

## 04. PROCUREMENT POLICIES AND PROCEDURES

### 4.2. Debarment

BOS Approved - August 17, 2016

Pursuant to Virginia Code §§ 2.2-4357 and 2.2-4321 the County has adopted the following ineligibility and debarment procedure:

**4.2.1. Ineligibility Notice.** Any Bidder, Offeror or Contractor suspended, refused permission to participate, or disqualified from participation, in any Solicitation or Contracts by the County (“disbarred”) for any cause including non-responsibility shall be notified in writing. Prior to the issuance of a written determination of disbarment, the County shall:

- A. Notify the Bidder or Contractor in writing of the results of the evaluation;
- B. Disclose the factual support for the determination; and
- C. Allow the 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.

**4.2.2. Rebuttal.** 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 disqualification or ineligibility 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 such rebuttal information.

**4.2.3. Decision.** If the evaluation reveals that the Bidder, Offeror or Contractor should be allowed permission to participate in the Contract, the County shall cancel the proposed disqualification action. If the evaluation reveals that the Bidder should be refused permission to participate, or disqualified from participation, in the Contract, the County shall so notify the Bidder, Offeror or Contractor. The 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 invoking administrative procedures meeting the standards of Virginia Code § 2.2-4365, if available, or in the alternative by instituting legal action as provided in Virginia Code § 2.2-4364.

**4.2.4. Debarment.** The County shall have the authority to suspend or debar a Bidder or Contractor from bidding on any Contract for the causes stated below:

- A. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

B. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;

C. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;

D. Violation of contract provisions, as set forth below, of a character which is regarded by the County to be so serious as to justify suspension or debarment action:

E. Failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

F. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment;

G. For non-responsibility. Any other cause the County determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;

H. The Contractor has abandoned performance or been terminated for default on any other County project; and/or

I. The Contractor is in default on any surety bond or written guarantee on which County is an obligee.

**4.2.5. Appeal.** If, upon appeal, it is determined that the action taken by the County was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the Bidder or Contractor shall be restoration of eligibility.

**4.2.6. Rules Applicable To Debarment**

A. The improper conduct of any agent, subcontractor, officer, board member or employee of any Contractor or Bidder may be fully imputed to such Bidder or Contractor; and vice versa.

B. Debarment of a Contractor in no way affects his obligations under any other Contracts with the County which are ongoing, unless terminated by the County as provided for in the County's Procurement Policies and Procedures.

C. A debarment can be imposed for any length of time, and the length of time for debarment will be determined by the County based upon the relevant circumstances.

D. Debarment of a Contractor/Bidder applies to any successor company formed with the same resources, owners or stockholders as the debarred entity.

**4.2.7. Reinstatement.** The County may suspend debarment of any Contractor or Bidder at any time if it determines that it is in the County's best interests to do so. Mitigating circumstances that will be considered when deciding to reinstate a Contractor or Bidder may include, but are not limited to: (i) the improper or illegal act underlying the debarment; (ii) the degree of culpability of the Bidder or Contractor; (iii) any restitution by the Contractor to the County for the improper or illegal act; and (iv) cooperation with the County by the Contractor or Bidder in any investigations into bid crimes. After the debarment period expires, the contractor may submit formal written request to the County stating that the contractor wishes to continue to conduct business with the County. A determination for the contractor's reinstatement shall be voted on by the Board of Supervisors based upon recommendation from the staff. If agreed upon by the County Board of Supervisors, the contractor shall be permitted to contract or make an offer, proposal or bid, in response to a Request for Proposals, an Invitation to Bid or any other form of solicitation by the County, for supplies, services, insurance or construction.