

04. PROCUREMENT POLICIES AND PROCEDURES

4.1. General Procurement

BOS Approved - August 17, 2016

4.1.1. General Provisions

A. Application. The County of Fluvanna Procurement Policies and Procedures, which includes the statement of purpose, Sections 4.1 to 4.7 and the Appendix I, (hereinafter referred to as the “**Policy**”) applies to all purchases, contracts, agreements and the like for the procurement of goods, professional and nonprofessional services, insurance, construction or otherwise entered into by Fluvanna County, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as the “**County**”). This Policy is established by official action of the Fluvanna County Board of Supervisors (hereinafter referred to as the “**Board**”). Bidders and Contractors or their authorized representatives are expected to inform themselves fully as to this Policy before submitting Bids to and/or entering into any Contract with the County.

B. Definitions. The definitions of Virginia Code Section 2.2-4301 are specifically incorporated herein by reference and as used in this Policy, whether capitalized or not, any of such defined terms have the same meaning as defined thereunder, such terms include: “Affiliate”, “Best Value”, “Business”, “Competitive Negotiation”, “Competitive Sealed Bidding”, “Construction”, “Construction Management Contract”, “Design-Build Contract”, “Employment Services Organization”, “Goods”, “Informality”, “Multiphase Professional Services Contract”, “Nonprofessional Services”, “Potential Bidder or Offeror”, “Professional Services”, “Public Body”, “Public Contract”, “Responsible Bidder or Offeror”, “Responsive Bidder”, “Reverse Auctioning” and “Services”. Additionally, as used in this Policy, the following terms, whether capitalized or not, have the following meanings:

1. Bid/Proposal - The offer of a Bidder or Offeror to provide specific Goods or Services at specified prices and/or other conditions specified in the Solicitation. The term “Bid” is used throughout this Policy and where appropriate includes the term “Proposal” or any modifications or amendments to any Bid or Proposal.

2. Bidder/Offeror/Vendor - Any individual(s), company, firm, corporation, partnership or other organization bidding or offering on any Solicitation issued by the County and/or offering to enter into Contracts with the County. The term “Bidder” is used throughout this Policy and where appropriate includes the term “Offeror” and/or “Vendor”.

3. Contract - Any contract or agreement for the procurement of services or goods to which the County will be a party.

4. Contractor - Any individual(s), company, firm, corporation, partnership, or other organization to whom an award is made by the County or whom enters into any contract to which the County is a party.

5. County - The County of Fluvanna, a political subdivision of the Commonwealth of Virginia, including where applicable all agencies and departments of the County.

6. County Administrator - The Fluvanna County Administrator.

7. County Attorney - The Fluvanna County Attorney.

8. Purchasing Agent - The County Administrator is the County's Purchasing Agent and is responsible for the purchasing activity of Fluvanna County; and has signatory authority to bind the County to all contracts and purchases made lawfully under the Fluvanna County Small Purchasing Procedures, see Section 4.4 of this Policy. The Purchasing Agent has signatory authority to bind the County to all other contracts and purchases only after the contracts or purchases have been approved by a vote of the Fluvanna County Board of Supervisors.

9. General Terms, Conditions and Instructions to Bidders and Contractors (also referred to herein as the "General Conditions") – The General Terms, Conditions and Instructions to Bidders and Contractors included in this Policy as Appendix 1 which shall be attached to and made a part of all Solicitations by the County and all Contracts to which the County is a party.

10. His - Any references to "his" shall include his, her, their, or its as appropriate.

11. Invitation to Bid (also referred to herein as an "IFB") - A request which is made to prospective Bidders for their quotation on Goods or Services desired by the County. The issuance of an IFB will contain or incorporate by reference the General Conditions and the other specifications and contractual terms and conditions applicable to the procurement.

12. Purchasing Officer - The Purchasing Officer employed by the County and to whom Bidders/Contractors can submit questions relating to any Bid or Contract.

13. Request for Proposal (also referred to herein as a "RFP") - A request for an offer from prospective Offerors which shall indicate the general terms which are sought to be procured from Offerors. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference the General Conditions and other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the Contractor.

14. Small Purchasing Procedures - The County's Small Purchasing Procedures, being Section 4.4 of this Policy, a method of purchasing not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; and also allowing for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$50,000.

15. Solicitation - The process of notifying prospective Bidders or Offerors that the County wishes to receive Bids or Proposals on a set of requirements to provide Goods or Services. "Solicitation" includes any notification of the County requirements, public advertising (newspaper, County's website, or other electronic notification), the mailing of notices of Solicitation, any Invitation for Quotes ("IFQ"), Initiations to Bid ("IFB"), or Requests for Proposal ("RFP"), the public posting of notices, issuance of an Open Market Procurement ("OMP"), or telephone calls to prospective Bidders or Offerors.

16. State - The Commonwealth of Virginia.

C. Effective Date. Contracts entered into prior to passage of this Policy shall continue to be governed by procurement policy of the County and the County, State or Federal, laws, ordinances, rules and regulations in effect at the time those contracts were executed.

D. References to Law. This Policy adopts and incorporates by reference the Virginia Public Procurement Act ("VPPA"), Virginia Code Section 2.2-4300 *et seq.* Any reference to Virginia Code herein refers to and incorporates by reference the current adopted statute as such may be amended or replaced by any statute dealing with the same or similar subject. This Policy is meant to confirm and comply in every respect with the VPPA and with all other applicable laws, regulations, ordinances and rules and if this Policy conflicts in any way with the same, then this Policy shall be considered to be automatically amended, without action by the County, to conform to the VPPA or other applicable law, regulation, ordinance or rule.

When the procurement involves the expenditure of Federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation which is not reflected in this Policy.

Pursuant to Virginia Code Section 2.2-4343(B), where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of the VPPA or this Policy, the County may comply with such federal requirements, notwithstanding the provisions of the VPPA or this Policy, only upon the written determination of the Board that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of the VPPA or this Policy in conflict with the conditions of the grant or contract.

E. Severability. If any provision of this Policy or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Policy which can be given effect without the invalid provision or application, and to this end the provisions of this Policy are declared to be severable.

4.1.2. Authority and Delegation to Purchasing Agent

A. Authority of the Board of Supervisors. Except as specifically delegated to the Purchasing Agent herein, the Board shall be responsible for approving all purchases and contracts for the procurement of goods, services, insurance and construction.

B. Delegation of Authority to Purchasing Agent. The Purchasing Agent shall serve as the principal public purchasing official for the County, and shall be responsible for the procurement of goods, services, insurance and construction in accordance with this Policy, as well as the management and disposal of items that are determined to be surplus property of the County. The Purchasing Agent has responsibility and authority for negotiating, placing and when necessary modifying every Solicitation, Contract and purchase order issued by the County under the County's Small Purchasing Procedures. The Purchasing Agent has signatory authority to bind the County to all contracts and purchases made lawfully under the County's Small Purchasing Procedures. The Purchasing Agent has responsibility and authority for negotiating, placing and when necessary modifying every other Solicitation, Contract and purchase order issued by the County except that the Purchasing Agent has signatory authority to bind the County to all other contracts and purchases ONLY after the contracts or purchases have been adopted and approved by a vote of the Fluvanna County Board of Supervisors (the "Board").

C. Delegation of Authority Generally. Except as specifically permitted under this Policy, unless specifically delegated by the Board in writing, no other County officer or employee is authorized to order supplies or Services, enter into purchase negotiations or Contracts, or in any way obligate the County for any indebtedness.

D. Communications to Purchasing Officer. For convenience, the County's Purchasing Officer shall serve as an intermediary between the Purchasing Agent and the Bidder or Contractor and any Bidder or Contractor may direct communications regarding any purchase, Solicitation or Contract to the Purchasing Officer; however only the Board or County's Purchasing Agent can bind the County and only upon the conditions stated *supra*.

4.1.3. Office of the Purchasing Agent

A. Establishment and Appointment. The purchasing system shall operate under the direction and supervision of the Purchasing Agent, in accordance with the provisions in this Policy.

B. Responsibilities of Purchasing Agent. In accordance with this Policy the Purchasing Agent shall:

1. Oversee and implement this Policy;
2. Purchase or supervise the purchase of all goods, services, insurance and construction, needed by the County, consistent with his authority under subsection 4.1.2. of this Section 4.1;
3. Exercise direct supervision over the County's supplies, inventories, vehicles, surplus, goods and other items belonging to the County;

4. Sell, trade, donate or otherwise dispose of goods belonging to the County consistent with the County's Surplus Policy, Section 4.3 of this Policy;

5. Purchase or supervise the purchase of all goods, services, insurance and construction, needed by the County, under the Small Purchasing Procedures; and

6. Establish and maintain programs for specification development, contract administration, inspection, and acceptance, in cooperation, with the department or agency of the County that has requested the goods, services, insurance or construction.

C. Powers of the Purchasing Agent. The Purchasing Agent shall have the power to:

1. Delegate any of his authorities, as limited by subsection 4.1.2. *supra*, in writing, to other County employees, if such delegation is deemed necessary or efficient for the effective procurement of those items provided such delegation specifically identifies the scope of such employees authority;

2. Establish and promulgate procedures to carry out the provisions of this Policy;

3. Secure for the County the benefits of research done in the field of purchasing by other governmental jurisdictions, national societies, national trade associations, and private businesses and organizations; and

4. Maintain a current file of sources of goods, services, insurance and construction to be known as a "Bidder List" on which vendors can request to be included.

4.1.4. Cooperative Procurement

A. Cooperative Procurement Generally. Consistent with the authority granted by Virginia Code Section 2.2-4304, the County may participate in, sponsor, conduct, or administer cooperative procurement agreements on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. The County may purchase from another public body's contract even if it did not participate in the Solicitation, if the Solicitation specified that the procurement was being conducted on behalf of other public bodies, except for: (1) Contracts for architectural or engineering services; or (2) Construction in excess of \$200,000 by the County from the contract of another local public body that is more than a straight line distance of 75 miles from the territorial limits of the County. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of Virginia Code Section 2.2-4303.

B. Effect of Alternative Policies. If the County enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions A 9 and 10 of Virginia Code Section 2.2-4343 then the

County shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

4.1.5. Prequalification of Bidders

A. Purchasing Agent Authorized to Prequalify Bidders. Pursuant to Virginia Code Section 2.2-4317, the Purchasing Agent is authorized to prequalify prospective contractors for particular types of supplies, services, insurance or construction; and, if so determined to be in the County's best interests by the Purchasing Agent, the Purchasing Agent may limit the consideration of bids or proposals to prequalified contractors.

B. Prequalification Process. Prequalification of prospective contractors for construction by a the County shall be pursuant to the following prequalification process for construction projects:

1. The application form used in the Prequalification Process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form 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 Virginia Code Section 2.2-4342.

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 applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

3. At least thirty (30) days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the 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 Virginia Code Section 2.2-4357.

C. Denial. The County may deny prequalification to a contractor only if the County finds one or more 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 a public body 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 may 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;

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/or

7. The contractor failed to provide to the County in a timely manner any information requested by the County relevant to Section 1-5.1 through f *supra*.

D. Exemption. The provisions of sections 4.1.5.B. and C shall not apply to prequalification for contracts let under Virginia Code Section 33.1-12.

4.1.6. General Procurement Process

A. Methods of Procurement. Pursuant to Virginia Code Section 2.2-4303:

1. Generally. 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 defined by the VPPA, unless otherwise authorized by law.

2. Competitive Negotiation of Professional Services. Professional services shall be procured by competitive negotiation.

3. Competitive Negotiation of Other Than Professional Services. Upon a determination made in advance by the County and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by the County, 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 by "competitive negotiation, see Section 4.1.6.A.2. above. The basis for this determination shall be documented in writing.

4. Competitive Sealed Bidding of Construction. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used where specifically allowed under subsection D of Virginia Code Section 2.2-4303 AND upon a determination made in advance by the County and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

5. Sole Source Procurement. Upon a determination in writing 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 competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The County shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, the County may publish in a newspaper of general circulation on the day the County awards or announces its decision to award the contract, whichever occurs first.

6. Emergency Purchases. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The County shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the County awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

7. Small Purchasing Procedures. As authorized under Virginia Code Section 2.2-

4303(G) and (H), the County has adopted Small Purchasing Procedures; see Section 4.4 of this Policy.

8. Public Auction. Upon a determination made in advance by the County and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

9. Reverse Auctioning. 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.

B. Competitive Negotiation. Any Competitive Negotiation of the County must meet the specific requirements of the VPPA, as such is term is specifically defined in Virginia Code Section 2.2-4301, and must include the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor;

2. Public notice of an RFP at least ten (10) days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, the County shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request; and

3. As appropriate or required by law, either:

(a) For procurement of professional services. The County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the County in addition to the review of the professional competence of the offeror. The RFP shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the County may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the RFP and all

information developed in the selection process to this point, the County shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, 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. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the RFP, the County may award contracts to more than one offeror.

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.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by a County, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the RFP, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first. Such contract may be renewable for four (4) additional one-year terms at the option of the County. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall not exceed \$500,000; and (c) the project fee of any single project shall not exceed \$100,000. Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the RFP so states and (2) the County has established procedures for distributing multiple projects among the selected contractors during the contract term.

Multiphase professional services contracts satisfactory and advantageous to the County for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when 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 the procurement of any such contract, the County shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of the County require awarding the contract; or

(b) For Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the RFP, including price if so stated in the RFP. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror. Should the County determine in writing and in its sole discretion that only one offeror is

fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

C. Competitive Sealed Bidding. **Any Competitive Sealed Bidding, a method of procurement for other than professional services, of the County must meet the specific requirements of the VPPA, as such is term is specifically defined in Virginia Code Section 2.2-4301, and must include the following elements:**

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the County has provided for prequalification of bidders, the IFB shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an IFB may be issued requesting the submission of unpriced offers to be followed by an IFB limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;

2. Public notice of the Invitation to Bid at least ten (10) days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, the County may publish in a newspaper of general circulation. In addition, bids may be solicited directly from potential contractors on the Bidder List maintained by the Purchasing Agent; AND any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise;

3. Public opening and announcement of all bids received;

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability; and

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the IFB, awards may be made to more than one bidder.

D. Competitive Bidding or Competitive Negotiation on State-Aid Projects. Pursuant to Virginia Code Section 2.2-4305 and 2.2-4345(B), no contract for the construction of any building or for an addition to or improvement of an existing building by the County or agency thereof 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 as provided under subsection D of Virginia Code Section 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to the VPPA.

E. Bulletin Board. The Purchasing Agent shall post pending purchases or sales by

notice in the appropriate public bulletin board and on the County's website.

F. Exemptions from Competition for certain Transactions

1. Persons with Disabilities and Legal Services. Pursuant to Virginia Code Section 2.2-4344, the County may enter into contracts without competition for:

(a) The purchase of goods or services that are produced or performed by:
(a) Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or (b) Employment services organizations that offer transitional or supported employment services serving individuals with disabilities; and

(b) The purchase of legal services, provided that the pertinent provisions of Virginia Code Section 2.2-500 *et seq.* remain applicable, or expert witnesses or other services associated with litigation or regulatory proceedings.

2. Election Materials. Pursuant to Virginia Code Section 2.2-4346, the County is exempt from the requirements of Articles 1, 2, and 5 of the VPPA (Virginia Code Sections 2.2-4300 to 4342 and 2.2-4357- to 4366) and the corresponding provisions of this Policy, in contracting for certain essential election materials and services pursuant to Virginia Code Section 24.2-602.

3. Utility Operators. Pursuant to Virginia Code Section 2.2-4343(A)(13), if the County is also a utility operator, then the County may purchase services through or participate in contracts awarded by one or more utility operators that are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act, Virginia Code Section 56-265.14 *et seq.* A purchase of services hereunder may deviate from the VPPA and this Policy only upon a determination made in advance by the County and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is awarded based on competitive principles.

G. Exemptions from Competitive Sealed Bidding and Competitive Negotiation for Certain Transactions. Under the following circumstances the County may enter into contracts without competitive sealed bidding or competitive negotiation:

1. For insurance or electric utility services if purchased through an association of which the County is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the County has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination; and

2. In administering public assistance and social services programs as defined in Virginia Code Section 63.2-100, community services boards as defined in Virginia Code Section

37.2-100, or when purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (Virginia Code Section 2.2-5200 *et seq.*) or the Virginia Juvenile Community Crime Control Act (Virginia Code Section 16.1-309.2 *et seq.*) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. However, contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of the VPPA and this Policy.

H. Conditions of Bidding. **The General Terms, Conditions and Instructions to Bidders and Contractors, Appendix I to this Policy, is incorporated in its entirety into this Policy by reference and MUST be attached to and incorporated by reference into every Solicitation and Contract of the County.**

I. Contract Pricing Arrangement. Pursuant to Virginia Code Section 2.2-4331, contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis not prohibited by law; however, except in case of emergency affecting the public health, safety or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost. A Policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

J. Multi-Term Contracts. Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interest of the County provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled without liability to the County.

K. Energy Forward Pricing Mechanisms. Pursuant to Virginia Code Section 2.2-4329.1:

1. As used in this subsection 4.1.6.K., unless the context requires a different meaning:

(a) "Energy" means natural gas, heating oil, propane, diesel fuel, unleaded fuel, and any other energy source except electricity; and

(b) "Forward pricing mechanism" means either: (i) a contract or financial instrument that obligates the County to buy or sell a specified quantity of energy at a future date at a set price or (ii) an option to buy or sell the contract or financial instrument.

2. Notwithstanding any other law to the contrary but subject to available appropriation, the County may use forward pricing mechanisms for budget risk reduction.

3. Forward pricing mechanism transactions shall be made only under the following conditions: (a) the quantity of energy affected by the forward pricing mechanism shall

not exceed the estimated energy use for the County for the same period, which shall not exceed 48 months from the trade date of the transaction; and (b) a separate account shall be established for operational energy for the County.

4. Before exercising the authority under this subsection 4.1.6.K., the County shall develop written policies and procedures governing the use of forward pricing mechanisms and disclosure of the same to the public.

5. Before exercising authority under subsection 4.1.6.K., the County shall establish an oversight process that provides for review of the County's use of forward pricing mechanisms. The oversight process shall include internal or external audit reviews; annual reports to, and review by, an internal investment committee; and internal management control.

L. Deposit of Certain Retained Funds on Certain Contracts. Pursuant to Virginia Code Section 2.2-4334:

1. When contracting directly with contractors for 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, the Bid Proposal shall include 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 Bid Proposal and Contract** shall be executed and submitted to the County within fifteen (15) 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.

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 form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the State. The escrow agreement and all regulations adopted by the County entering into the contract shall be substantially the same as that used by the Virginia Department of Transportation.

3. This subsection 4.1.6.L. shall not apply to 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.

4. Any such 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 penalty for each day exceeding the completion date stated in the contract.

5. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section; and any contract with the Contractor shall include language that any subcontracts shall be subject to the provisions of this Section 4.1.6.L.

M. Bid Bonds. Pursuant to Virginia Code Section 2.2-4336:

1. Except in cases of emergency, all bids or proposals for non-transportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Virginia Code Section 33.1-12 that are in excess of \$250,000 and partially or wholly funded by the State shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in the State, 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 (5%) of the amount bid.

2. For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with subsection 4.1.5 of this Section *supra*.

3. 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.

4. 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 non-transportation-related projects or \$250,000 for transportation-related projects authorized under Virginia Code Section 33.1-12 and partially or wholly funded by the State.

N. Performance and Payment Bonds. Pursuant to Virginia Code Section 2.2-4337:

1. Except as provided in subsection 4.1.6.N.8. below, upon the award of any (i) construction contract exceeding \$500,000 awarded to any prime contractor; (ii) construction contract exceeding \$500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by the County; (iii) construction contract exceeding \$500,000 in which the performance of labor or the furnishing of materials will be paid with County funds; or (iv) transportation-related projects exceeding \$350,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the County the following bonds:

(a) 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. For transportation-related projects authorized under Virginia Code Section 33.1-12, such bond shall be in a form and amount satisfactory to the County.

(b) A payment bond in the sum of the contract amount. 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. For transportation-related projects authorized under Virginia Code Section 33.1-12 and partially or wholly funded by the State, such bond shall be in a form and amount satisfactory to the County. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

2. For non-transportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with Virginia Code Section 2.2-4317.

3. 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.

4. Bonds required for the contracts shall be payable to the County.

5. Each of the bonds shall be filed with the Purchasing Agent.

6. 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 Virginia Code Section 33.1-12 and partially or wholly funded by the State.

7. 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.

8. The performance and payment bond requirements of Section 4.1.6.N.1 *supra* for transportation-related projects that are valued in excess of \$250,000 but less than \$350,000 may be waived by the County if the bidder provides evidence, satisfactory to the County, that a surety company has declined an application from the contractor for a performance or payment bond.

O. Alternative Forms of Security. Pursuant to Virginia Code Section 2.2-4338, upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond, a bidder may: (i) furnish a certified check or cash escrow in the face amount required for the bond in lieu of a bid, payment, or performance bond; or (ii) ,if approved by the County Attorney, 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.

P. Bonds for Other than Construction Contracts. Pursuant to Virginia Code Section 2.2-4339, at the discretion of the Purchasing Agent, the County may require bid, payment or performance bonds for contracts for goods or services if provided in the IFB or RFP.

Q. Action on Performance Bonds. Pursuant to Virginia Code Section 2.2-4340, no action against the surety on a performance bond shall be brought unless brought within one (1) year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

R. Action on Payment Bonds. Pursuant to Virginia Code Section 2.2-4341:

1. Any claimant who has a direct contractual relationship with the contractor and who has performed labor or furnished material in accordance with the contract documents in the furtherance of work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of ninety (90) days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to such action.

2. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within ninety (90) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection 4.1.6.R.2.

3. Any action on a payment bond must be brought within one (1) year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

4. A person may waive their right to sue on the payment bond required by this subsection 4.1.6.R., but such waiver shall be void UNLESS it is: (i) in writing; (ii) it is signed by the person whose right is waived; and (iii) it is executed after such person has performed labor or furnished material in accordance with the contract documents.

4.1.7. Contracts Generally

A. Required Contract Terms. **The General Terms, Conditions and Instructions to Bidders and Contractors, Appendix I to this Policy, is incorporated in its entirety into this Policy by reference and MUST be incorporated by reference into every contract to which the County is a party.**

B. Contracts Approved by County Attorney. All Contracts must be approved as to form by the County Attorney pursuant to Virginia Code Section 15.2-1237.

C. Contracts to be Filed with County Treasurer. A copy of each long-term contract shall be filed with the County Treasurer pursuant to Virginia Code Section 15.2-1237.

D. Unauthorized Purchases & Contracts

1. Whenever any officer or employee of the County purchases or contracts for any supplies or services contrary to the provisions of this Policy, such purchases or contract shall be void and shall not be considered to be an obligation of the County.

2. Any County officer or employee making or approving a purchase contrary to the provision of this Policy shall be personally liable for the costs of such purchases or contract. If already paid out of the County funds, the amount thereof may in the name of the County, be recovered by deduction from that person's compensation or an appropriate legal action instituted.

3. **ONLY** the Board or County Purchasing Agent, and only consistent with the authority granted under subsection 4.1.2. of this Chapter, or their designee shall have the authority to execute a contract. Any contract that has been signed by another officer of the County shall be nullified relinquishing the County of any obligations owed or implied to the Contractor.

4.1.8. Discrimination Prohibited; Participation of Small, Women-, Minority-, and Service Disabled Veteran-Owned Businesses

A. Definitions. The words defined in Virginia Code Section 2.2-4310 shall have the meanings set forth therein throughout this subsection 4.1.8 and incorporated herein by reference.

B. Discrimination Prohibited. In the solicitation or awarding of contracts, the County shall not discriminate against a Bidder or Offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the County shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

C. Participation of Small, Women-, Minority- and Service Disabled Veteran-owned Business. The County desires to facilitate the participation of small businesses and businesses owned by women, minorities, and service disabled veterans in procurement transactions and it is the policy of the County that the Purchasing Agent shall establish programs consistent with this Section 1-8 and further shall cooperate with state and federal agencies to facilitate the participation of small, women-, minority-, and service disabled veteran-owned businesses in the procurement transactions of County. The Purchasing Agent shall assist any such business in understanding any Solicitation or completing a Bid or Proposal.

D. Contracts with Faith-Based Organizations. Pursuant to Virginia Code § 2.2-4343.1:

1. In accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, the County is authorized to enter into contracts with faith-based organizations for the purposes described in this subsection 4.1.8.D 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.

2. The County does not discriminate against “faith-based organizations”, being 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 Reconciliation Act of 1996, P.L. 104-193. In procuring goods or services, or in making disbursements pursuant to Virginia Code Section 2.2-4343.1, the County 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 subsection 4.1.9.D. below, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

3. 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, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies 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 subsection 4.1.8.D.3. shall be construed to supersede or otherwise override any other applicable state law.

4. 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.

5. Nothing in this section 4.1.8. 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.

6. 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. 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.

4.1.9. Appeals and Remedies for Bidders

A. Ineligibility and Debarment of Bidder, Offeror or Contractor. See Section 4.2 of this Policy.

B. Appeal of Denial of Withdrawal of Bid. Pursuant to Virginia Code Virginia Code Section 2.2-4358:

1. The County's decision to deny withdrawal of Bid shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in Virginia Code Section 2.2-4364.

2. If no Bid bond was posted, a Bidder refused withdrawal of a Bid under the provisions of this Policy (see General Conditions, paragraph 8), prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the Bid sought to be withdrawn and the next low Bid. Such security shall be released only upon a final determination that the Bidder was entitled to withdraw the Bid.

3. If, upon appeal, it is determined that the decision refusing withdrawal of the Bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the IFB, the sole relief shall be withdrawal of the bid.

C. Determination of Non-Responsibility. Pursuant to Virginia Code Section 2.2-4359:

1. Following public opening and announcement of bids received on an IFB, the County shall evaluate the bids in accordance with Section 4.1.6.C.4 of this Section 4.1. At the same time, the County shall determine whether the apparent low bidder is responsible. If the County so determines, then it may proceed with an award in accordance with Section 4.1.6.C.5 of this Section 4.1. If the County determines that the apparent low bidder is not responsible, it shall proceed as follows:

(a) Prior to the issuance of a written determination of non-responsibility, the County shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an

opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five (5) business days after receipt of the notice.

(b) Within ten (10) business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The County shall issue its written determination of responsibility based on all information in the possession of the County, including any rebuttal information, within five (5) business days of the date the County received the rebuttal information. At the same time, the County shall notify, with return receipt requested, the bidder in writing of its determination.

(c) Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days after receipt of the notice by instituting legal action as provided in Virginia Code Section 2.2-4364.

2. The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

3. If, upon appeal pursuant to Virginia Code Section 2.2-4364, it is determined that the decision of the County was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the IFB, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of Virginia Code Section 2.2-4364 or both.

If it is determined that the decision of the County was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the IFB, and an award of the contract has been made, the relief shall be as set forth in subsection B of Virginia Code Section 2.2-4360.

4. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of Virginia Code Section 2.2-4360.

5. Nothing contained in this section shall be construed to require the County, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

D. Protest of Award or Decision to Award. Pursuant to Virginia Code Section 2.2-4360-4362:

1. Any Bidder who desires to protest the award or decision to award a Contract by the County, shall submit such protest in writing to the Board or the Purchasing Agent, no later than ten (10) days after public notice of the award or announcement of the decision to award,

whichever comes first. Public notice of the award or the announcement of the decision to award shall be given by the County in the manner prescribed in the terms or conditions of the Solicitation. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten (10) days after posting or publication of the notice of such contract as provided in Virginia Code Section 2.2-4303. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under Virginia Code Section 2.2-4342, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Virginia Code Section 2.2-4342, or at such later time as provided in this section. 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. The County shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the Bidder appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in Virginia Code Section 2.2-4364. Nothing in this paragraph shall be construed to permit an Offeror to challenge the validity of the terms or conditions of the Solicitation.

2. If prior to actual award it is determined that the pending decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a Contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the Contract may be enjoined by the County. Where the award has been made and performance has begun, the County may declare the Contract void upon a finding that this action is in the best interest of the County. Where a Contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the Contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits or any other losses, compensation or other costs or fees not specifically noted herein.

3. When the County or the Purchasing Agent, or any appeals board created by the Board, after a hearing held following reasonable notice to all Bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 6 of the VPPA (Virginia Code Section 2.2-4367 *et seq.*) the County or Purchasing Agent, or any appeals board created by the Board, may enjoin the award of the contract to a particular Bidder.

4. Pending final determination of a protest or appeal, the validity of a Contract awarded and accepted in good faith in accordance with this Article shall not be affected by the fact that a protest or appeal has been filed.

5. An award need not be delayed for the period allowed a Bidder or Offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination by the County that proceeding without delay is necessary to protect the public interest or unless the Bid would expire.

4.1.10. Ethics in Public Contracting

A. Purpose. This subsection 4.1.10 adopts the ethics provisions of Article 6 of the VPPA, Virginia Code Sections 2.2-4367 *et seq.*, as amended, and pursuant to Virginia Code Section 2.2-4367 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 (Virginia Code Section 2.2-3100 *et seq.*), the Virginia Governmental Frauds Act (Virginia Code Section 18.2-498.1 *et seq.*), and Articles 2 (Virginia Code Section 18.2-438 *et seq.*) and 3 (Virginia Code Section 18.2-446 *et seq.*) of Chapter 10 of Title 18.2. 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.

B. Definitions. Pursuant to Virginia Code Section 2.2-4368, the words defined in this section shall have the meanings set forth below throughout this Section 4.1.10:

1. "Immediate family" means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

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.

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 (Virginia Code Section 2.2-3100 *et seq.*).

4. "Nominal Value" means five dollars (\$5.00) or less.

5. "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.

6. "Public employee" means any person employed by the County, including elected officials or appointed members of governing bodies.

C. Proscribed Participation by Employees in Procurement Transactions. Pursuant to Virginia Code Section 2.2-4369, except as may be specifically allowed by subdivisions A 2, 3 and 4 of Virginia Code Section 2.2-3112, no employee having official responsibility for a procurement transaction shall participate in that transaction of behalf of the County when the employee knows that:

1. The employee is contemporaneously employed by a bidder, Offeror, or contractor involved in the procurement transaction;

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;

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

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 the bidder, Offeror or contractor.

D. Prohibition on Solicitation or Acceptance of Gifts; Gifts by Bidders, Offerors, Contractor or Subcontractors Prohibited. Pursuant Virginia Code Section 2.2-4371:

1. No County 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.

2. No bidder, offeror, contractor or subcontractor shall confer upon any County 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.

E. Disclosure of Subsequent Employment. Pursuant to Virginia Code Section 2.2-43790, 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 Board or the Purchasing Agent, or both prior to commencement of employment by that bidder, Offeror or contractor.

F. Kickbacks. Pursuant to Virginia Code Section 2.2-4372:

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.

2. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

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 County contract.

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.

G. Participation in bid preparation; limitation on submitting bid for same procurement. Pursuant to Virginia Code section 2.2-4373, no person who, for compensation, prepares an IFB or RFP for or on behalf of the County shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement 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.

H. Purchase of Building Materials, etc., from Architect or Engineer Prohibited. Pursuant to Virginia Code Section 2.2-4374:

1. No building materials, supplies or equipment for any building or structure constructed by or for a the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in Virginia Code Section 2.2-3101.

2. No building materials, supplies or equipment for any building or structure constructed by or for a 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 Virginia Code Section 2.2-3101.

3. The provisions of subsections 4.1.10.H.1 and 2 *supra* shall not apply in cases of emergency.

I. Misrepresentations Prohibited. Pursuant to Virginia Code Section 2.2-4376, no County employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

J. Certification of Compliance Required; Penalty for False Statements. Pursuant to Virginia Code Section 2.2-4375:

1. The County requires 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 Virginia Code Section 2.2-4367-4377.

2. Any employee required to submit a certification as provided in section 4.1.10.J *supra* who knowingly makes a false statement in such certification shall be punished as provided in subsection 4.1.10.K below.

K. Penalty for Violation. Pursuant to Virginia Code Section 2.2-4377, upon conviction of a willful violation of ethics in the public contracting provisions under the VPPA, any employee, in addition to any other fine or penalty provided by law, shall forfeit his/her employment.