2. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.
  - 7-5.3. The bonds shall be payable to the County of York, Virginia. Bonds required for the contracts for other public bodies shall be payable to such public body.
  - 7-5.4. Each of the bonds shall be filed with the public body that awarded the contract, or a designated office or official thereof.
  - 7-5.5. Nothing in this section shall preclude the County from requiring payment or performance bonds for construction contracts below \$500,000 for nontransportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Virginia code and partially or wholly funded by the Commonwealth.
  - ~~7-5.6.~~ 7-5.6. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.
  - ~~7-5.6.~~ 7-5.7. For indefinite delivery or quantity contracts awarded pursuant to subsection 7-5.1 through 7-5.1.2, the County may require the contractor awarded such contract to furnish a performance bond and a payment bond for each individual project, each bond to be equal to the dollar amount of the individual project. Such contractor shall not be required to pay the performance bond and payment bond in the sum of the annual cap for the total work that may be authorized for such contract. For purposes of this section, "indefinite delivery or quantity contract" means a contract that only requires performance of contractual obligations upon the request of the County and which establishes an annual cap for the total work that may be authorized for such contract.
- 7-6 Alternative forms of security
- 7-6.1 In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check, or cash escrow in the face amount required for the bond.
  - 7-6.2 If approved by the county attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

- 7-7 Bonds: In addition to any bonds which may be required by state law, the Purchasing Agent may, in the Agent's sole discretion, require a bid, performance, or payment bond or other specified surety arrangement in any procurement solicitation in any amount, provided that for construction or renovation contracts in excess of \$500,000, performance and payment bonds shall be required in the amount of the contract. The requirement for such surety shall be clearly stated in the solicitation.

**ARTICLE 8: FREEDOM OF INFORMATION ACT**

- 8-1 Freedom of Information Act: With the following exceptions, procurement documents are subject to the Virginia Freedom of Information Act:
- 8-1.1 Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be open to public inspection.
  - 8-1.2 Bid and proposal records shall be open to public inspection only after award of the contract. Any bidder or offeror may be allowed to inspect the bid or proposal records after bid opening or after the evaluation and negotiation of proposals are completed, and prior to award unless the County decides not to accept any bids or not to accept any of the proposals and to resolicit for the goods or services.
  - 8-1.3 Trade secrets or proprietary information submitted to the County are not subject to disclosure if requested by the person submitting such information prior to or upon submission of the data or other materials. Any such request must identify what is to be protected and state the reasons therefor.
  - 8-1.4 Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions imposed by the Purchasing Agent to insure security and integrity of the records.

## ARTICLE 9: CONTRACTING WITH FAITH-BASED ORGANIZATIONS

- 9-1 In accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, to the County shall enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.
- 9-2 For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.
- 9-3 The County, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in section 9-6, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.
- 9-4 The County shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the ~~the~~ County does not discriminate against faith-based organizations.
- 9-5 A faith-based organization contracting with the County (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, or refusal to participate in a religious practice or on the basis of race, age, color, gender, sexual orientation, gender identity, or national origin and (ii) shall be subject to the same rules as other organizations that contract with the County to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the County. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.
- 9-6 Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with the County shall not be spent for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.
- 9-7 Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000 e-1 et seq.), to employ persons of a particular religion.
- 9-8 If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the County and a faith-based organization, objects to the

religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the County shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

- 9-9 The County shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the County and a faith-based organization a notice in bold face type that states: "Neither the County's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."

## ARTICLE 10 – APPEALS, PROTESTS, DISPUTES, LEGAL ACTIONS

### 10-1 Suspension and Debarment .

- 10-1.1 The Purchasing Agent is authorized, after consultation with the County Attorney, to suspend or debar any offeror for cause from consideration for the award of contracts.
- 10-1.2 An offeror may be suspended for a period not to exceed three (3) months if there is probable cause to believe that the offeror has engaged in any activity that might lead to debarment.
- 10-1.3 An offeror may be debarred for a period not to exceed three (3) years for activities that may include, but are not necessarily limited to, the following:
  - 10-1.3.1 Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;
  - 10-1.3.2 Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense of moral turpitude indicating a lack of business or personal integrity or honesty which currently, seriously, and directly affects responsibility as a County offeror;
  - 10-1.3.3 Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
  - 10-1.3.4 Violation of contract provisions of a character which is regarded by the Purchasing Agent to be so serious as to justify a debarment action including, but not limited to:
    - 10-1.3.4.1 Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract with the County; or
    - 10-1.3.4.2 A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts.
  - 10-1.3.5 Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a County contractor including debarment by another governmental entity.
- 10-1.4 Notice of any debarment or suspension shall be provided by the Purchasing Agent to the contractor, stating the reasons for the action taken.
  - 10-1.4.1 The offeror may, within ten (10) days of receiving the notice, appeal the decision in writing to the Purchasing Agent. The written appeal shall include the basis for the appeal.
  - 10-1.4.2 The Purchasing Agent shall consider all information available, and shall issue a decision in writing within ten days stating the reasons for the action taken. The Purchasing Agent's decision shall be final.

### 10-2 Ineligibility

- 10-2.1 The Purchasing Agent shall notify any bidder, offeror or contractor refused permission to participate, or disqualified from participation in County solicitations or contracts in writing, stating the reasons for the action taken.

- 10-2.2 The bidder, offeror or contractor may, within ten (10) days of receiving the notice, appeal the decision in writing to the Purchasing Agent. The written appeal shall include the basis for the appeal.
- 10-2.3 The Purchasing Agent shall consider all information available, and shall issue a decision in writing within ten days stating the reasons for the action taken. The Purchasing Agent's decision shall be final.
- 10-2.4 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.

#### 10-3 Determination of nonresponsibility

- ~~10-3.1~~ 10-3.1 Following opening of bids or quotes received, the Purchasing Agent shall determine whether the apparent low bidder is responsible.
- ~~10-3.1~~ 10-3.2 Following the opening of proposals, or receipt of any proposed contract, the Purchasing Agent shall determine whether the offeror is responsible.
- ~~10-3.2~~ 10-3.3 If the Purchasing Agent ~~so~~ determines, then it may proceed with an award in accordance with this policy.
- ~~10-3.3~~ 10-3.4 If the Purchasing Agent determines that ~~the apparent low~~ a bidder or offeror is not responsible, it shall provide notice ~~to the bidder~~ or offeror, stating the reasons for the action taken.
- ~~10-3.4~~ 10-3.5 The bidder or offeror may, within ten (10) calendar days of receiving the notice, appeal the decision in writing to the Purchasing Agent. The written appeal shall include the basis for the appeal.
- ~~10-3.5~~ 10-3.6 The Purchasing Agent shall consider all information available, and shall issue a decision in writing within ten days stating the reasons for the action taken. The Purchasing Agent's decision shall be final.

#### 10-4 Protest of award or decision to award

- 10-4.1 All bids and offers are subject to the decision of the Purchasing Agent as to the quality of what is offered, responsiveness of the offer or bid, responsibility of the offeror or bidder, and the qualifications of the offeror or bidder.
- 10-4.2 A bidder or offeror may protest the award or decision to award by submitting such protest in writing to the Purchasing Agent no later than ten (10) days after the award or the announcement of the decision to award. No protest shall lie for a claim that the selected Bidder is not a responsible Bidder. The written protest shall include the basis for the protest and the relief sought.
- 10-4.3 The Purchasing Agent shall consider all information available, and shall issue a decision in writing within ten days stating the reasons for the action taken. The Purchasing Agent's decision shall be final.
- 10-4.4 Every bidder or offeror submitting a bid or proposal agrees, as a condition precedent to the submission, to abide by the Purchasing Agent's decision and all of the provisions of this policy.

#### 10-5 Contractual disputes

- 10-5.1 Contractual claims, whether for money or other relief, shall be submitted to the Purchasing Agent in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.
- 10-5.2 No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the Purchasing Agent or his designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the Purchasing Agent fails to render a decision within 90 days of submission of the claim. Failure of the Purchasing Agent to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the Purchasing Agent's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.
- 10-5.3 A contractor may not institute legal action prior to receipt of the Purchasing Agent's decision on the claim, unless the Purchasing Agent fails to render such decision within 90 calendar days. A failure of the Purchasing Agent to render a final decision within 90 calendar days shall be deemed a final decision denying the claim by the Purchasing Agent.
- 10-5.4 The decision of the Purchasing Agent shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Purchasing Agent.
- 10-6 Legal actions
- 10-6.1 A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in Article 5 of this policy. In the event the apparent low bidder, having been previously determined by the Purchasing Agent to be not responsible in accordance with Section 10-3 of this policy, is found by the court to be a responsible bidder, the court may direct the Purchasing Agent to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.
- 10-6.2 A bidder denied withdrawal of a bid under Section 6-5 of this policy may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Purchasing Agent 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 Invitation to Bid.
- 10-6.3 A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in Article 3 of this policy,

whose protest of an award or decision to award under Section 10-3 of this policy is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

- 10-6.4 If injunctive relief is granted, the court, upon request of the Purchasing Agent, shall require the posting of reasonable security to protect the Purchasing Agent.
  - 10-6.5 A contractor may bring an action involving a contract dispute with the Purchasing Agent in the appropriate circuit court.
  - 10-6.6 A bidder, offeror or contractor need not utilize administrative procedures adopted by the Purchasing Agent, if available, but if any such procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Purchasing Agent agrees otherwise.
  - 10-6.7 Nothing herein shall be construed to prevent the Purchasing Agent or the County from instituting legal action against a contractor.
- 10-7 Alternative dispute resolution: The Purchasing Agent may enter into agreements to submit disputes arising from contracts entered into pursuant to this chapter to arbitration and utilize mediation and other alternative dispute resolution procedures. Alternative dispute resolution procedures entered into by school boards shall be nonbinding.

**ARTICLE 11: DISPOSITION OF SURPLUS PROPERTY**

**11-1 Sale of Surplus Property.**

11-1.1 The Purchasing Agent shall have the responsibility for disposal of County surplus, worn out, or obsolete items. The Purchasing Agent shall have the authority to transfer such surplus stock to other internal and external departments and public bodies and agencies. All property not so transferred shall be exchanged, traded in on new items, salvaged, destroyed, or sold as deemed appropriate by the Purchasing Agent.

11-1.1.1. Notwithstanding the foregoing, any library books purchased for circulation by the York County public Library which have been declared to be surplus by the York County Librarian may be donated by the Librarian to the York County Friends of the Library, or to any similar organization the main function of which is to support the activities of the York County public library system. The Librarian shall keep a record of all books so donated for review upon request by the Purchasing Agent.

11-1.1.2. Surplus, worn out, or obsolete items, materials and personal property of the County of York, Virginia and of the York County School Board may be donated to a nonprofit organization which is exempt from taxation under 501(c)(3) of the Internal Revenue Code. Such donations shall be coordinated with the Purchasing Agent.

11-1.2 In general, the sale of surplus property may be made through competitive methods to include, but not limited to, public auction, sealed bids, or an appropriate website to the highest bidder. The sale of property having an estimated value of \$500 or less shall not require a competitive process. Individual items may be scrapped, if in the opinion of the Purchasing Agent, the cost of storage and sale exceeds the value of the item. The Board, upon the request of the Purchasing Agent, may make a special dispensation of any individual item if, in the opinion of the Board, such dispensation is in the public interest.

11-2 Participation at County Auctions: County and School employees are prohibited from bidding on surplus property sold for their respective entity. Central Purchasing staff are prohibited from purchasing any surplus property from either entity, regardless of disposal method used.

**ARTICLE 12: PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRA-STRUCTURE ACT**

- 12-1 Introduction: The Public-Private Education Facilities and Infrastructure Act of 2002, Code of Virginia section 56-575.1 et. seq. (the "PPEA") grants the County of York (the "County"), a responsible public entity as defined in the PPEA, the authority to enter public-private agreements for the development of a wide range of projects for public use if the County determines there is a public need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Individually negotiated comprehensive agreements between an operator, as defined in the PPEA, and the County will define the respective rights and obligations of the County and the private operator. The entirety of the PPEA is located in the Code of Virginia, Chapter 21.1. It shall be incumbent upon the County and all private entities to comply with the provisions of the PPEA. The PPEA establishes requirements to which the County must adhere when reviewing and approving proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of the comprehensive agreement detailing the relationship between the County and the private entity.
- 12-2 The individual designated by the County Administrator to serve as the point of contact for implementation of procedures, to receive proposals submitted under the PPEA and to respond to inquiries regarding the PPEA or this adopted policy shall be the designated County Purchasing Agent.
- 12-3 Printed below are the procurement provisions of the act. The section numbering and text that follows match that of the Code of Virginia. For the purposes of Article 12 of this County policy, when the text refers to a "public entity" or "local governing body", it shall be understood to refer to the County of York, Virginia. If any provision of this Article is inconsistent with other Articles of this County policy, the more stringent policy or procedure shall be used. If the following is silent on a procurement matter, then the County's policies and procedures for procurements shall be applicable to the procurement.

56-575.16. Procurement.

The Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) and any interpretations, regulations, or guidelines of the Division of Engineering and Buildings of the Department of General Services or the Virginia Information Technologies Agency, including the Capital Outlay Manual and those interpretations, regulations or guidelines developed pursuant to §§ [2.2-1131](#), [2.2-1132](#), [2.2-1133](#), [2.2-1149](#), and [2.2-1502](#), except those developed by the Division or the Virginia Information Technologies Agency in accordance with this chapter when the Commonwealth is the responsible public entity, shall not apply to this chapter. However, a responsible public entity may enter into a comprehensive agreement only in accordance with guidelines adopted by it as follows:

1. A responsible public entity may enter into a comprehensive agreement in accordance with guidelines adopted by it that are consistent with procurement through competitive sealed bidding as set forth in § [2.2-4302.1](#) and subsection B of § [2.2-4310](#).
2. A responsible public entity may enter into a comprehensive agreement in accordance with guidelines adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as set forth in § [2.2-4302.2](#) and subsection B of § [2.2-4310](#). Such responsible public entity shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include (i) the proposed cost of the qualifying

facility; (ii) the general reputation, industry experience, and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and government comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; and (ix) other criteria that the responsible public entity deems appropriate.

A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity, or priority of the project; (ii) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available. When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the responsible Governor's Secretary, or the Governor, shall be required before the responsible public entity may enter into a comprehensive agreement pursuant to this subdivision.

3. Nothing in this chapter shall authorize or require that a responsible public entity obtain professional services through any process except in accordance with guidelines adopted by it that are consistent with the procurement of "professional services" through competitive negotiation as set forth in § [2.2-4302.2](#) and subsection B of § [2.2-4310](#).

4. A responsible public entity shall not proceed to consider any request by a private entity for approval of a qualifying project until the responsible public entity has adopted and made publicly available guidelines pursuant to § [56-575.3:1](#) that are sufficient to enable the responsible public entity to comply with this chapter.

5. A responsible public entity that is a school board or a county, city, or town may enter into an interim or comprehensive agreement under this chapter only with the approval of the local governing body.

56-575.17. Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § [56-575.4](#) to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, authorities, departments, institutions, and other units of state government, posting shall be on the Department of General Services' centralized electronic procurement website; and

2. For responsible public entities that are local bodies, posting shall be on the responsible public entity's website or on the Department of General Services' central electronic procurement website. In addition, such public bodies may publish in a newspaper of general circulation in the area in which the contract is to be performed a summary of the proposals and the location where copies of the proposals are available for public inspection. Such local

public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § [2.2-3705.6](#) shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. The responsible public entity shall hold a public hearing on the proposals during the proposal review process, but not later than 30 days prior to entering into an interim or comprehensive agreement.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible public entity shall make available the proposed agreement in a manner provided in subsection A.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, upon request. For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.

#### 56-575.17:1 Contributions and gifts; prohibition during approval process

A. No private entity that has submitted a bid or proposal to a public entity that is an executive branch agency directly responsible to the Governor and is seeking to develop or operate a qualifying project pursuant to this chapter, and no individual who is an officer or director of such a private entity, shall knowingly provide a contribution, gift, or other item with a value greater than \$50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, following the submission of a proposal under this chapter until the execution of a comprehensive agreement thereunder. The provisions of this section shall apply only for any proposal or an interim or comprehensive agreement where the stated or expected value of the contract is \$5 million or more.

B. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

12-4 Projects Intended for Use by the York County School Board

Proposals for qualifying projects for which the York County School Board shall be the sole using public entity shall be submitted to the County's Purchasing Office, and the County shall provide all required public notices. However, decisions whether to accept and consider any such proposal, and the evaluation or review of any such proposal, shall be by the School Board, and the School Board shall approve and execute the Comprehensive agreement.

## **ARTICLE 13: DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTS**

13-1 The purpose of this Article is to enunciate the County's policies pertaining to procurement of construction utilizing the construction management and design-build procurement methods. A design-bid-build project delivery method that utilizes competitive sealed bidding is the default method of procurement for construction. Notwithstanding any other provision of law, the County may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this Article. This Article shall apply regardless of the source of financing.

13-1.1. The County may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis, provided that:

13.1.1.1. the project is a complex project, defined as 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 the design-bid-build project delivery method not practical; and

13.1.1.2. the County has 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 construction management or design-build for that project and (ii) assist the County with the preparation of the Request for Proposal and the evaluation of such proposals; and

13.1.1.3. a written determination is made in advance by the Purchasing Agent that the design-bid-build project delivery method is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize construction management or design-build, including the determination of the project's complexity. The determination shall be included in the Request for Qualifications and be maintained in the procurement file; and

13.1.1.4. the County Board of Supervisors approves a resolution on a per project basis in a public forum prior to the issuance of a Request for Qualifications; and

13.1.1.5. after award, when applicable, the County posts on its website when and where the general contractor advertises bid packages for subcontracting opportunities.

13-2 Definitions. As used in this Article, unless the context requires a different meaning:

13-2.1. "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 the design-bid-build project delivery method not practical.

13-2.2. "Construction management contract" is a contract in which a Construction Manager (CM) is retained by the County to coordinate and administer contracts for construction services for the benefit of the County. The Construction Management contract may include a provision that requires the CM to deliver the project within a Guaranteed Maximum Price (GMP) for the Construction and all related services; the CM is "At Risk" for constructing the entire project within the agreed-upon GMP. The contract may be identified as a Construction Manager at Risk (CMR) contract. Collaborating

with an A/E design firm separately under contract with the County, the CM administers a construction contract. The construction contract may be with a General Contractor (GC) firm or directly with the CM.

13-2.3. "Design-bid-build" means a project delivery method in which the County sequentially awards two separate contracts, the first for professional services to design the project and the second utilizing competitive sealed bidding for construction of the project according to the design.

13-2.4. "Design-build contract" means a contract between the County and another party in which the party contracting with the County agrees to both design and build the structure, or other item specified in the contract. A two-step process is used to establish a contract.

13-2.5. Evaluation Panel ("Panel"): An ad hoc committee established by the County department for whom the solicitation is being conducted. The Panel shall consist of not less than three County representatives, to evaluate proposals and recommend award. A representative of the Purchasing Division shall be included in all Panel meetings and shall provide general oversight of the evaluation process.

### 13-3 Procedures for Design-Build.

~~13.1 Design-Build: A design-build contract is 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. A two-step process is used to establish a contract. The procedures are as follows.~~

#### 13-3.1 Step 1

13-3.1.1. Prior to initiating the solicitation process, the Purchasing Agent shall insure that 13-1.1.3 and 13-1.1.4 of this Article have been performed.

13-3.1.2. The issuance of a Request For Qualifications (RFQ) to seek Statements of Qualifications (SOQ). The method of issuance of the RFQ and receipt of SOQ responses shall be consistent with the methods used for Request For Proposals, except that public notice of the Request For Qualifications at least thirty (30) calendar days prior to the date set for receipt of responses shall be made by posting a link to the solicitation on the county's website. In addition, qualifications may be solicited directly from potential parties.

~~13-3.1.1.~~13-3.1.3. The RFQ shall identify the criteria to be evaluated for pre-qualification. Prior construction management or design-build experience or previous experience with the County shall not be considered as a prerequisite or factor considered for prequalification of a contract. However, in the selection of a contractor, the County may consider the experience of each contractor on comparable construction management or design-build projects.

~~13-3.1.2.~~13-3.1.4. Based on the criteria specified in the RFQ, SOQs will be evaluated by an Evaluation Panel ("Panel"). The panel will select up to five of the highest ranked firms deemed qualified and suitable for the project, and only those selected will be eligible to participate in Step 2 of the selection process. If less than five firms are deemed qualified and suitable for the project, then that number shall be eligible to participate in Step 2.

- ~~13-3.1.3~~ 13-3.1.5. At least 30 days prior to the date established for the submission of proposals (Step 2), the County shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. 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.
- 13-3.2 Step 2
- 13-3.2.1 The County shall issue a Request for Proposals (RFP) to the firms selected in Step 1. Except as may otherwise be specified in this Article, the RFP shall be processed per County policy for competitive negotiation for other than professional services. Public posting of the RFP shall not be required since only the firms short-listed from the RFQ may participate. ~~The issuance of a Request For Proposals (RFP) to the firms selected in Step 1.~~ The criteria for award shall be included in the RFP. Price shall be a critical basis for award.
- 13-3.2.2 Offerors shall separately submit a Cost Proposal and a Technical Proposal to the Contract Officer in the manner specified in the RFP solicitation.
- 13-3.2.3 The Purchasing office Contract Officer shall open the Cost Proposals and without identifying the Offeror, advise the Evaluation Panel ("Panel") of proposed costs. The Panel will consider if the proposed costs fall within the County's original estimate. If the proposed costs exceed the original estimate, the Panel may rescope the project, including such changes for Technical revisions as allowed in Section 13-3.2.4.
- ~~13-3.2.3~~ 13-3.2.4 Based on the criteria specified in the RFP, Technical Proposals will be evaluated by an Evaluation Panel ("Panel"). The Panel shall identify changes desired to be made to each offeror's proposal, and through the Contract Officer allow each offeror to adjust its Technical Proposal to fully comply with the requirements of the RFP or as necessary to incorporate project improvements and/or additional detailed information identified by the Panel during design development.
- ~~13-3.2.4~~ 13-3.2.5 Based on the above adjustments, the offerors may resubmit a revised Technical Proposal, ~~as well as~~ and separately a revised Cost Proposal to the Contract Officer.
- ~~13-3.2.5~~ 13-3.2.6 The Panel will re-evaluate the Technical Proposals and agree to a consensus ranking.
- ~~13-3.2.6~~ 13-3.2.7 The Contract Officer shall open the revised Cost Proposals and provide the cost information to the Panel.
- ~~13-3.2.7~~ 13-3.2.8 The Panel will consider all information available to ~~select-rank~~ the firms that has provided providing the best value for the project.
- 13-3.2.9 ~~After evaluation and ranking of the proposals, the Purchasing Agent shall conduct negotiations with two or more offerors submitting the highest ranked proposals. Negotiations may be conducted simultaneously with different offerors. Award shall be made to the offeror with whom negotiations, in the County's opinion, resulted in the best proposal and provides the best value.~~
- 13-3.2.10 Should the County determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.
- ~~13-3.2.8~~ 13-3.2.11 Award shall be made to the firm who is fully qualified and determined to have provided the best value in response to the RFP.
- 13-3.2.12 The Purchasing Agent will notify all offerors who submitted proposals which offeror was selected for the project.

### 13-4. Procedures for Construction Management

#### 13-4.1 Step 1

13-4.1.1 Prior to initiating the solicitation process, the Purchasing Agent shall insure that 13-1.1.3 and 13-1.1.4 of this Article have been performed.

13-4.1.2 Issuance of a Request For Qualifications (RFQ) to seek Statements of Qualifications (SOQ). The method of issuance of the RFQ and receipt of SOQ responses shall be consistent with the methods used for Request For Proposals, except that public notice of the Request For Qualifications at least thirty (30) calendar days prior to the date set for receipt of responses shall be made by posting a link to the solicitation on the county's website. In addition, qualifications may be solicited directly from potential parties.

13-4.1.3 The RFQ shall identify the criteria to be evaluated for pre-qualification. Prior construction management or design-build experience or previous experience with the County shall not be considered as a prerequisite or factor considered for prequalification of a contract. However, in the selection of a contractor, the County may consider the experience of each contractor on comparable construction management or design-build projects. Qualification Criteria to be included in the RFQ shall at a minimum, include the following:

- General Contractor ("GC") shall be appropriately licensed and in good standing as a Class A General Contractor in the Commonwealth of Virginia.
- Ability to obtain appropriate insurance coverage for the project.
- Appropriate bonding capacity.
- A listing of experience of at least three (3) projects of similar scope, and complexity within the past ten (10) years, including construction cost, schedule, and Owner or architect representative's contact information.
- A list of at least three (3) professional references including contact information.

13-4.13 Based on the criteria specified in the RFQ, SOQs will be evaluated by the Evaluation Panel ("Panel"). The Panel will select up to five of the highest ranked firms deemed qualified and suitable for the project, and only those selected will be eligible to participate in Step 2 of the selection process. If less than five firms are deemed qualified and suitable for the project, then that number shall be eligible to participate in Step 2.

13-4.14 At least 30 days prior to the date established for the submission of proposals (Step 2), the County shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. 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.

#### 13-4.2 Step 2

13-4.2.1 The County shall issue a Request for Proposals (RFP) to the firms selected in Step 1. Except as may otherwise be specified in this Article, the RFP shall be processed per County policy for competitive negotiation for other than professional services. Public posting of the RFP shall not be required

since only the firms short-listed from the RFQ may participate. At a minimum, the RFP shall request the following information:

- A lump sum fee for Pre-construction Services in accordance with the scope of services included in the RFP.
- A General Conditions Fee based upon an anticipated duration set by the County detailed in a specific listing of General Conditions items and their associated cost.
- The Insurance and Taxes Fee which shall be stated as a percentage of the Cost of the Construction Work, for general liability insurance, builders risk insurance, payment and performance bonds, local business licenses, any local municipal taxes, and any other similar costs identified in the definition of the Insurance and Taxes Fee per the General Conditions. This is the percentage that the CM proposes to use in developing all estimates for the Work, including the GMP. The costs of the items covered by the Insurance and Taxes Fee will be reimbursable as incurred during the course of the Work. The total reimbursements made for this fee shall not exceed the stated percentage of the Cost of the Construction Work.
- A CM/GC Fee to include all home office expenses, overhead and profit during the construction phase of the Contract.

Budget estimates for the construction project shall not be requested as a part of the RFP response.

### 13-4.3 Evaluation of Proposals

13-4.3.1 The RFP evaluation panel will evaluate and rank the proposals.

13-4.3.1.1 The CM Fee and the Preconstruction Services Fee shall be evaluated based upon the sum of those fees and not individually.

13-4.3.1.2 Although not required, the panel may conduct interviews with two or more firms deemed to be best suited based on the qualification criteria. The fee amounts are not to be negotiated during the interview process, although the offeror may voluntarily offer alternate fees during the interview.

13-4.3.1.3 Price shall be a critical basis for award.

13-4.3.1.4 Based on all available information, the evaluation panel will rank the proposals.

### 13-4.4 Negotiations and Award

13-4.4.1 After evaluation and ranking of the proposals, the Purchasing Agent shall conduct negotiations with two or more offerors submitting the highest ranked proposals. Negotiations may be conducted simultaneously with multiple offerors. Award shall be made to the offeror with whom negotiations, in the County's opinion, resulted in the best proposal and provides the best value.

13-4.4.2 Should the County determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and

- suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.
- 13-4.4.3 The CM contract shall be entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions.
- 13-4.4.4 The Purchasing Agent will notify all offerors who submitted proposals which offeror was selected for the project.
- 13-4.5 Contract Structure: If award is to be for a CMAR contract, it shall be structured into two (2) parts.
- 13-4.5.1 Part 1, Pre-Construction Services: These services will be performed for a stipulated or fixed amount.
- 13-4.5.1.1 The Part 1 contract is associated with the work of the CM prior to the start of construction activities.
- 13-4.5.2 Part 2, Construction Services: The Part 2 contract is associated with the work of the CM during the construction portion of the project.
- 13-4.5.2.1 The provision of the construction services is contingent upon the CM providing an agreeable GMP to the County.
- 13-4.5.2.2 The GMP shall be established at the completion of working drawings.
- 13-4.5.2.3 In the event of phased permitting where the drawings and specifications are not complete for portions of the project, but where early work has been authorized, the County and CM shall agree to a GMP for that portion of the work, pending the agreement of a GMP for the complete project. The intermediate work shall correspond with the partial permits being issued (example: clearing & grubbing, grading, or site utilities) or shall be for long lead items that need to proceed in order to maintain the project schedule (example: mill orders for structural steel).
- 13-4.5.2.4 If a GMP cannot be agreed upon, the Contract for Part 1 is concluded and the County shall not enter into a Part 2 contract with the CM. At this point in the process, the documents are substantially complete and the project may be bid using standard competitive sealed bidding procedures.
- 13-4.5.2.1.4.1 If the project is bid using standard competitive sealed bid procedures, then the construction contingency of the CM process would no longer be applicable.
- 13-4.5.2.1.4.2 Should the County choose to proceed with standard competitive sealed bidding, the CMs short-listed in the initial RFQ for SOQ (including the CM with whom a GMP was not agreed upon unless the County has documented that the CM failed to complete the Scope of Services under the Part 1 Contract to the County's satisfaction or breached the Part 1 Contract), as well as other interested firms that may not have participated in the initial RFQ, may respond with a bid.
- 13-4.5.2.5 Alternatively, if factors remain that sustain the benefit of the CMAR process, the Purchasing Agent may negotiate a GMP from one or more of the other highly ranked short-listed CM firms. Negotiations may be conducted simultaneously with multiple offerors. Award shall be made to the offeror

with whom negotiations, in the County's opinion, resulted in the best proposal and provides the best value.

13-4.5.3 In CMAR contracts, allowances are permitted with adequate justification and backup.

13-4.5.4 Contract Structure: If award is strictly for Contract Management without a CMAR component, it shall be structured as a standard contract for services.

### 13-5 Additional Construction Management Requirements

13-5.1 The County is required to contract for independent structural and special inspections, paid for by the County separately from the CMAR contract.

13-5.2 The County is required to contract for independent structural observations paid for by the County separately from the CMAR contract.

13-5.3 The work must be inspected by other than the Construction Manager at Risk to assure conformance with the plans and specs – usually by the County's Project Inspector.

13-5.4 When the construction contract is with the CM, the CM may only self-perform no more than 10% of the cost of the work and general conditions. Work performed by wholly owned subsidiaries of the CM shall be considered as self-performed. The remaining work must be performed by subcontractors of the CM, which the CM shall procure by publically advertised, competitive sealed bidding.

13-5.4.1. The provisions of 13-5.4 shall not apply to construction management contract involving infrastructure projects.

13-5.5 Prior to the County's award of a contract to the CM, the CM shall have advised the County when and where the CM plans to advertise bid packages for subcontracting opportunities.

## ARTICLE 14: STATE AND FEDERALLY FUNDED PROCUREMENTS

### 14.1. Purpose Policy and Procedures for State and Federally funded procurements:

When conducting procurement transactions under a Federal award, the County shall follow the procurement standards as provided by the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule Title 2 of the Code of Federal Regulations; 2 CFR 200, in §§ 200.318 through 200.327..

~~This policy communicates the County of York's methods for the procurement of goods and services obtained with federal grants and sets forth the requirements provided by the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule Title 2 of the Code of Federal Regulations; 2 CFR 200.~~

~~The section numbering and text that follows match that as published in 2 CFR Part 200. For the purposes of Article 14 of this policy, when the text below from 2 CFR Part 200 refers to a "non-Federal entity", it shall be understood to refer to the County of York, Virginia. If any provision of this Article is inconsistent with other Articles of this policy, the more stringent policy or procedure shall be used. If the 2 CFR Part 200 is silent on a procurement matter, then the County's policies and procedures for procurements using non-Federal funds shall be applicable to the procurement.~~

#### ~~§ 200.317 Procurements by states.~~

~~When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.~~

#### ~~§ 200.318 General procurement standards.~~

~~(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.~~

~~(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.~~

~~(c)~~

~~(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate~~

~~in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.~~

~~(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.~~

~~(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.~~

~~(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.~~

~~(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.~~

~~(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.~~

~~(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed~~

~~procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.~~

~~(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.~~

~~(j)~~

~~(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:~~

~~(i) The actual cost of materials; and~~

~~(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.~~

~~(2) Since this formula generates an open-ended contract price, a time and materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.~~

~~(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.~~

~~[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]~~

~~§ 200.319 Competition.~~

~~(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.~~

~~(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from~~

~~competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:~~

- ~~(1) Placing unreasonable requirements on firms in order for them to qualify to do business;~~
- ~~(2) Requiring unnecessary experience and excessive bonding;~~
- ~~(3) Noncompetitive pricing practices between firms or between affiliated companies;~~
- ~~(4) Noncompetitive contracts to consultants that are on retainer contracts;~~
- ~~(5) Organizational conflicts of interest;~~
- ~~(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and~~
- ~~(7) Any arbitrary action in the procurement process.~~

~~(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.~~

~~(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:~~

- ~~(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and~~
- ~~(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.~~

~~(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough~~

~~qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.~~

~~(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).~~

~~§ 200.320 Methods of procurement to be followed.~~

~~The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.~~

~~(a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:~~

~~(1) **Micro-purchases**—~~

~~(i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.~~

~~(ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.~~

~~(iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.~~

~~(iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must~~

~~maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:~~

~~(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;~~

~~(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,~~

~~(C) For public institutions, a higher threshold consistent with State law.~~

~~(v) *Non-Federal entity increase to the micro-purchase threshold over \$50,000.* Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.~~

~~(2) *Small purchases*~~

~~(i) *Small purchase procedures.* The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.~~

~~(ii) *Simplified acquisition thresholds.* The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.~~

~~(b) *Formal procurement methods.* When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:~~

~~(1) *Sealed bids.* A procurement method in which bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for~~

~~bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.~~

~~(i) In order for sealed bidding to be feasible, the following conditions should be present:~~

~~(A) A complete, adequate, and realistic specification or purchase description is available;~~

~~(B) Two or more responsible bidders are willing and able to compete effectively for the business; and~~

~~(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.~~

~~(ii) If sealed bids are used, the following requirements apply:~~

~~(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;~~

~~(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;~~

~~(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;~~

~~(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and~~

~~(E) Any or all bids may be rejected if there is a sound documented reason.~~

~~(2) **Proposals.** A procurement method in which either a fixed price or cost reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:~~

~~(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;~~

~~(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;~~

~~(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and~~

~~(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.~~

~~(e) *Noncompetitive procurement.* There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:~~

~~(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);~~

~~(2) The item is available only from a single source;~~

~~(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;~~

~~(4) The Federal awarding agency or pass-through entity expressly authorizes a non-competitive procurement in response to a written request from the non-Federal entity; or~~

~~(5) After solicitation of a number of sources, competition is determined inadequate.~~

~~§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms:~~

~~(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.~~

~~(b) Affirmative steps must include:~~

~~(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;~~

~~(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;~~

~~(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;~~

~~(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;~~

~~(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and~~

~~(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.~~

~~§ 200.322 Domestic preferences for procurements.~~

~~(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.~~

~~(b) For purposes of this section:~~

~~(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.~~

~~(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.~~

~~§ 200.323 Procurement of recovered materials.~~

~~A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.~~

~~§ 200.324 Contract cost and price.~~

~~(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.~~

~~(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.~~

~~(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.~~

~~(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.~~

~~§ 200.325 Federal awarding agency or pass-through entity review.~~

~~(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.~~

~~(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:~~

~~(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;~~

~~(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;~~

~~(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;~~

~~(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or~~

~~(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.~~

~~(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.~~

~~(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;~~

~~(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.~~

~~§ 200.326 Bonding requirements:~~

~~For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:~~

~~(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.~~

~~(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.~~

~~(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.~~

~~§ 200.327 Contract provisions:~~

~~The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.~~

Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

~~(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.~~

~~(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.~~

~~(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”~~

~~(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United~~

States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

~~(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.~~

~~(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.~~

~~(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).~~

~~(H) Debarment and Suspension (Executive Orders 12549 and 12689) — A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise~~

~~excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.~~

~~(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) — Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.~~

~~(J) § 200.323. Procurement of recovered materials.~~

~~A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.~~

~~(K) § 200.216. Prohibition on certain telecommunications and video surveillance services or equipment.~~

~~(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:~~

~~(1) Procure or obtain;~~

~~(2) Extend or renew a contract to procure or obtain; or~~

~~(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).~~

~~(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).~~

~~(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.~~

~~(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.~~

~~(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.~~

~~(e) See Public Law 115-232, section 889 for additional information. [John S. McCain National Defense Authorization Act]~~

~~(d) § 200.471 Telecommunication costs and video surveillance costs.~~

~~(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances:~~

~~(b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:~~

~~(1) Procure or obtain, extend or renew a contract to procure or obtain;~~

~~(2) Enter into a contract (or extend or renew a contract) to procure; or~~

~~(3) Obtain the equipment, services, or systems.~~

~~(L) § 200.322 Domestic preferences for procurements.~~

~~(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.~~

~~(b) For purposes of this section:~~

~~(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.~~

~~(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.~~

~~14.1, 14.2.~~ 14.2. Cash Management: The County will comply with applicable methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement by the County. However, if the County receives an advance in federal grant funds, the County will remit interest earned on the advanced payment quarterly to the federal agency consistent with 2 C.F.R. 200.305(b)(9).

#### 14.2.1. Payment Methods

14.2.1.1. *Reimbursements:* The County will request reimbursement for actual expenditures incurred under the federal grants as necessary. Consistent with state and federal requirements, the County will maintain source documentations supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make sure documentation is available for review upon request. Reimbursements of actual expenditures do not require interest calculations.

14.2.1.2. *Advances:* To the extent the County receives advance payments of federal grant funds, the County will strive to expend the federal funds on allowable expenditures as expeditiously as possible.

The County will hold federal advance payments in interest-bearing accounts, unless an allowable exception applies. The County will begin to calculate interest earned on cash balances once funds are deposited into the County's account.

The County will remit interest earned on grant funds annually to the U.S. Department of Health and Human Services Payment Management System (regardless of the federal awarding agency for the grant) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. 2 C.F.R. 200.305(b)(9). The County may retain up to \$500 of interest per year.

~~14.2, 14.3.~~ 14.3. Conflict of Interest: In accordance with 2 C.F.R. 200.18(c)(1), no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, unless the gift is an unsolicited item of nominal value.

**ARTICLE 15: ETHICS IN PUBLIC CONTRACTING**

15-1 Purpose

- 15-1.1 The provisions of this article supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2.
- 15-1.2 The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

15-2 Definitions: As used in this article:

- 15-2.1 "Immediate family" means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.
- 15-2.2 "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.
- 15-2.3 "Pecuniary interest arising from the procurement" means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).
- 15-2.4 "Procurement transaction" means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- 15-2.5 "Public employee" means any person employed by the County, including elected officials or appointed members of governing bodies.

15-3 Proscribed participation by public employees in procurement transactions: Except as may be specifically allowed by subdivisions B 1, 2, and 3 of § 2.2-3112, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the County when the employee knows that:

- 15-3.1 The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
- 15-3.2 The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;
- 15-3.3 The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- 15-3.4 The 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.

15-4 **Disclosure of subsequent employment:** No County employee or former County employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from

the cessation of employment by the County unless the employee or former employee provides written notification to the County, or a public official if designated by the County, or both, prior to commencement of employment by that bidder, offeror or contractor.

- 15-5 Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited
- 15-5.1 No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The County may recover the value of anything conveyed in violation of this subsection.
- 15-5.2 No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.
- 15-6 Kickbacks
- 15-6.1 No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
- 15-6.2 No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- 15-6.3 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 public contract.
- 15-6.4 If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the County and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.
- 15-7 Participation in bid preparation; limitation on submitting bid for same procurement
- 15-7.1 No person who, for compensation, assists in the development of an invitation to bid or request for proposal for or on behalf of the County shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that 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 the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the County.
- 15-8 Purchase of building materials, etc., from architect or engineer prohibited
- 15-8.1 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 § 2.2-3101 of the state code.

- 15-8.2 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 the 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 § 2.2-3101.
- 15-8.3 The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.
- 15-9 Certification of compliance required; penalty for false statements
- 15-9.1 Public bodies may require public 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 article.
- 15-9.2 Any public employee required to submit a certification as provided in subsection A who knowingly makes a false statement in the certification shall be punished as provided in § 2.2-437 of the state code.
- 15-10 Misrepresentations prohibited:
- 15-10.1 No public 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 it to contain any false, fictitious or fraudulent statement or entry.
- 15-11 Contributions and gifts; prohibition during procurement process:
- 15-11.1 No bidder or offeror who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor for the award of a public contract pursuant to this chapter, and no individual who is an officer or director of such a bidder or offeror, shall knowingly provide a contribution, gift, or other item with a value greater than \$50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, during the period between the submission of the bid and the award of the public contract under this chapter. The provisions of this section shall apply only for public contracts where the stated or expected value of the contract is \$5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.
- 15-12 Penalty for violation:
- 15-12.1 Any person convicted of a willful violation of any provision of this article 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.

BOARD OF SUPERVISORS  
COUNTY OF YORK  
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the \_\_\_\_ day of \_\_\_\_\_, 2024:

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Present

Vote

G. Stephen Roane, Jr., Chairman  
Sheila S. Noll, Vice Chairman  
Douglas R. Holroyd  
M. Wayne Drewry  
Thomas G. Shepperd, Jr.

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On motion of \_\_\_\_\_, which carried \_\_\_\_, the following ordinance was adopted:

AN ORDINANCE CODIFYING, REORGANIZING, AND AMENDING THE YORK COUNTY PURCHASING ORDINANCE, CURRENTLY NUMBERED AS O23-3, TO INCORPORATE PROVISIONS MANDATED BY THE CODE OF VIRGINIA SECTION 2.2-4343(A)(12), THE SINGLE VEHICLE PURCHASE LIMIT, BOARD OF SUPERVISOR APPROVAL LIMITS FOR PURCHASES, ALLOWANCE FOR THE SUBMISSION OF BIDS AND PROPOSALS ELECTRONICALLY, P-CARD PURCHASE LIMITS, USE OF CATEGORY B VENDORS FOR SMALLER PROFESSIONAL SERVICES, BOND REQUIREMENTS FOR INDIVIDUAL PROJECTS, AND VARIOUS ADMINISTRATIVE MATTERS

WHEREAS, Virginia Code §2.2-4343(10) allows localities to adopt alternative policies and procedures for purchasing and procurement that are based on competitive principles and are generally applicable to the procurement of goods and services by the governing body and its agencies; and

WHEREAS, Virginia Code §15.2-1231 allows counties to provide for the centralized competitive purchasing of all supplies, equipment, materials and commodities for all departments, officers and employees of the county, and for the county school board and the local board of social services, and also allows the establishment and maintenance of systems of bookkeeping, accounting and controls as are necessary to the proper operation of such systems of competitive purchasing and to proscribe the methods by which departments obtain their supplies, equipment, materials and commodities; and

WHEREAS, Virginia Code §2.2-4343(12) proscribes certain mandatory provisions for all purchasing and procurement policies;

WHEREAS, the York County Board of Supervisors has adopted an alternative purchasing policy that has been in place for many years and revises that policy from time to time, adopting an ordinance to approve said policy; and

WHEREAS, the County Attorney has recommended that the purchasing policy be codified as part of the County Code; and

WHEREAS, the County Purchasing Agent and County Administration recommend several changes to the current purchasing policy; and

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this \_\_\_\_ day of \_\_\_\_\_, 2024, that the York County Purchasing Policy be codified and enacted as Chapter 2.1 of the Code of Ordinances of York County, Virginia, which Chapter will read as follows:

#### Chapter 2.1 – PROCUREMENT

#### ARTICLE 1. – OVERVIEW.

##### Sec. 2.1-1-1. - Short Title.

This ordinance may be cited as the York County Procurement Policy, and shall supersede and replace all prior versions.

##### Sec. 2.1-1-2. - Purpose.

The purpose of this policy is to increase public confidence in purchasing by York County, to provide for fair and equitable treatment of all persons involved in public purchasing by the County, to maximize the purchasing value of public funds, to foster competition in the procurement process to the maximum feasible extent, and to provide for a centralized purchasing system of quality and integrity for the County.

##### Sec. 2.1-1-3. - Authority.

This policy is adopted pursuant to §§ 2.2-4343(10) and 15.2-1231 of the Code of Virginia and supersedes the operation of the Virginia Public Procurement Act as it applies to the procurement actions of the departments, agencies, officers, and employees subject to this policy, except as required by Code of Virginia § 2.2-4343(A)(12).

##### Sec. 2.1-1-4. - Intent.

This policy is intended to provide for centralized competitive purchasing and procurement from all non-governmental sources by all departments, officers, elements and employees of the County, including specifically, but not limited to, the York County

School Board, the York-Poquoson Department of Social Services, Constitutional Officers, and the York County Library.

Sec. 2.1-1-5. - Application.

Unless otherwise excepted, this policy shall apply to all procurements from non-governmental sources or contracts for the purpose of procuring goods, services, insurance, and construction involving the expenditure of public funds.

- (a) When any procurement involves the expenditure of state or federal assistance, grant, loan, or contract funds the procurement shall be conducted in accordance with the procedures set forth in Article XIV of this chapter, or any other mandatory federal or state requirements which are not reflected in this policy if the receipt of such funds is conditioned upon compliance with the mandatory procedures.
- (b) This policy shall not prohibit compliance with the terms and conditions of any grant, gift, or bequest that are otherwise consistent with law.
- (c) This policy shall not apply to contracts existing on its effective date and such contracts may be performed or extended according to their terms.
- (d) Unless otherwise restricted by this policy, the Purchasing Agent may utilize competitive procurement methods that are consistent with the Virginia Public Procurement Act (VPPA) when in the best interest of the County.

Sec. 2.1-1-6. - Implementation.

This policy shall be in effect immediately upon its passage.

Sec. 2.1-1-7. - Contracts or Purchases Made in Violation of this Policy.

Except as provided herein, no official, elected or appointed, nor any employee, shall purchase or contract for any goods, services, insurance, or construction on behalf of the County. Any purchase or contract made contrary to the provisions of this policy shall be void, and the County will not be bound thereby. Any person who makes such a procurement or disposition may be personally liable therefore to the vendor or purchaser of the goods, services, or construction involved. The Purchasing Agent shall not execute a purchase order if such procurement has not been in compliance with this policy and the procedures developed pursuant to it; unless, in the public's best interest, a circumstance warrants issuance of a purchase order, such circumstances to be documented in the procurement record.

Sec. 2.1-1-8 - Delegation of Authority to Purchasing Agent.

The Purchasing Agent shall serve as the principal public purchasing official for the County and shall be responsible, under the supervision of the Board, for the procurement of all goods, services, insurance, and construction as well as the management and disposal of surplus materials. The Purchasing Agent may delegate authority to a duly authorized

agent or agents. The authority of the Purchasing Agent shall specifically, but without limitation, include the authority to select the method of procurement to be used and the authority to negotiate and execute contracts on behalf of the County for any and all procurements or for the disposition of materials. The Purchasing Agent shall conduct all purchasing activities in accordance with the provisions of this policy.

If deemed by the Purchasing Agent to be in the County's best interest, regulations and procedures may be established that are more stringent than those specified in this policy.

The Purchasing Agent shall prepare forms and administrative regulations for the purpose of implementing the provisions of this policy. Such forms and regulations shall be deemed a part of this policy and shall direct the actions of those to whom this policy applies.

Documentation of competitive pricing or other documentation required by this policy, including a complete copy of the solicitation for competitive bids or proposals, shall be retained along with other papers related to the procurement in the office of the Division of Purchasing. The documentation may be retained electronically as may be permitted by the records retention guidelines promulgated by the Library of Virginia. Such documentation shall be retained until the acquisition of goods is completed or the services have been rendered and after such time may be destroyed in accordance with County and State procedures governing records retention.

The Purchasing Agent shall establish procedures to ensure that County interactions with potential bidders, offerors and selected contractors are conducted in a fair and professional manner. The Purchasing Agent may, for the convenience of the County, maintain a bidders list containing the names of prospective offerors. The maintenance of such list shall not be construed as the acceptance of an obligation to notify any or all of the prospective bidders or offerors on such list of procurement transactions by the County.

#### Sec. 2.1-1-9. - Definitions.

As used in this policy, the following words and phrases shall have the meanings set forth below:

*Approving Authority.* The Board of Supervisors or the County School Board or the York-Poquoson Social Services Board, as appropriate.

*Best Value.* The overall combination of quality, price, and various elements of required services that in total are optimal relative to the County's needs, as predetermined in the solicitation.

*Board or Board of Supervisors.* The Board of Supervisors of York County, Virginia.

*Business.* Any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

*Competitive Negotiation.* A method of procurement defined in section 2.1-2-2 of this chapter.

*Competitive Sealed Bidding.* A method of procurement defined in section 2.1-2-1 of this chapter.

*Construction.* Building, altering, repairing, improving or demolishing any structure, building, or roadway, and any draining, dredging, excavation, grading or similar work upon real property, but generally does not apply to routine maintenance, repair, or operation (MRO) of existing real property, if the expected costs do not exceed \$50,000.

*Construction contract.* A contract relating to the construction, alteration, repair, or maintenance of a building, structure, or appurtenance to such building or structure, including moving, demolition, and excavation connected with such building or structure, or any provision contained in any contract relating to the construction of projects other than buildings.

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

*Construction Manager at Risk (CMR).* A project delivery system where the Construction Manager, acting as the County's general contractor, is contracted to advise the designer and builder, and to deliver a project within a guaranteed maximum price (GMP).

*County.* The County of York, Virginia, a political subdivision of the Commonwealth of Virginia, and shall include all entities listed in section 2.1-1-4 of this chapter, above, and all other departments, public bodies corporate, agencies, sanitary districts and officers of the County to which this policy applies. It shall also include any other entity that has chosen to participate in this policy and has entered into a cooperative procurement agreement with the County.

*County Administrator.* The County Administrator of York County, or, a duly authorized designee.

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

*Employment services organization.* An organization that provides employment services to individuals with disabilities.

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

*Informality.* A minor defect or variation of a bid or proposal from the exact requirements of a solicitation for goods, services or construction, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

*Job Order Contracting.* A method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities and specifications in the book as the basis of its pricing. The method of selection may be made either through competitive sealed bidding or competitive negotiation.

*Multiphase professional service contract.* A contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

*Nonprofessional services.* Any services not specifically identified as professional services in the definition of professional services.

*Offeror.* Unless expressly indicated otherwise, shall mean both a bidder, i.e., a person who submits a competitive sealed bid in response to an Invitation to Bid, or a person who submits a proposal in response to a Request for Proposals.

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

*Professional Services.* 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.

*Purchasing Agent.* The County Administrator of York County, Virginia, or any person designated by the County Administrator to implement all or a portion of this policy.

*"Responsible bidder" or "Responsible offeror".* A person 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” or “Responsive offeror”*. A person who has submitted a bid or proposal that conforms in all material respects to the Invitation to Bid or Request For Proposals.

*Reverse Auctioning*. A procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for opening.

*Services*. Any work performed by an independent contractor wherein the service rendered does not consist primarily of the acquisition of equipment or materials or the rental of equipment, materials, or supplies.

*State Code*. The Code of Virginia.

*Using Agency*. Any officer, employee, or other entity of the County requiring any goods, services, insurance, or construction to be procured under the policies and procedures established by this policy.

Sec. 2.1-1-10. - Approvals.

- (a) All purchases in excess of \$25,000 shall be specifically approved by the County Administrator, or the Approving Authority's designee, prior to the placement of a firm order. Purchases of \$25,000 or less may be approved by the Purchasing Agent or its designee.
- (b) Purchases of goods or services not previously included in the approved Capital Improvements Program (CIP) in excess of \$100,000, and purchases of goods and services previously included in the approved CIP in excess of \$250,000, shall be specifically approved by the Board of Supervisors or the appropriate Approving Authority prior to placement of a firm order.

Excluded from the above approval requirement set out in section 2.1-1-10(b) of this chapter are:

- (1) the purchase of vehicles, wherein the cost of a single unit does not exceed \$75,000;
- (2) the bulk purchase of fuels for the Department of Public Works;
- (3) the acquisition of Public Utility Services (Data Access services, phone (“land-line” only)/water/electricity/gas);
- (4) annual software licensing or maintenance contracts when the initial software acquisition was approved by the Board of Supervisors or the appropriate Approving Authority, such purchases being subject to fund availability; and

- (5) Individual projects to be performed under an established Board approved annual services agreement for professional services.
- (c) The Board shall be notified no later than the Board's next regular meeting of any purchases of goods and services previously included in the approved CIP that are in excess of \$100,000 but not more than \$250,000.
- (d) If Board approval is required, emergency or exigency purchases may be approved after the fact. The request for approval shall identify the method of price competition used in the procurement.
- (e) This policy is not intended to require review or approval by the Board of specific items procured by the York County School Board, the York-Poquoson Department of Social Services, the Constitutional Officers, the York County Library, or public bodies who have by agreement become subject to this policy, when sufficient funds have been appropriated to such entity or officer for the purpose of the procurement and this policy has been followed. The Purchasing Agent with regard to such entities and officers shall, however, by signing all purchase orders for such procurements prior to the placement of a firm order, certify compliance with this policy and procedures issued pursuant to it.

Sec. 2.1-1-11. - Contract Requirements and Legal Review.

The terms and conditions of procurements in excess of \$25,000 shall be reviewed and approved as to form by the County Attorney prior to issuance by the Purchasing Agent. Contracts signed by all parties and containing, or incorporating by reference, all applicable terms and conditions shall be required for procurements of services, goods, or construction in excess of \$25,000. Whenever a contract, signed by all parties and containing, or incorporating by reference, all applicable terms and conditions is to be used in a procurement, it and all amendments and changes thereto shall be approved as to form by the County Attorney.

Sec. 2.1-1-12. - Authority to Sign Contracts and Agreements.

All procurement contracts and agreement in excess of \$25,000 shall be specifically signed by the County Administrator or its designee, or the Approving Authority's designee, prior to the placement of a firm order. All procurement contracts and agreement of \$25,000 or less may be signed by the Purchasing Agent or its designee. Contracts, agreements, letters of engagement, specifically for legal services, may be signed by the County Attorney.

ARTICLE II. - SOLICITATION PROCESS.

Sec. 2.1-2-1. - Process for Competitive Sealed Bidding.

The process for Competitive sealed bidding shall include the following elements:

- (a) Issuance of a written invitation to bid containing or incorporating by reference specifications and contractual terms and conditions applicable to the procurement. When it is impractical to prepare initially a purchase description to support an award based on price, an invitation to bid may be issued requesting submission of unpriced offers to be followed by an invitation to bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
- (b) Public notice of the invitation to bid at least ten (10) calendar days prior to the date set for receipt of bids by posting a link to the solicitation on the county's website. In addition, bids may be solicited directly from potential offerors.
- (c) Bidders shall submit bids in the manner specified in the Invitation For Bids ["IFB"]. When so specified, the County may allow submissions of bids through either electronic means or paper submission. Bids shall not be opened until the designated time specified in the IFB for the submission of bids.
- (d) Public opening and announcement of all bids received.
- (e) Evaluation of the bids based on requirements set forth in the invitation and the provisions of this policy. The following non-exhaustive list of factors shall be considered, in addition to price, when determining the lowest responsible bidder and the responsiveness of the bid:
  - (1) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
  - (2) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
  - (3) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
  - (4) The quality of performance of previous contracts or services;
  - (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
  - (6) The sufficiency of financial resources and ability of the bidder to perform the contract or provide the service;
  - (7) The quality, availability and adaptability of the goods or services to the particular use required;

- (8) The ability of the bidder to perform future maintenance and service for use of the subject of the contract;
- (9) The number and scope of conditions attached to the bid; and
- (10) Any other condition or criteria included in the solicitation, its terms, conditions or the solicitation's instructions.

(f) Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided for in the invitation to bid, awards may be made to more than one bidder. In the event only one bid is received and the Purchasing Agent in consultation with the using agency makes a determination that it would not be in the best interest of the County to rebid the procurement, such determination shall be in writing and shall be provided to the approving authority when approval by other than the Purchasing Agent is required.

Sec. 2.1-2-2. - Process for Competitive Negotiation.

The process for Competitive Negotiation shall include the following elements:

(a) Issuance of a written request for proposal (RFP) indicating in general terms what is sought to be procured and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the offeror. In addition, the RFP shall identify and list, in order of importance, the evaluation criteria that will be used in making a decision of award.

- (1) When soliciting for Professional or other than Professional services, costs for services may be an evaluation criteria. The RFP may request any cost or financial information, including but not limited to, life-cycle costing and actual or nonbinding estimates of price for services. Such cost or financial information may be negotiated during the discussion and negotiation stages.

(b) Public notice of the request for proposal at least ten (10) calendar days prior to the date set for receipt of proposals by posting a link to the solicitation on the county's website. In addition, proposals may be solicited directly from potential offerors.

(c) Offerors shall submit proposals in the manner specified in the Request For Proposals ["RFP"]. When so specified, the County may allow submissions of proposals through electronic means and/or paper submission. Proposals shall not be opened until the designated time specified in the RFP for the submission of proposals.

## (d) Evaluation and Award:

- (1) A panel shall be established by the using agency, and shall consist of a representative of the Purchasing Division, and not less than three County representatives to evaluate proposals and recommend award.
- (2) On the basis of the initial responses to and the evaluation factors identified in the RFP, at least two (2) offerors deemed to be the most qualified, responsible and suitable or having proposed the best solution for which the RFP was issued shall be selected. Individual discussions shall then be had with each such offeror. Repetitive discussions shall be permissible. Offerors shall be encouraged to elaborate on their proposed solution and/or qualifications, scope of work, performance data, or expertise pertinent to the proposed project as well as any alternative concepts. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. Discussions may encompass non-binding estimates of total project costs, including, where appropriate, design, construction, and life cycle costs. Methods to be used in arriving at a price for services may also be discussed. Price of service may be discussed and considered but will not be the sole determining factor in proceeding with negotiations. The evaluation panel shall identify and rank at least two of the offerors with whom the Purchasing representative will negotiate.
  - a. For professional services, negotiations shall be led by the Purchasing Division representative, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the County, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.
  - b. For other than professional services, negotiations shall be led by the Purchasing Division representative, and may be conducted simultaneously with multiple offerors. Award shall be made to the offeror with whom negotiations, in the County's opinion, resulted in the best proposal and provides the best value.
- (3) When the terms and conditions of multiple awards are so provided for in the request for proposal, awards may be made to more than one offeror.
- (4) Should the County determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more

highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

- (5) Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the County shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the County require awarding the contract.

Sec. 2.1-2-3. - Pre-Bid and Pre-Proposal Conferences.

When deemed necessary by the Purchasing Agent, a pre-bid or pre-proposal conference with prospective bidders / offerors may be held prior to the date established for submitting a bid or proposal. Such conferences are for the purpose of detecting unclear provisions, removing or editing restrictive language, and in the discretion of the Purchasing Agent identifying alternative specifications, methods or means to the benefit of the County, or for increasing competition or providing greater value for the County. After such conference, when appropriate, the Purchasing Agent may issue a written addendum to the solicitation, clarifying or revising specifications or other submittal and contract requirements. Bidders shall not rely upon any oral instructions.

Sec. 2.1-2-4. - Use of brand names.

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

Sec. 2.1-2-5. - Comments or Questions Regarding Invitations for Bid or Requests for Proposal.

Should a prospective bidder or offeror find any discrepancy in, or omissions from, the specifications, request for proposal, or other contract documents, or should he be in doubt as to their meaning, he shall at once notify the specified contact person who may issue a written Addendum to the solicitation. The Addendum shall be made available in the same manner as the original solicitation documents were offered. Bidders shall not rely upon any oral instructions.

Sec. 2.1-2-6. - Offeror's Responsibilities.

By submitting a bid or proposal an offeror agrees and war-rants that it has examined all contract documents and, if appropriate, the subject of the contract, and where the specifications require a given result to be produced, that the specifications are adequate and the required results can be produced under the specifications in the contract. Omissions from the specifications shall not relieve the offeror from the responsibility of complying with the general terms and intent of the contract as indicated by the specifications. Once the award has been made, failure to have read all the conditions, instructions, and specifications of the contract will not be cause to alter the original bid, quote, or proposal, or for the offeror to request additional compensation.

Sec. 2.1-2-7. - Signatures on Offers or Bids.

The firm, corporation, or individual name of the offeror must be signed to any proposals or bids submitted. In the case of a corporation, the title of the officer signing must be stated and each officer must be duly authorized. In the case of a partnership, the signature of at least one of the partners must follow the firm name using the term "member of the firm" or "general partner."

ARTICLE III. - METHODS OF PROCUREMENT.

Sec. 2.1-3-1. All contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding or competitive negotiation as provided in this section, unless otherwise authorized by law.

Sec. 2.1-3-2. - Professional services shall be procured by competitive negotiation.

Sec. 2.1-3-3. - Goods, services other than professional services, and insurance may be procured by competitive sealed bidding or competitive negotiation.

- (a) Upon a written determination made in advance by the Purchasing Agent that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services. The basis for this determination shall be documented in writing.

Sec. 2.1-3-4. - Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances:

- (a) On a fixed price design-build or construction management basis as provided in Article XIII of this chapter; or
- (b) For the construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made in advance by the Purchasing Agent and set forth in writing that competitive

sealed bidding is either not practicable or not fiscally advantageous to the County, which writing shall document the basis for this determination.

Sec. 2.1-3-5. - Exceptions to Competition Requirements.

Sections 2.1-3-1 through 2.1-3-4(b) of this chapter shall not apply and no price competition other than specified in this section is required in the following procurement transactions:

- (a) The purchase of items under procurement contracts made available to the County by the Commonwealth of Virginia or to purchases made available to the County through other state, federal, or public entities, or through a cooperative purchasing organization establishing cooperative contracts for the public sector and utilizing competitive methods consistent with this policy;
- (b) Contracts for legal services, expert witnesses, and other services associated with litigation, regulatory proceedings, or other legal matters;
- (c) Purchases for special police work when the Sheriff certifies that the purchases are needed for undercover law enforcement operations;
- (d) Contracts and purchases by the Economic Development Authority with respect to any item of cost of an "authority facility" or "facilities" as defined in § 15.2-4902 of the State Code;
- (e) Upon a determination by the Purchasing Agent in writing, which writing shall state the basis for such determination, 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. The Purchasing Agent shall conduct appropriate negotiations as to price, delivery, and terms. A record of the sole source procurement shall be maintained listing the contractor's name, the amount, and qualifying circumstances. The Purchasing Agent shall provide a copy of the written determination to the County Administrator or other appropriate Approving Authority when approval is required by section 2.1-1-10 of this chapter;
- (f) In cases of emergency or exigency provided, however, such procurement shall be made with such competition as is practicable under the circumstances. A written statement by the Purchasing Agent of the basis for the emergency or exigency and for the selection of the particular supplier shall be included in the papers relating to the procurement. The Purchasing Agent shall develop appropriate procedures regarding emergency or exigency purchases. The term "emergency" as used in this subparagraph means a situation where there exists a threat to public health, welfare, or safety or when an unforeseen circumstance causes disruption of an essential service. The term "exigency" as used in this subparagraph means that there is a need to avoid, prevent, or alleviate serious

harm or injury, financial or otherwise, to the County, and the use of competitive procurement proposals would prevent or unreasonably delay the procurement action required to address the situation;

- (g) Agreements or contracts entered into between the County and private parties for cost participation or cost sharing in the extension or construction of public utilities or the provision of other public services. Any such agreements must be approved by the Board;
- (h) Travel advances, travel reimbursements, or travel expenses;
- (i) Lodging and conference facilities, meals, beverages, entertainment, awards, or similar purchases in conjunction with official county functions or meetings;
- (j) Payments for services to jurors, board and commission members, sports officials, and medical examiners;
- (k) Contracts for local telephone service (excepting cellular and paging services), or other regulated utility services;
- (l) Interdepartmental or interagency expenses or purchases;
- (m) Contracts of employment;
- (n) Advertising and legal notices – not to include advertising associated with marketing;
- (o) Dues and subscriptions;
- (p) Employee educational expenses;
- (q) Textbooks, library books, and other library items for circulation to, or use by students, acquired by the public schools;
- (r) Public library books and other library items for circulation to, or use by the public;
- (s) Services rendered to or payments received by clients of the Department of Social Services;
- (t) Foster home placements;
- (u) Treatment services provided to clients by the Department of Community Services;
- (v) Clinical supervision services for counselors in County employment;

- (w) Occupational therapy, physical therapy, student evaluations;
- (x) Mail and mail-related costs (e.g. postage meter expense, stamps, etc.), but not mailing equipment or non-governmental services;
- (y) Instructional/specialty educational materials, promotional items, crafts;
- (z) The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance and aggregates shall not be made by reverse auctioning;
- (aa) Notwithstanding any other provision of this policy, upon a determination by the Purchasing Agent that the purchase of certain designated goods from a public auction sale is in the best interest of the County, such items may be purchased at auction sale. The Purchasing Agent shall document the basis for any such determination;
- (bb) The purchase of goods or services that are produced or performed by:
  - (1) Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or
  - (2) Employment services organizations that offer transitional or supported employment services serving individuals with disabilities;
- (cc) Public assistance and social services programs as defined in § 63.2-100 of the State Code, community services boards as defined in § 37.2-100 of the State Code; services under the Children's Services Act (§ 2.2-5200 et seq. of the State Code) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq. of the State Code) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 2.2-4303 of the State Code;
- (dd) Contracts for certain essential election materials and services;
- (ee) The selection of services related to the management, purchase, or sale of authorized investments, including but not limited to actuarial service;
- (ff) The procurement of goods and services not exceeding \$50,000, and not otherwise excluded from competition pursuant to sections 2.1-3-5(a) through 2.1-3-5(ee) of this chapter shall be made as follows:

- (1) For purchases in the amount of \$5,000 or less, a Purchase Order and multiple quotes are not required; however, price reasonableness shall be considered prior to making a purchase.
  - a. Purchases of \$2,500 or less may be acquired using the County-provided credit card (“purchase card” or “PCard”). The use of a PCard includes the following stipulations:
    1. No cash advances (prohibited by security settings);
    2. No ‘Gift Card’ purchases for Employee Recognition Program. Any requests of that nature must be made on a purchase requisition form for coordination with the payroll office;
    3. No purchases of “equipment maintenance” or “lease agreements”. These services should be requested on a purchase requisition form so that an accurate record of coverage can be maintained by staff;
    4. No Cell phones;
    5. The Purchasing Agent may allow for the use of a PCard in amounts greater than \$2,500 on an exception basis, when deemed to be in the County’s best interest, and approved by the cardholder’s department head or County Administration. All School Division spending parameter adjustments must be approved by the School Division’s Chief Financial Officer.
  - b. For purchases in excess of \$5,000 but not greater than \$25,000, at least three suppliers shall be contacted. Written quotations or proposals shall be required.
  - c. For purchases in excess of \$25,000 but not greater than \$50,000, the Purchasing Agent or his designee shall obtain quotes or proposals through an informal process, and whenever practical publish the quoting opportunity on the website utilized by the County for the posting of solicitations.
  - d. When a procurement transaction is made under section 2.1-3-5(ff) of this chapter, the purchase shall be made from the Responsive and Responsible bidder quoting the lowest price, best value or proposing the most suitable solution, unless the Purchasing Agent documents in writing a determination that, in the best interest of the County, such purchase should be made from another supplier at a higher price. Such determination for purchases in excess of \$5,000 shall be approved by the County Administrator or the approving authority’s designee.
  - e. Purchases that in the aggregate or in the sum of all phases are expected to be in excess of \$50,000 shall be made by either competitive sealed bidding or competitive negotiation.

- f. No using agency shall artificially divide contract requirements so as to avoid any dollar limitations set forth in this policy.
- g. Nothing in this policy shall prevent the use of competitive sealed bidding or competitive negotiation in procurements under \$50,000, if deemed appropriate by the Purchasing Agent.
- (gg) Maintenance or license agreements on prior Board-approved purchases;
- (hh) Purchases paid fully with non-public funds [i.e.: including but not limited to sponsorships, donations, school activity funds, etc.];
- (ii) Professional Services, where fees are expected to be under \$80,000, when made consistent with the Commonwealth's Department of General Services/Division of Purchase and Supply (DPS) Category B procedures:
  - (1) Applicable to both single and term contracts
  - (2) Procedure
    - a. Prepare a Scope of Work.
    - b. From the pool of firms on file with DPS for Category B procedures, first present opportunity to a micro business if available. If no micro business in the category exist, are willing to participate, or are appropriately qualified, then the initial opportunity may be presented to a certified small business. When selecting firms to contact, avoid favoritism or the appearance of favoritism. Consideration should be given to number and value of previous contracts awarded to each firm.
    - c. Conduct telephone or personal interviews with representatives of the firm to determine current personnel qualifications, location relative to the work, expertise, workload, capability to meet the proposed schedule, past performance on similar projects and ability to provide the service within budgeted costs.
    - d. Determine if the A/E is qualified for the work and, if so, negotiate the fee for services. Make award following standard operating procedures, including appropriate approvals.
    - e. If unable to negotiate an acceptable fee with the firm, then repeat the process until an acceptable fee is obtained.

Sec. 2.1-3-6. - Architectural and professional engineering term contracting; limitations.

- (a) A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by the County, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects

is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

- (b) Such contracts may be renewable for four additional one-year terms at the option of the County. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.
- (c) The sum of all projects performed in a one-year contract term shall not exceed \$10 million, and no single project shall exceed \$1,000,000.
- (d) Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) the procedures for distributing multiple projects among the selected contractors during the contract term are established prior to issuance of the Request for Proposals.

Sec. 2.1-3-7. - Job Order Contracting.

- (a) A job order contract may be awarded for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first. Contractors may be selected through either competitive sealed bidding or competitive negotiation.
- (b) Such contracts may be renewable for four additional one-year terms at the option of the County. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed the maximum threshold amount.
  - (1) The maximum threshold amount shall be \$6 million in a one-year contract term.
  - (2) Subject to the maximum threshold amount, no individual job order shall exceed \$500,000.
- (c) For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.
- (d) Order splitting with the intent of keeping a job order under the maximum dollar amounts is prohibited.
- (e) The County shall not issue or use a job order, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of

engineering as those terms are defined in § 54.1-400 of the State Code. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$50,000 per job order, and (iii) do not exceed \$600,000 per contract term.

Sec. 2.1-3-8. - Joint and Cooperative Procurement.

- (a) The County may participate in, sponsor, conduct, or administer a joint procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction.
- (b) The County may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association, or from any authority, department, agency or institution of the Commonwealth even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies.
  - (1) Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.
- (c) Consistent with Code of Virginia § 2.2-4304.D.3, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases, the County may purchase goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

Sec. 2.1-3-9. - Requirements for state-aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation.

Sec. 2.1-3-10. - Modification of Contracts.

Contracts entered into by the County may include provisions for modification of the contract during performance but no fixed price contract may be increased by more than 25 percent of the amount of the contract or \$50,000, whichever is greater, without prior approval by the Board or other approving authority. Following such approval, the Contract price will consist of the original Contract amount plus all such approved modifications. Any such modifications shall not exceed appropriations available for the project. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

#### ARTICLE IV. - COMPLIANCE REQUIREMENTS.

##### Sec. 2.1-4-1. - Discrimination prohibited.

- (a) In the solicitation or awarding of contracts, the County shall not discriminate against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by law relating to discrimination in employment.
- (b) The Purchasing Agent may establish programs to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions.
- (c) The programs used to facilitate participation may incorporate definitions as identified in State Code § 2.2-4310.F.

##### Sec. 2.1-4-2. - Employment discrimination by contractor prohibited; required contract provisions.

The County shall include in every contract of more than \$10,000 the following provisions:

- (a) During the performance of this contract, the contractor agrees as follows:
  - (1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- (2) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- (3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- (4) The contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Sec. 2.1-4-3. - Compliance with federal, state, and local laws and federal immigration law; required contract provisions.

The County shall provide in every written contract a statement that that the contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

Sec. 2.1-4-4. - Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth.

- (a) The County shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.
- (b) Pursuant to competitive sealed bidding or competitive negotiation, the County shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall be required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.
- (c) Any bidder or offeror described in subsection 2.1-4-4(b) of this chapter that fails to provide the required information shall not receive an award unless a waiver of this requirement is granted by Purchasing Agent, and documented in the procurement file.

- (d) Any business entity described in subsection 2.1-4-4(a) of this chapter that enters into a contract with the County pursuant to this policy shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.
- (e) The County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

Sec. 2.1-4-5. - Drug-free workplace to be maintained by contractor; required contract provisions.

The County shall include in every contract over \$10,000 the following provisions:

- (a) During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- (b) For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

Sec. 2.1-4-6. - Contractor's Classification of Employees; Civil Penalty; Debarment; As required by §§ 58.1-1900 and 58.1-1902 of the state code.

- (a) For the purposes of state code titles 58.1 (Taxation), 40.1 (Labor and Employment), 60.2 (Unemployment Compensation), and 65.2 (Workers Compensation), if an individual performs services for an employer for remuneration, that individual shall be considered an employee of the party that pays that remuneration unless such individual or his employer demonstrates that such individual is an independent contractor. The Virginia Department of Taxation ((the "Department" for purposes of section 2.1-4-6(a) of this chapter) shall determine whether an individual is an independent contractor by applying Internal Revenue Service guidelines.

(b) In the event that the Department notifies the County pursuant to state code § 58.1-1902 that an employer has failed to properly classify an individual as an employee under the provisions of state code § 58.1-1900, the County shall not award a contract to such employer or to any firm, corporation, or partnership in which the employer has an interest in the following manner:

- (1) For a period of up to one year, as determined by the Department, from the date of the notice for a second offense;
- (2) For a period of up to three years, as determined by the Department, from the date of the notice for a third or subsequent offense.

#### ARTICLE V. - PREQUALIFICATION,

Sec. 2.1-5-1. - Prequalification generally; prequalification for construction.

Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. The Purchasing Agent shall promulgate written procedures to implement Article V of this chapter.

- (a) Any prequalification of prospective contractors for construction by the County shall include:
  - (1) The County's issuance of a Request For Qualifications (RFQ) or a Request For Proposals (RFP) to solicit an application from prospective contractors desiring prequalification. The RFQ or RFP shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The RFQ or RFP shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 2.2-4342 of the State Code;
  - (2) In all instances in which the County requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification application. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction to allow the procedures set forth in this Article to be accomplished;
  - (3) At least 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 County shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons;

- (4) A decision by the County denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 2.2-4357 of the State Code.
- (b) The County may deny prequalification to any contractor only if the County finds one of the following:
- (1) The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor 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 County shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
  - (2) The contractor does not have appropriate experience to perform the construction project in question;
  - (3) The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;
  - (4) The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the County without good cause. If the County has not contracted with a contractor in any prior construction contracts, the County may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The County shall not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
  - (5) The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article XV of this chapter, (ii) the Virginia Governmental Frauds Act (§

18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state; or

- (6) The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
  - (7) The contractor failed to provide to the County in a timely manner any information requested by the County relevant to subdivisions 2.1-5-1(b)(1) through 2.1-5-1(b)(6) of this chapter.
- (c) The provisions of subsections 2.1-5-1(a) and 2.1-5-1(b) of this chapter shall not apply to prequalification for contracts let under §§ 33.2-209, 33.2-214, or 33.2-221 of the State Code

#### ARTICLE VI. – MISCELLANEOUS.

##### Sec. 2.1-6-1. - Negotiation with lowest responsible bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the lowest acceptable bid exceeds available funds, the Purchasing Agent may negotiate with the bidder to obtain a contract price within available funds.

- (a) The Purchasing Agent may require a bidder or offeror to clarify its bid or offer or acknowledge by written confirmation that the minimum requirements of the specifications are included in the offeror's bid or proposal.

##### Sec. 2.1-6-2. - Cancellation or Rejection of Bids.

- (a) An invitation to bid, a request for proposal, any other solicitation, or any and all bids or proposals received may be canceled or rejected when the Purchasing Agent determines that it is in the best interest of the County to do so. The reasons therefore shall be made a part of the contract file. Any bid which is incomplete, conditional, obscure, or which is not in conformance with the specifications may be rejected or any such irregularities may be waived at the option of the Purchasing Agent provided they do not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction to be procured.
- (b) No bidder shall be permitted to alter, modify or amend its bid after the time fixed for submission of bids.
- (c) No bid received after the time fixed for submission of bids shall be opened or considered.

- (d) No statement or notation whatsoever, written, printed, typed or otherwise set out on any bid or offer envelope, including any addition or deduction in contract price, shall be recognized or considered in the review and tabulation of any bid or offer or for any other purpose.
- (e) If the solicitation is cancelled prior to the opening of bids or proposals, a bidder or offeror who has already submitted their bid/proposal may request that it be returned, and the sealed document will be returned to them (at their expense). Any remaining submittals not returned to the submitting bidder or offeror shall remain permanently sealed in the procurement file. File retention and disposal shall be in accordance with applicable records destruction policy.
- (f) If the solicitation is cancelled after the opening of bids or proposals, the documents will not be returned to the bidder or offeror, but shall be re-sealed and retained by the Purchasing Agent in the procurement file. File retention and disposal shall be in accordance with applicable records destruction policy.

Sec. 2.1-6-3. - Tie Bids.

In the case of a tie bid, preference shall be given to goods, services, and construction produced in Virginia or provided by Virginia persons, firms, or corporations (with bidders situated within the County of York given first preference) if such a choice is available; otherwise the tie shall be decided by lot. Where all bidders are Virginia persons, firms, or corporations (or, alternatively, if all bidders are non-Virginia persons, firms, or corporations), the tie shall also be decided by lot. For purposes of this section, a Virginia person, firm or corporation means a person, firm or corporation organized pursuant to Virginia law or maintaining a principal place of business in Virginia.

Sec. 2.1-6-4. - Withdrawal of Bids or Proposals.

- (a) A bidder or an offeror may withdraw or cancel a bid or proposal at any time prior to the time set for receipt of bids or proposals.
- (b) After the time set for receipt of bids or proposals, the bidder or offeror may not withdraw for a period of sixty (60) calendar days, unless otherwise specified in the solicitation document or as provided below.
  - (1) After the time set for receipt of bids or proposals, a bidder or offeror seeking withdrawal of a bid for construction shall give notice in writing to the Purchasing Agent of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.
  - (2) After the time set for receipt of bids or proposals, a bidder or offeror seeking withdrawal of a bid for non-construction shall give notice in writing

to the Purchasing Agent of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

- (3) The basis for seeking withdrawal of a bid or proposal shall be based solely on a mistake in the bid or proposal, provided it 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.
- (c) No bid shall 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 in accordance with this section, the lowest 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 person or firm 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 Purchasing Agent shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the Purchasing Agent denies the withdrawal of a bid under the provisions of this section, he shall state in such notice the reasons for his 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 Purchasing Agent shall return all work papers and copies thereof that have been submitted by the bidder.

Sec. 2.1-6-5. - Cost Plus Percentage of Cost Contracts.

Contract provisions allowing for "cost plus a percentage of cost" shall be avoided.

Sec. 2.1-6-6. - Recycled goods and products.

- (a) Any person who believes that particular goods or products with recycled content are functionally equivalent to the same goods or products produced from virgin materials may petition the Purchasing Agent to include the recycled goods or products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation that establishes that the

goods or products (i) contain recycled content and (ii) can meet the performance standards set forth in the applicable specifications. If the Purchasing Agent determines that the documentation demonstrates that the goods or products with recycled content will meet the performance standards set forth in the applicable specifications, it shall incorporate the goods or products into its procurement process.

- (b) The Purchasing Agent shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of goods and products with recycled content and shall, in developing new procedures and specifications, encourage the use of goods and products with recycled content.

#### ARTICLE VII. - SECURITY PROVISIONS.

##### Sec. 2.1-7-1. - Retainage on construction contracts.

- (a) In any public contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.
- (b) Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

##### Sec. 2.1-7-2. - Deposit of certain retained funds on certain contracts; penalty for failure to timely complete.

- (a) The County, when contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the solicitation an option for the contractor to use an escrow account procedure for utilization of the County's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the solicitation document and Contract shall be executed and submitted to the County within fifteen calendar days after notification. If the escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.
- (b) In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement in a form acceptable to the county attorney. The contractor's escrow agent shall be a trust

company, bank or savings institution with its principal office located in the Commonwealth. The escrow agreement and all regulations adopted by the County shall be substantially the same as that used by the Virginia Department of Transportation.

- (c) This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.
- (d) Any such public contract for construction with the County, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified amount for each day exceeding the completion date stated in the contract.
- (e) Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

Sec. 2.1-7-3. - Public construction contract provisions barring damages for unreasonable delays declared void.

- (a) Any provision contained in any public construction contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the County, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.
- (b) Subsection 2.1-7-3(a) of this chapter shall not be construed to render void any provision of a public construction contract that:
  - (1) Allows the County to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
  - (2) Requires notice of any delay by the party claiming the delay;
  - (3) Provides for liquidated damages for delay; or
  - (4) Provides for arbitration or any other procedure designed to settle contract disputes.
- (c) A contractor making a claim against the County for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the County and shall pay it for a percentage of all costs incurred by the County in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal

to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

- (d) The County denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the County shall be equal to the percentage of the contractor's total delay claim for which the County's denial is determined through litigation or arbitration to have been made in bad faith.

Sec. 2.1-7-4. - Bid Bonds.

- (a) Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Virginia Code that are in excess of \$350,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.
- (b) No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.
- (c) Nothing in this section shall preclude the County from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for nontransportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Virginia Code and partially or wholly funded by the Commonwealth.

Sec. 2.1-7-5. - Performance and payment bonds.

- (a) Upon the award of any (i) nontransportation-related public construction contract exceeding \$500,000 awarded to any prime contractor or (ii) transportation-related project authorized pursuant to Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Virginia code exceeding \$350,000 that is partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds:
  - (1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans,

specifications, and conditions of the contract, unless the contract is an indefinite delivery or quantity contract; and

- (2) A payment bond in the sum of the contract amount, unless the contract is an indefinite delivery or quantity contract. The bond 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.
- (b) Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.
- (c) The bonds shall be payable to the County of York, Virginia. Bonds required for the contracts for other public bodies shall be payable to such public body.
- (d) Each of the bonds shall be filed with the public body that awarded the contract, or a designated office or official thereof.
- (e) Nothing in this section shall preclude the County from requiring payment or performance bonds for construction contracts below \$500,000 for nontransportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Virginia code and partially or wholly funded by the Commonwealth.
- (f) Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.
- (g) For indefinite delivery or quantity contracts awarded pursuant to subsections 2.1-7-5(a) through 2.1-7-5(a)(2) of this chapter, the County may require the contractor awarded such contract to furnish a performance bond and a payment bond for each individual project, each bond to be equal to the dollar amount of the individual project. Such contractor shall not be required to pay the performance bond and payment bond in the sum of the annual cap for the total work that may be authorized for such contract. For purposes of this section, "indefinite delivery or quantity contract" means a contract that only requires performance of contractual obligations upon the request of the County and which establishes an annual cap for the total work that may be authorized for such contract.

Sec. 2.1-7-6. - Alternative forms of security.

- (a) In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check, or cash escrow in the face amount required for the bond.
- (b) If approved by the county attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

Sec. 2.1-7-7. - Bonds.

In addition to any bonds which may be required by state law, the Purchasing Agent may, in the Agent's sole discretion, require a bid, performance, or payment bond or other specified surety arrangement in any procurement solicitation in any amount, provided that for construction or renovation contracts in excess of \$500,000, performance and payment bonds shall be required in the amount of the contract. The requirement for such surety shall be clearly stated in the solicitation.

ARTICLE VIII. - FREEDOM OF INFORMATION ACT.

Sec. 2.1-8-1. - Freedom of Information Act.

With the following exceptions, procurement documents are subject to the Virginia Freedom of Information Act:

- (a) Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be open to public inspection;
- (b) Bid and proposal records shall be open to public inspection only after award of the contract. Any bidder or offeror may be allowed to inspect the bid or proposal records after bid opening or after the evaluation and negotiation of proposals are completed, and prior to award unless the County decides not to accept any bids or not to accept any of the proposals and to resolicit for the goods or services;
- (c) Trade secrets or proprietary information submitted to the County are not subject to disclosure if requested by the person submitting such information prior to or upon submission of the data or other materials. Any such request must identify what is to be protected and state the reasons therefor;
- (d) Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions imposed by the Purchasing Agent to insure security and integrity of the records.

ARTICLE IX. - CONTRACTING WITH FAITH-BASED ORGANIZATIONS.

Sec. 2.1-9-1. In accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, to the County shall enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

Sec. 2.1-9-2. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

Sec. 2.1-9-3. The County, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in section 2.1-9-6 of this chapter, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

Sec. 2.1-9-4. The County shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the County does not discriminate against faith-based organizations.

Sec. 2.1-9-5. A faith-based organization contracting with the County (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, or refusal to participate in a religious practice or on the basis of race, age, color, gender, sexual orientation, gender identity, or national origin and (ii) shall be subject to the same rules as other organizations that contract with the County to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the County. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

Sec. 2.1-9-6. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with the County shall not be spent for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

Sec. 2.1-9-7. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the

grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000 e-1 et seq.), to employ persons of a particular religion.

Sec. 2.1-9-8. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the County and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the County shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

Sec. 2.1-9-9. The County shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the County and a faith-based organization a notice in bold face type that states: "Neither the County's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."

#### ARTICLE X. - APPEALS, PROTESTS, DISPUTES, LEGAL ACTIONS.

##### Sec. 2.1-10-1. - Suspension and Debarment.

- (a) The Purchasing Agent is authorized, after consultation with the County Attorney, to suspend or debar any offeror for cause from consideration for the award of contracts.
- (b) An offeror may be suspended for a period not to exceed three (3) months if there is probable cause to believe that the offeror has engaged in any activity that might lead to debarment.
- (c) An offeror may be debarred for a period not to exceed three (3) years for activities that may include, but are not necessarily limited to, the following:
  - (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;
  - (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense of moral turpitude indicating a lack of business or

personal integrity or honesty which currently, seriously, and directly affects responsibility as a County offeror;

- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
  - (4) Violation of contract provisions of a character which is regarded by the Purchasing Agent to be so serious as to justify a debarment action including, but not limited to:
    - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract with the County; or
    - b. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; or
  - (5) Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a County contractor including debarment by another governmental entity.
- (d) Notice of any debarment or suspension shall be provided by the Purchasing Agent to the contractor, stating the reasons for the action taken.
- (1) The offeror may, within ten (10) days of receiving the notice, appeal the decision in writing to the Purchasing Agent. The written appeal shall include the basis for the appeal.
  - (2) The Purchasing Agent shall consider all information available, and shall issue a decision in writing within ten days stating the reasons for the action taken. The Purchasing Agent's decision shall be final.

Sec. 2.1-10-2. – Ineligibility.

- (a) The Purchasing Agent shall notify any bidder, offeror or contractor refused permission to participate, or disqualified from participation in County solicitations or contracts in writing, stating the reasons for the action taken.
- (b) The bidder, offeror or contractor may, within ten (10) days of receiving the notice, appeal the decision in writing to the Purchasing Agent. The written appeal shall include the basis for the appeal.
- (c) The Purchasing Agent shall consider all information available, and shall issue a decision in writing within ten days stating the reasons for the action taken. The Purchasing Agent's decision shall be final.

- (d) 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.

Sec. 2.1-10-3. - Determination of nonresponsibility.

- (a) Following opening of bids or quotes received, the Purchasing Agent shall determine whether the apparent low bidder is responsible.
- (b) Following the opening of proposals, or receipt of any proposed contract, the Purchasing Agent shall determine whether the offeror is responsible.
- (c) If the Purchasing Agent so determines, then it may proceed with an award in accordance with this policy.
- (d) If the Purchasing Agent determines that a bidder or offeror is not responsible, it shall provide notice to the bidder or offeror, stating the reasons for the action taken.
- (e) The bidder or offeror may, within ten (10) calendar days of receiving the notice, appeal the decision in writing to the Purchasing Agent. The written appeal shall include the basis for the appeal.
- (f) The Purchasing Agent shall consider all information available, and shall issue a decision in writing within ten days stating the reasons for the action taken. The Purchasing Agent's decision shall be final.

Sec. 2.1-10-4. - Protest of award or decision to award.

- (a) All bids and offers are subject to the decision of the Purchasing Agent as to the quality of what is offered, responsiveness of the offer or bid, responsibility of the offeror or bidder, and the qualifications of the offeror or bidder.
- (b) A bidder or offeror may protest the award or decision to award by submitting such protest in writing to the Purchasing Agent no later than ten (10) days after the award or the announcement of the decision to award. No protest shall lie for a claim that the selected Bidder is not a responsible Bidder. The written protest shall include the basis for the protest and the relief sought.
- (c) The Purchasing Agent shall consider all information available, and shall issue a decision in writing within ten days stating the reasons for the action taken. The Purchasing Agent's decision shall be final.

- (d) Every bidder or offeror submitting a bid or proposal agrees, as a condition precedent to the submission, to abide by the Purchasing Agent's decision and all of the provisions of this policy.

Sec. 2.1-10-5. - Contractual disputes.

- (a) Contractual claims, whether for money or other relief, shall be submitted to the Purchasing Agent in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.
- (b) No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the Purchasing Agent or his designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the Purchasing Agent fails to render a decision within 90 days of submission of the claim. Failure of the Purchasing Agent to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the Purchasing Agent's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.
- (c) A contractor may not institute legal action prior to receipt of the Purchasing Agent's decision on the claim, unless the Purchasing Agent fails to render such decision within 90 calendar days. A failure of the Purchasing Agent to render a final decision within 90 calendar days shall be deemed a final decision denying the claim by the Purchasing Agent.
- (d) The decision of the Purchasing Agent shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Purchasing Agent.

Sec. 2.1-10-6. - Legal actions.

- (a) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in Article V of this chapter. In the event the apparent low bidder, having been previously determined by the Purchasing Agent to be

not responsible in accordance with section 2.1-10-3 of this chapter, is found by the court to be a responsible bidder, the court may direct the Purchasing Agent to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

- (b) A bidder denied withdrawal of a bid under section 2.1-6-4 of this chapter may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Purchasing Agent 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 Invitation to Bid.
- (c) A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in Article III of this chapter, whose protest of an award or decision to award under section 2.1-10-3 of this chapter is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.
- (d) If injunctive relief is granted, the court, upon request of the Purchasing Agent, shall require the posting of reasonable security to protect the Purchasing Agent.
- (e) A contractor may bring an action involving a contract dispute with the Purchasing Agent in the appropriate circuit court.
- (f) A bidder, offeror or contractor need not utilize administrative procedures adopted by the Purchasing Agent, if available, but if any such procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Purchasing Agent agrees otherwise.
- (g) Nothing herein shall be construed to prevent the Purchasing Agent or the County from instituting legal action against a contractor.

Sec. 2.1-10-7. - Alternative dispute resolution.

The Purchasing Agent may enter into agreements to submit disputes arising from contracts entered into pursuant to this chapter to arbitration and utilize mediation and other alternative dispute resolution procedures. Alternative dispute resolution procedures entered into by school boards shall be nonbinding.

ARTICLE XI. - DISPOSITION OF SURPLUS PROPERTY.

Sec. 2.1-11-1. - Sale of Surplus Property.

(a) The Purchasing Agent shall have the responsibility for disposal of County surplus, worn out, or obsolete items. The Purchasing Agent shall have the authority to transfer such surplus stock to other internal and external departments and public bodies and agencies. All property not so transferred shall be exchanged, traded in on new items, salvaged, destroyed, or sold as deemed appropriate by the Purchasing Agent.

(1) Notwithstanding the foregoing, any library books purchased for circulation by the York County public Library which have been declared to be surplus by the York County Librarian may be donated by the Librarian to the York County Friends of the Library, or to any similar organization the main function of which is to support the activities of the York County public library system. The Librarian shall keep a record of all books so donated for review upon request by the Purchasing Agent.

(2) Surplus, worn out, or obsolete items, materials and personal property of the County of York, Virginia and of the York County School Board may be donated to a nonprofit organization which is exempt from taxation under 501(c)(3) of the Internal Revenue Code. Such donations shall be coordinated with the Purchasing Agent.

(b) In general, the sale of surplus property may be made through competitive methods to include, but not limited to, public auction, sealed bids, or an appropriate website to the highest bidder. The sale of property having an estimated value of \$500 or less shall not require a competitive process. Individual items may be scrapped, if in the opinion of the Purchasing Agent, the cost of storage and sale exceeds the value of the item. The Board, upon the request of the Purchasing Agent, may make a special dispensation of any individual item if, in the opinion of the Board, such dispensation is in the public interest.

Sec. 2.1-11-2. - Participation at County Auctions.

County and School employees are prohibited from bidding on surplus property sold for their respective entity. Central Purchasing staff are prohibited from purchasing any surplus property from either entity, regardless of disposal method used.

ARTICLE XII. - PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT.

Sec. 2.1-12-1. – Introduction.

The Public-Private Education Facilities and Infrastructure Act of 2002, Code of Virginia § 56-575.1 et. seq. (the “PPEA”) grants the County of York (the “County”), a responsible public entity as defined in the PPEA, the authority to enter public-private agreements for the development of a wide range of projects for public use if the County determines there is a public need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Individually negotiated comprehensive agreements between an operator, as defined in the PPEA, and the County will define the respective rights and obligations of the County and the private operator. The entirety of the PPEA is located in the Code of Virginia, Chapter 21.1. It shall be incumbent upon the County and all private entities to comply with the provisions of the PPEA. The PPEA establishes requirements to which the County must adhere when reviewing and approving proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of the comprehensive agreement detailing the relationship between the County and the private entity.

Sec. 2.1-12-2. The individual designated by the County Administrator to serve as the point of contact for implementation of procedures, to receive proposals submitted under the PPEA and to respond to inquiries regarding the PPEA or this adopted policy shall be the designated County Purchasing Agent.

Sec. 2.1-12-3. Printed below are the procurement provisions of the act. The section numbering and text that follows match that of the Code of Virginia. For the purposes of Article XII of this chapter, when the text refers to a “public entity” or “local governing body”, it shall be understood to refer to the County of York, Virginia. If any provision of this Article is inconsistent with other Articles of this County policy, the more stringent policy or procedure shall be used. If the following is silent on a procurement matter, then the County’s policies and procedures for procurements shall be applicable to the procurement.

#### 56-575.16. Procurement.

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) and any interpretations, regulations, or guidelines of the Division of Engineering and Buildings of the Department of General Services or the Virginia Information Technologies Agency, including the Capital Outlay Manual and those interpretations, regulations or guidelines developed pursuant to §§ 2.2-1131, 2.2-1132, 2.2-1133, 2.2-1149, and 2.2-1502, except those developed by the Division or the Virginia Information Technologies Agency in accordance with this chapter when the Commonwealth is the responsible public entity, shall not apply to this chapter. However, a responsible public entity may enter into a comprehensive agreement only in accordance with guidelines adopted by it as follows:

1. A responsible public entity may enter into a comprehensive agreement in accordance with guidelines adopted by it that are consistent with

procurement through competitive sealed bidding as set forth in § 2.2-4302.1 and subsection B of § 2.2-4310.

2. A responsible public entity may enter into a comprehensive agreement in accordance with guidelines adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as set forth in § 2.2-4302.2 and subsection B of § 2.2-4310. Such responsible public entity shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience, and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and government comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; and (ix) other criteria that the responsible public entity deems appropriate.

A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity, or priority of the project; (ii) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available. When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the responsible Governor's Secretary, or the Governor, shall be required before the responsible public entity may enter into a comprehensive agreement pursuant to this subdivision.

3. Nothing in this chapter shall authorize or require that a responsible public entity obtain professional services through any process except in accordance with guidelines adopted by it that are consistent with the procurement of "professional services" through competitive negotiation as set forth in § 2.2-4302.2 and subsection B of § 2.2-4310.

4. A responsible public entity shall not proceed to consider any request by a private entity for approval of a qualifying project until the responsible public entity has adopted and made publicly available guidelines pursuant to

§ 56-575.3:1 that are sufficient to enable the responsible public entity to comply with this chapter.

5. A responsible public entity that is a school board or a county, city, or town may enter in-to an interim or comprehensive agreement under this chapter only with the approval of the local governing body.

56-575.17. Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § 56-575.4 to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, authorities, departments, institutions, and other units of state government, posting shall be on the Department of General Services' centralized electronic procurement website; and

2. For responsible public entities that are local bodies, posting shall be on the responsible public entity's website or on the Department of General Services' central electronic procurement website. In addition, such public bodies may publish in a newspaper of general circulation in the area in which the contract is to be performed a summary of the proposals and the location where copies of the proposals are available for public inspection. Such local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. The responsible public entity shall hold a public hearing on the proposals during the proposal review process, but not later than 30 days prior to entering into an interim or comprehensive agreement.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible public entity shall make available the proposed agreement in a manner provided in subsection A.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, upon request. For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.

#### 56-575.17:1 Contributions and gifts; prohibition during approval process

A. No private entity that has submitted a bid or proposal to a public entity that is an executive branch agency directly responsible to the Governor and is seeking to develop or operate a qualifying project pursuant to this chapter, and no individual who is an officer or director of such a private entity, shall knowingly provide a contribution, gift, or other item with a value greater than \$50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, following the submission of a proposal under this chapter until the execution of a comprehensive agreement thereunder. The provisions of this section shall apply only for any proposal or an interim or comprehensive agreement where the stated or expected value of the contract is \$5 million or more.

B. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil

proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

Sec. 2.1-12-4. - Projects Intended for Use by the York County School Board.

Proposals for qualifying projects for which the York County School Board shall be the sole using public entity shall be submitted to the County's Purchasing Office, and the County shall provide all required public notices. However, decisions whether to accept and consider any such proposal, and the evaluation or review of any such proposal, shall be by the School Board, and the School Board shall approve and execute the Comprehensive agreement.

ARTICLE XIII. - DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTS.

Sec. 2.1-13-1. The purpose of this Article is to enunciate the County's policies pertaining to procurement of construction utilizing the construction management and design-build procurement methods. A design-bid-build project delivery method that utilizes competitive sealed bidding is the default method of procurement for construction. Notwithstanding any other provision of law, the County may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this Article. This Article shall apply regardless of the source of financing.

(a) The County may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis, provided that:

- (1) The project is a complex project, defined as 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 the design-bid-build project delivery method not practical; and
- (2) The County has 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 construction management or design-build for that project and (ii) assist the County with the preparation of the Request for Proposal and the evaluation of such proposals; and
- (3) A written determination is made in advance by the Purchasing Agent that the design-bid-build project delivery method is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize construction management or design-build, including the determination of the project's complexity. The determination shall be included in the Request for Qualifications and be maintained in the procurement file; and

- (4) The County Board of Supervisors approves a resolution on a per project basis in a public forum prior to the issuance of a Request for Qualifications; and
- (5) After award, when applicable, the County posts on its website when and where the general contractor advertises bid packages for subcontracting opportunities.

Sec. 2.1-13-2. - Definitions.

As used in this Article, unless the context requires a different meaning, the following words and phrases shall have the meanings set forth below:

*Complex project.* 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 the design-bid-build project delivery method not practical.

*Construction management contract.* A contract in which a Construction Manager (CM) is retained by the County to coordinate and administer contracts for construction services for the benefit of the County. The Construction Management contract may include a provision that requires the CM to deliver the project within a Guaranteed Maximum Price (GMP) for the Construction and all related services; the CM is "At Risk" for constructing the entire project within the agreed-upon GMP. The contract may be identified as a Construction Manager at Risk (CMR) contract. Collaborating with an A/E design firm separately under contract with the County, the CM administers a construction contract. The construction contract may be with a General Contractor (GC) firm or directly with the CM.

*Design-bid-build.* A project delivery method in which the County sequentially awards two separate contracts, the first for professional services to design the project and the second utilizing competitive sealed bidding for construction of the project according to the design.

*Design-build contract.* A contract between the County and another party in which the party contracting with the County agrees to both design and build the structure, or other item specified in the contract. A two-step process is used to establish a contract.

*Evaluation Panel ("Panel").* An ad hoc committee established by the County department for whom the solicitation is being conducted. The Panel shall consist of not less than three County representatives to evaluate proposals and recommend award. A representative of the Purchasing Division shall be included in all Panel meetings and shall provide general oversight of the evaluation process.

Sec. 2.1-13-3. - Procedures for Design-Build.

(a) Step 1

- (1) Prior to initiating the solicitation process, the Purchasing Agent shall insure that sections 2.1-13-1(a)(3) and 2.1-13-1(a)(4) of this chapter have been performed.
- (2) The issuance of a Request For Qualifications (RFQ) to seek Statements of Qualifications (SOQ). The method of issuance of the RFQ and receipt of SOQ responses shall be consistent with the methods used for Request For Proposals, except that public notice of the Request For Qualifications at least thirty (30) calendar days prior to the date set for receipt of responses shall be made by posting a link to the solicitation on the county's website. In addition, qualifications may be solicited directly from potential parties.
- (3) The RFQ shall identify the criteria to be evaluated for pre-qualification. Prior construction management or design-build experience or previous experience with the County shall not be considered as a prerequisite or factor considered for prequalification of a contract. However, in the selection of a contractor, the County may consider the experience of each contractor on comparable construction management or design-build projects.
- (4) Based on the criteria specified in the RFQ, SOQs will be evaluated by an Evaluation Panel ("Panel"). The panel will select up to five of the highest ranked firms deemed qualified and suitable for the project, and only those selected will be eligible to participate in Step 2 of the selection process. If less than five firms are deemed qualified and suitable for the project, then that number shall be eligible to participate in Step 2.
- (5) At least 30 days prior to the date established for the submission of proposals (Step 2), the County shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. 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.

(b) Step 2

- (1) The County shall issue a Request for Proposals (RFP) to the firms selected in Step 1. Except as may otherwise be specified in this Article, the RFP shall be processed per County policy for competitive negotiation for other than professional services. Public posting of the RFP shall not be required since only the firms short-listed from the RFQ may participate. The criteria for award shall be included in the RFP. Price shall be a critical basis for award.

- (2) Offerors shall separately submit a Cost Proposal and a Technical Proposal to the Contract Officer in the manner specified in the RFP solicitation.
- (3) The Purchasing office Contract Officer shall open the Cost Proposals and without identifying the Offeror, advise the Evaluation Panel ("Panel") of proposed costs. The Panel will consider if the proposed costs fall within the County's original estimate. If the proposed costs exceed the original estimate, the Panel may rescope the project, including such changes for Technical revisions as allowed in section 2.1-13-3(b)(4) of this chapter.
- (4) Based on the criteria specified in the RFP, Technical Proposals will be evaluated by an Evaluation Panel ("Panel"). The Panel shall identify changes desired to be made to each offeror's proposal, and through the Contract Officer allow each offeror to adjust its Technical Proposal to fully comply with the requirements of the RFP or as necessary to incorporate project improvements and/or additional detailed information identified by the Panel during design development.
- (5) Based on the above adjustments, the offerors may resubmit a revised Technical Proposal, and separately a revised Cost Proposal to the Contract Officer.
- (6) The Panel will re-evaluate the Technical Proposals and agree to a consensus ranking.
- (7) The Contract Officer shall open the revised Cost Proposals and provide the cost information to the Panel.
- (8) The Panel will consider all information available to rank the firms providing the best value for the project.
- (9) Should the County determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.
- (10) Award shall be made to the firm who is fully qualified and determined to have provided the best value in response to the RFP.
- (11) The Purchasing Agent will notify all offerors who submitted proposals which offeror was selected for the project.

Sec. 2.1-13-4. - Procedures for Construction Management.

- (a) Step 1

- (1) Prior to initiating the solicitation process, the Purchasing Agent shall ensure that sections 2.1-13-1(a)(3) and 2.1-13-1(a)(4) of this chapter have been performed.
- (2) Issuance of a Request For Qualifications (RFQ) to seek Statements of Qualifications (SOQ). The method of issuance of the RFQ and receipt of SOQ responses shall be consistent with the methods used for Request For Proposals, except that public notice of the Request For Qualifications at least thirty (30) calendar days prior to the date set for receipt of responses shall be made by posting a link to the solicitation on the county's website. In addition, qualifications may be solicited directly from potential parties.
- (3) The RFQ shall identify the criteria to be evaluated for pre-qualification. Prior construction management or design-build experience or previous experience with the County shall not be considered as a prerequisite or factor considered for prequalification of a contract. However, in the selection of a contractor, the County may consider the experience of each contractor on comparable construction management or design-build projects. Qualification Criteria to be included in the RFQ shall at a minimum, include the following:
  - General Contractor ("GC") shall be appropriately licensed and in good standing as a Class A General Contractor in the Commonwealth of Virginia.
  - Ability to obtain appropriate insurance coverage for the project.
  - Appropriate bonding capacity.
  - A listing of experience of at least three (3) projects of similar scope, and complexity within the past ten (10) years, including construction cost, schedule, and Owner or architect representative's contact information.
  - A list of at least three (3) professional references including contact information.
- (4) Based on the criteria specified in the RFQ, SOQs will be evaluated by the Evaluation Panel ("Panel"). The Panel will select up to five of the highest ranked firms deemed qualified and suitable for the project, and only those selected will be eligible to participate in Step 2 of the selection process. If less than five firms are deemed qualified and suitable for the project, then that number shall be eligible to participate in Step 2.
- (5) At least 30 days prior to the date established for the submission of proposals (Step 2), the County shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. 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.

(b) Step 2.

(1) The County shall issue a Request for Proposals (RFP) to the firms selected in Step 1. Except as may otherwise be specified in this Article, the RFP shall be processed per County policy for competitive negotiation for other than professional services. Public posting of the RFP shall not be required since only the firms short-listed from the RFQ may participate. At a minimum, the RFP shall request the following information:

- A lump sum fee for Pre-construction Services in accordance with the scope of services included in the RFP.
- A General Conditions Fee based upon an anticipated duration set by the County detailed in a specific listing of General Conditions items and their associated cost.
- The Insurance and Taxes Fee which shall be stated as a percentage of the Cost of the Construction Work, for general liability insurance, builders risk insurance, payment and performance bonds, local business licenses, any local municipal taxes, and any other similar costs identified in the definition of the Insurance and Taxes Fee per the General Conditions. This is the percentage that the CM proposes to use in developing all estimates for the Work, including the GMP. The costs of the items covered by the Insurance and Taxes Fee will be reimbursable as incurred during the course of the Work. The total reimbursements made for this fee shall not exceed the stated percentage of the Cost of the Construction Work.
- A CM/GC Fee to include all home office expenses, overhead and profit during the construction phase of the Contract.

Budget estimates for the construction project shall not be requested as a part of the RFP response.

(c) Evaluation of Proposals.

(1) The RFP evaluation panel will evaluate and rank the proposals.

- a. The CM Fee and the Preconstruction Services Fee shall be evaluated based upon the sum of those fees and not individually.
- b. Although not required, the panel may conduct interviews with two or more firms deemed to be best suited based on the qualification criteria. The fee amounts are not to be negotiated during the interview process, although the offeror may voluntarily offer alternate fees during the interview.
- c. Price shall be a critical basis for award.

- d. Based on all available information, the evaluation panel will rank the proposals.
- (d) Negotiations and Award.
- (1) After evaluation and ranking of the proposals, the Purchasing Agent shall conduct negotiations with two or more offerors submitting the highest ranked proposals. Negotiations may be conducted simultaneously with multiple offerors. Award shall be made to the offeror with whom negotiations, in the County's opinion, resulted in the best proposal and provides the best value.
  - (2) Should the County determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.
  - (3) The CM contract shall be entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions.
  - (4) The Purchasing Agent will notify all offerors who submitted proposals which offeror was selected for the project.
- (e) Contract Structure: If award is to be for a CMAR contract, it shall be structured into two (2) parts.
- (1) Part 1, Pre-Construction Services: These services will be performed for a stipulated or fixed amount.
    - a. The Part 1 contract is associated with the work of the CM prior to the start of construction activities.
  - (2) Part 2, Construction Services: The Part 2 contract is associated with the work of the CM during the construction portion of the project.
    - a. The provision of the construction services is contingent upon the CM providing an agreeable GMP to the County.
    - b. The GMP shall be established at the completion of working drawings.
    - c. In the event of phased permitting where the drawings and specifications are not complete for portions of the project, but where early work has been authorized, the County and CM shall agree to a GMP for that portion of the work, pending the agreement of a GMP for the complete project. The intermediate work shall correspond with the partial permits being issued (example: clearing & grubbing,

grading, or site utilities) or shall be for long lead items that need to proceed in order to maintain the project schedule (example: mill orders for structural steel).

- d. If a GMP cannot be agreed upon, the Contract for Part 1 is concluded and the County shall not enter into a Part 2 contract with the CM. At this point in the process, the documents are substantially complete and the project may be bid using standard competitive sealed bidding procedures.
    1. If the project is bid using standard competitive sealed bid procedures, then the construction contingency of the CM process would no longer be applicable.
    2. Should the County choose to proceed with standard competitive sealed bidding, the CMs short-listed in the initial RFQ for SOQ (including the CM with whom a GMP was not agreed upon unless the County has documented that the CM failed to complete the Scope of Services under the Part 1 Contract to the County's satisfaction or breached the Part 1 Contract), as well as other interested firms that may not have participated in the initial RFQ, may respond with a bid.
  - e. Alternatively, if factors remain that sustain the benefit of the CMAR process, the Purchasing Agent may negotiate a GMP from one or more of the other highly ranked short-listed CM firms. Negotiations may be conducted simultaneously with multiple offerors. Award shall be made to the offeror with whom negotiations, in the County's opinion, resulted in the best proposal and provides the best value.
- (3) In CMAR contracts, allowances are permitted with adequate justification and backup.
  - (4) Contract Structure: If award is strictly for Contract Management without a CMAR component, it shall be structured as a standard contract for services.

Sec. 2.1-13-5. - Additional Construction Management Requirements.

- (a) The County is required to contract for independent structural and special inspections, paid for by the County separately from the CMAR contract.
- (b) The County is required to contract for independent structural observations paid for by the County separately from the CMAR contract.
- (c) The work must be inspected by other than the Construction Manager at Risk to assure conformance with the plans and specs – usually by the County's Project Inspector.

(d) When the construction contract is with the CM, the CM may only self-perform no more than 10% of the cost of the work and general conditions. Work performed by wholly owned subsidiaries of the CM shall be considered as self-performed. The remaining work must be performed by subcontractors of the CM, which the CM shall procure by publically advertised, competitive sealed bidding.

(1) The provisions of section 2.1-13-5(d) of chapter shall not apply to construction management contract involving infrastructure projects.

(e) Prior to the County's award of a contract to the CM, the CM shall have advised the County when and where the CM plans to advertise bid packages for subcontracting opportunities.

#### ARTICLE XIV. - STATE AND FEDERALLY FUNDED PROCUREMENTS.

Sec. 2.1-14.1. - Policy and Procedures for State and Federally funded procurements.

When conducting procurement transactions under a Federal award, the County shall follow the procurement standards as provided by the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Rule Title 2 of the Code of Federal Regulations; 2 CFR 200, in §§ 200.318 through 200.327.

For the purposes of Article XIV of this policy, when the text from 2 CFR Part 200 refers to a "non-Federal entity", it shall be understood to refer to the County of York, Virginia. If any provision of this Article is inconsistent with other Articles of this policy, the more stringent policy or procedure shall be used. If the 2 CFR Part 200 is silent on a procurement matter, then the County's policies and procedures for procurements using non-Federal funds shall be applicable to the procurement.

Sec. 2.1-14.2. - Cash Management.

The County will comply with applicable methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement by the County. However, if the County receives an advance in federal grant funds, the County will remit interest earned on the advanced payment quarterly to the federal agency consistent with 2 C.F.R. 200.305(b)(9).

(a) Payment Methods.

(1) Reimbursements: The County will request reimbursement for actual expenditures incurred under the federal grants as necessary.

Consistent with state and federal requirements, the County will maintain source documentations supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make sure documentation is available for review upon request.

Reimbursements of actual expenditures do not require interest calculations.

- (2) Advances: To the extent the County receives advance payments of federal grant funds, the County will strive to expend the federal funds on allowable expenditures as expeditiously as possible.

The County will hold federal advance payments in interest-bearing accounts, unless an allowable exception applies. The County will begin to calculate interest earned on cash balances once funds are deposited into the County's account.

The County will remit interest earned on grant funds annually to the U.S. Department of Health and Human Services Payment Management System (regardless of the federal awarding agency for the grant) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. 2 C.F.R. 200.305(b)(9). The County may retain up to \$500 of interest per year.

#### Sec. 2.1-14.3. - Conflict of Interest.

In accordance with 2 C.F.R. 200.18(c)(1), no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, unless the gift is an unsolicited item of nominal value.

### ARTICLE XV. - ETHICS IN PUBLIC CONTRACTING.

#### Sec. 2.1-15-1. – Purpose.

- (a) The provisions of this article supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2.

- (b) The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

Sec. 2.1-15-2. – Definitions.

As used in this article, the following words and phrases shall have the meanings set forth below:

*Immediate family.* A spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

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

*Pecuniary interest arising from the procurement.* A personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

*Procurement transaction.* All functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

*Public employee.* Any person employed by the County, including elected officials or appointed members of governing bodies.

Sec. 2.1-15-3. - Proscribed participation by public employees in procurement transactions.

Except as may be specifically allowed by subdivisions B 1, 2, and 3 of § 2.2-3112, no public 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 employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
- (b) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;
- (c) The 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 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.

Sec. 2.1-15-4. - Disclosure of subsequent employment.

No County employee or former County employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the County unless the employee or former employee provides written notification to the County, or a public official if designated by the County, or both, prior to commencement of employment by that bidder, offeror or contractor.

Sec. 2.1-15-5. - Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited.

- (a) No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or sub-contractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The County may recover the value of anything conveyed in violation of this subsection.
- (b) No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

Sec. 2.1-15-6. – Kickbacks.

- (a) No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
- (b) No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- (c) No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

- (d) If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the County and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

Sec. 2.1-15-7. - Participation in bid preparation; limitation on submitting bid for same procurement.

- (a) No person who, for compensation, assists in the development of an invitation to bid or request for proposal for or on behalf of the County shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that 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 the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the County.

Sec. 2.1-15-8. - Purchase of building materials, etc., from architect or engineer prohibited.

- (a) No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in § 2.2-3101 of the state code.
- (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 the 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 § 2.2-3101.
- (c) The provisions of subsections 2.1-15-8(a) and (b) of this chapter shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

Sec. 2.1-15-9. - Certification of compliance required; penalty for false statements.

- (a) Public bodies may require public 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 article.
- (b) Any public employee required to submit a certification as provided in subsection 2.1-15-9(a) of this chapter who knowingly makes a false statement in the certification shall be punished as provided in § 2.2-437 of the state code.

Sec. 2.1-15-10. - Misrepresentations prohibited.

- (a) No public 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 it to contain any false, fictitious or fraudulent statement or entry.

Sec. 2.1-15-11. - Contributions and gifts; prohibition during procurement process.

- (a) No bidder or offeror who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor for the award of a public contract pursuant to this chapter, and no individual who is an officer or director of such a bidder or offeror, shall knowingly provide a contribution, gift, or other item with a value greater than \$50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, during the period between the submission of the bid and the award of the public contract under this chapter. The provisions of this section shall apply only for public contracts where the stated or expected value of the contract is \$5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

Sec. 2.1-15-12. - Penalty for violation.

- (a) Any person convicted of a willful violation of any provision of this article 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.