

04. PROCUREMENT POLICIES AND PROCEDURES

4.0 Statement of Purpose

BOS Approved - August 17, 2016

4.0.1. Public purchasing embraces a fundamental obligation to the general public to ensure that procurements are accomplished in accordance with the intent of the laws enacted by the appropriate legislative body. The intent of the Virginia General Assembly is set forth in the Virginia Public Procurement Act (Code of Virginia Section 2.2-4300 et seq.):

"To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business, and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered."

4.0.2. Fluvanna County intends, through these Procurement Policies and Procedures, to assure fair and equitable treatment of all persons involved in the procurement process, the best quality and price for products and services and to protect the assets and funds of Fluvanna County while meeting the requirements of any applicable Federal, State and Local laws, rule, regulations and policies.

4.0.3. This policy, which includes the statement of purpose, Sections 4.1 to 4.7 and Appendix 1, may be cited as the County of Fluvanna Procurement Policies and Procedures, and is herein referred to as the "Policy".

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 of 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.

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.

04. PROCUREMENT POLICIES AND PROCEDURES

4.3. Surplus Property

BOS Approved - August 17, 2016

4.3.1. Purpose. This Surplus Policy shall determine the process for transfer, sale, destruction or disposal of all the County's tangible property.

4.3.2. Authorization. The Purchasing Agent is responsible for overseeing and implementing the County's Surplus Policy and is authorized to transfer, sell, trade, donate, or destroy the County's property and vehicles consistent with this Surplus Policy.

4.3.3. Definitions. Whether capitalized or not, within this Section 4.3, the following terms mean:

A. County. The County of Fluvanna, a political subdivision of the Commonwealth of Virginia, including all agencies, departments and constitutional offices of the County.

B. Department. Any department, agency or Constitutional office of the County reporting to the County Administrator.

C. Non-Profit. Any 501(c)(3) organization deemed to be serving a public purpose.

D. Property. All tangible property owned by the County except vehicles.

E. Purchasing Agent. The County Administrator is the County's Purchasing Agent and is responsible for the purchasing activity of Fluvanna County.

F. State Agency. Any agency or department of the Commonwealth of Virginia.

G. Surplus Property. Any tangible property that is no longer of use to the County because it is obsolete, uneconomical, uneconomical to repair, valued based only upon its contents, or for any other reason deemed appropriate by the Purchasing Agent.

H. Surplus Vehicle. Any vehicle that is no longer of use to the County because it is obsolete, uneconomical, uneconomical to repair, valued based only upon its contents, or for any other reason deemed appropriate by the Purchasing Agent.

I. Vehicles. All vehicles owned by the County.

4.3.4. Identification of Unused Property and Release of Property

A. All Department heads are responsible for identifying Property and Vehicles within their Department that are no longer used by or of use to such Department. The Department

Heads shall notify the Purchasing Agent in writing specifically identifying such unused Property or Vehicles from time to time, but at least semiannually.

B. Such written notice shall include all known pertinent information regarding the Property or Vehicle including, but not limited to, the following:

1. For Property:

- Type of Property;
- Year of purchase;
- Condition of Property;
- Manufacturer, if applicable; and
- Product identification, if applicable.

2. For Vehicles:

- year, make, and model of vehicle;
- VIN;
- general condition of interior and exterior;
- any known mechanical problems;
- any known major repairs;
- any known accident history;
- number of miles;
- number of doors; and
- other descriptors including, but not limited to, air conditioning, power steering, power brakes, power door locks, cruise control, etc.

C. All computer equipment being released must first be cleared by the IT administrator to ensure that the hard drive has been cleared of all privileged County information, software and documents.

4.3.5. Transfer of Property

A. Notice of Availability. Upon determination by the Purchasing Agent that Property or Vehicle(s) are unused and eligible for transfer, the Purchasing Agent shall notify the heads of Departments that such is available. If the Purchasing Agent deems the Property or Vehicle(s) unsafe or otherwise improper for use by the County, then the Purchasing Agent is authorized to proceed with the Property as Surplus Property, or in the case of a Vehicle, as a Surplus Vehicle under subsection 4.3.6 below.

B. Priority. Preference for transfer of Property or Vehicles shall generally be given to the Department with the most need for it or to the Department who responds first to the notice of availability, as determined by the Purchasing Agent in his sole discretion.

C. Notice of Determination. Upon receipt of requests by Departments to receive the Property or Vehicle(s), the Purchasing Agent shall make a determination as to the most effective

placement of the Property or Vehicle(s) and notify all requestors of the decision.

D. Transfer between County Departments. Should the Purchasing Agent choose to transfer property from one Department to another Department, the notification shall serve as final approval and the receiving Department shall contact the releasing agency for transfer of the Property or Vehicle(s), keys, etc.

4.3.6. Surplus Property and Surplus Vehicle(s)

A. Determination of Surplus Property

1. If the Purchasing Agent deems the Property or Vehicle(s) unsafe or otherwise improper for use by the County, then the Property is Surplus Property, or in the case of a Vehicle, is a Surplus Vehicle.

2. If no Department receives the Property or Vehicle(s) under Section 4.3.5 *supra*, i.e., the Purchasing Agent determines that no Department needs or is eligible to receive the Property or the Vehicle(s), then the Property is Surplus Property, or if a Vehicle, the Vehicle is a Surplus Vehicle.

B. Disposition of Surplus Property by Sale, Trade or Exchange. The Purchasing Agent has the authority to sell all Surplus Property and Surplus Vehicle(s) or to exchange the same for, or trade in the same for other Property or Vehicle(s). All sales of Surplus Property and Surplus Vehicle(s) shall be based on competitive principals and if feasible shall be sold on the basis of competitive bids to obtain the best price and insure that the County receives fair market value. The Purchasing Agent must require competitive sealed bids for any sale of Surplus Property or a Surplus Vehicle estimated to have a fair market value of more than \$50,000; and the Purchasing agent may require competitive sealed bids for any sale in his discretion.

C. Other Disposition of Surplus Property

1. When Applicable. The Purchasing Agent may use the other methods of disposition described herein only if the Purchasing Agent:

(a) Is unable to sell, trade or exchange the Surplus Property or Surplus Vehicle(s) as described in Section 4.3.6.B *supra*; or

(b) Has determined that the Surplus Property or Surplus Vehicle(s) have a nominal fair market value such that sale, trade or exchange is inappropriate.

2. Other Methods of Disposition: If either of the above conditions of 4.1.6.C are met, then the Purchasing Agent may do any of the following:

(a) Transfer of Surplus Property or Surplus Vehicle(s) from County Ownership to a State Agency or Non-Profit. The Purchasing Agent may transfer Surplus Property or Surplus Vehicle(s) from the County to a State Agency or Non-Profit as described

below.

(a) Notification. The Purchasing Agent shall notify heads of State Agencies and Non-Profits that have requested to receive such notifications that Surplus Property or Surplus Vehicle(s) are available.

(b) Priority. In the case of multiple interested parties, the Purchasing Agent shall give priority to Non-Profits operating in the County or offering services to County residents, then to State Agencies locally housed, then to other Non-Profits and finally to other State Agencies.

(c) Conditions. The receiving State Agency or Nonprofit, submits a letter stating the following: “The Surplus Property transfer is in the form of a donation and such donated property will not subsequently be sold.”; and that “Surplus property being received is “as is – where is”. It is understood that this is a gratuitous donation, that no representations or warranties are intended, that the donee assumes responsibility for inspection and use and that donee assumes risks of using the property.” Non-profit agencies must provide a copy of their IRS determination letter to verify their non-profit status.

(d) Pick-Up. It shall be the sole responsibility of the receiving Non-Profit or State Agency to arrange for pick-up of the Surplus Property or Surplus Vehicle(s) within ten (10) working days of notice of donation.

(e) Board of Supervisor Approval for Transfer of Surplus Vehicle(s). In addition to the requirements *supra*, the County Board of Supervisors must approve any transfer of a Surplus Vehicle to a State Agency or Non-Profit.

(b) Transfer to Surplus Property Pool. The Purchasing Agent may order that Surplus Property or Surplus Vehicle(s) be stored with other surplus property and made available at public auction (including online auctioning if authorized and appropriate).

D. Destruction of Property. The Purchasing Agent may order the destruction, removal to landfill or trash disposal of any Surplus Property or Surplus Vehicle(s) with no or nominal fair market value that cannot be otherwise disposed of under provisions of this of this Policy.

04. PROCUREMENT POLICIES AND PROCEDURES

4.4. Small Purchasing Procedures

BOS Approved Amendment – April 3, 2024

4.4.1. Authorization. The Virginia Public Procurement Act, Virginia Code Section 2.2-4300 *et seq.*, (Hereinafter referred to as the “VPPA”) permits a locality to establish written small purchase procedures for single or term purchases from non-governmental contractors that do not require competitive sealed bids or competitive negotiation, on the condition that such procedures provide for competition wherever practicable. See Virginia Code Section 2.2-4303(G). The following small purchase procedures have been established by the Board of Supervisors of Fluvanna County for use by the County when acquiring (1) materials, supplies, equipment, printing, or other goods and non-professional services from non-governmental contractors where the estimated cost is less than or equal to \$100,000, (2) professional services through single or term contracts if the aggregate or the sum of all phases is not expected to exceed \$80,000, and (3) specifically for vehicles such as a car truck or van where the estimated cost is less than or equal to \$200,000. Notwithstanding the foregoing, small purchasing procedures for any transportation-related construction may only be used when the estimated aggregate cost or sum of all phases is not expected to exceed \$25,000.00. In general, the objective of this policy shall be to provide the County and its taxpayers with the best value possible – reflecting high quality and best price – through efficient and effective use of the competitive market.

4.4.2. Authority of Purchasing Agent. The “Purchasing Agent”, who is the County Administrator, 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.

4.4.3. General Policies

- A. The procedures established in this Section are intended to provide for competition wherever practicable and shall be applied to further this intent.
- B. The County may choose to require more formal bidding procedures or more stringent requirements in addition to or in lieu of the methods provided in these procedures. Reasons for imposing such requirements may include, but shall not be limited to, (1) a belief that a more competitive price could be obtained or (2) to comply with more stringent funding source procurement requirements.
- C. The County shall not procure goods or services in a piecemeal manner, split procurement into multiple parts, or request that the selected vendor invoice the County at intervals for the purpose of reducing the estimated cost of the procurement below the applicable limit for the

type of goods or services being purchased as set forth in section 4.4.1 *supra*. Order splitting with the intent of keeping a small purchase under the maximum dollar amounts prescribed in section 4.4.1 is prohibited.

- D. The receipt of written quotations is preferred.
- E. All oral quotes must be documented by the employee receiving said quote. A standard County form shall be available for this purpose.
- F. When practicable, the County shall inquire about available discounts.
- G. The County may, but shall not be required to, follow the methods provided in these procedures for procurements of goods or services which are exempt from requirements of competition under the VPPA.
- H. Where the estimated cost exceeds the limit for the type of goods or services being purchased as set forth in section 4.4.1 *supra*, then the County shall follow the applicable provisions of the VPPA and the County's Procurement Policies and Procedures (the "Policy").
- I. In the event that the required number of quotes cannot be obtained, the purchaser must document either that there are no other vendors available to provide the good or perform the service (single source determination), or that a reasonable effort was made to contact other vendors with no response. Documentation of such reasonable effort to contact vendors should include copies of fax confirmation sheets or letters requesting the quote and confirmation from the purchaser that no response was received. A standard County form may be available for this purpose.
- J. Consistent with Section 4.1.4 of the County's Procurement Procedures, when applicable under the VPPA, the County may make use of existing contracts in other localities for the purchase of similar goods and services as a small cooperative procurement in accordance with this policy and Virginia Code Section 2.2-4304 ("Small Cooperative Procurement"). The contract price in any one (1) Small Cooperative Procurement contract shall satisfy any quotation requirements of this policy.
- K. A contract may include provisions for modification of the contract during performance, but no contract price may be increased such that the total contract price would be more than applicable limit for the type of goods or services being purchased as set forth in section 4.4.1 *supra*, without the advance written approval of the Board of Supervisors of Fluvanna County (the "Board"). 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 quote or offer.
- L. In the solicitation or awarding of contracts, the County shall not discriminate against an offeror because of race, religion, color, sex, national origin, age, marital status, sexual

orientation, gender identity, status as a service-disabled veteran, disability, or any other basis prohibited by state law relating to discrimination in employment.

- M. Whenever solicitations are made, the County shall include businesses selected from a list made available by the Small Business and Supplier Diversity.
- N. Whenever Solicitations are made, the County shall include and incorporated by reference the General Terms, Conditions and Instructions to Bidders and Contractors, attached to the Policy as Appendix 1, as may be amended, modified, or replaced by the Board from time to time.
- O. The County encourages the participation of small businesses and businesses owned by women and minorities in procurement transactions
- P. **Compliance with Immigration Law.** Pursuant to § 2.2-4311.1. of the Code of Virginia, the Contractor does not, and shall not during the performance of a Contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986. (BOS action Oct. 1, 2008).
- Q. Compliance with the Uniform State Building Code is required for all small purchases and cannot be waived.

4.4.4. Definitions

- A. The County of Fluvanna Procurement Policies and Procedures, being the statement of purpose, Sections 4.1 to 4.7 inclusive, and Appendix I, are referred to throughout as the “Policy”.
- B. The definitions of the “Policy” as stated in Section 4.1 apply to the entire Policy, but for clarity are specifically incorporated to this Section 4.4 by reference.
- C. The term “contracts” previously defined in Section 4.1 shall be expanded to also include any decisions to purchase a good or service made in compliance with the procedures outlined in this Section 4.4, with or without a formal written contract, including documentation.
- D. “Small purchases” are single or term contracts for goods or services where the estimated sum or aggregate of all phases does not exceed the applicable limit for the type of goods or services being purchased as set forth in Article 1 *supra*.
- E. “**Professional services**”, consistent with its definition in Section 4.1, means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.

F. ***“Nonprofessional services”***, consistent with its definition in Section 4.1, means any services not specifically identified as professional services in the definition of professional services.

G. The “estimated cost” of a contract shall be according to a single purchase order, not the annual total for a particular vendor. However, unit orders shall not be split in order to reduce the invoice total.

H. A “quotation” may be either written or oral. A supplier's current price list may serve the same purpose as obtaining a quote. It is the responsibility of the employee receiving an oral quote to document thoroughly the price and good or service provided.

4.4.5. Small Procurement Methods

A. **One quotation.** Purchases where the estimated cost of goods, professional services, or nonprofessional services does not exceed \$5,000 may be made upon receipt of a written or oral quote from one vendor.

1. The County shall seek additional quotations whenever there is reason to believe a materially better value could be found.
2. Where more than one quote has been obtained for goods or nonprofessional services, the County shall select the supplier with the lowest responsive and responsible quote. It shall be consistent with these Small Purchasing Procedures for the County to consider product quality, service, and vendor reliability to reach this determination.
3. Where more than one quote has been obtained for professional services, the County shall negotiate with the vendor determined to be the most qualified, responsible and suitable; cost shall not be the sole determining factor. If a satisfactory contract cannot be negotiated with such vendor, negotiations shall then be undertaken with the second most qualified, responsible and suitable vendor, and so on until a satisfactory contract is agreed upon.

B. Two Quotations

1. Purchases where the estimated cost of goods, professional services, or nonprofessional services exceeds \$5,000 but does not exceed \$30,000 may be made upon receipt of written or oral quotes from two vendors, subject to the provisions of Section 4.4.3(J) above.
2. For goods and nonprofessional services, the County shall select the supplier with the lowest responsive and responsible quote. It shall be consistent with these these Small

Purchasing Procedures for the County to consider product quality, service, and vendor reliability to reach this determination.

3. For professional services, the County shall negotiate with the vendor determined to be the most qualified, responsible and suitable; cost shall not be the sole determining factor. If a satisfactory contract cannot be negotiated with such vendor, negotiations shall then be undertaken with the second most qualified, responsible and suitable vendor, and so on until a satisfactory contract is agreed upon.

C. Three Written Quotations

1. Purchases where the estimated cost of goods, professional services, or nonprofessional services exceeds \$30,000 but does not exceed \$60,000 may be made upon receipt of written quotes from three vendors, subject to the provisions of Section 4.4.3(J) above.
2. For goods and nonprofessional services, the County shall select the supplier with the lowest responsive and responsible quote. It shall be consistent with these Small Purchasing Procedures for the County to consider product quality, service, and vendor reliability to reach this determination.
3. For professional services, the County shall negotiate with the vendor determined to be the most qualified, responsible and suitable; cost shall not be the sole determining factor. If a satisfactory contract cannot be negotiated with such vendor, negotiations shall then be undertaken with the second most qualified, responsible and suitable vendor, and so on until a satisfactory contract is agreed upon.
4. Notwithstanding the foregoing, small purchases of transportation-related construction may only be used when the estimated aggregate cost or sum of all phases is not expected to exceed \$25,000.00.

D. Four Written Quotations

1. Purchases where the estimated cost of goods, professional services, or nonprofessional services exceeds \$60,000 but does not exceed \$100,000 (\$200,000 for vehicle purchases) may be made upon receipt of written quotes from four vendors, subject to the provisions of Section 4.4.3(J) above. Notwithstanding the foregoing, small purchases of professional services may not exceed the limit of \$80,000 as set forth in section 4.4.1.
2. Written informal solicitation of a minimum of four bidders or offerors shall be required.
3. For goods and nonprofessional services, the County shall select the supplier with the lowest responsive and responsible quote. It shall be consistent with these Small

Purchasing Procedures for the County to consider product quality, service, and vendor reliability to reach this determination.

4. For professional services, the County shall negotiate with the vendor determined to be the most qualified, responsible and suitable; cost shall not be the sole determining factor. If a satisfactory contract cannot be negotiated with such vendor, negotiations shall then be undertaken with the second most qualified, responsible and suitable vendor, and so on until a satisfactory contract is agreed upon.
5. Notwithstanding the foregoing, small purchases of transportation-related construction may only be used when the estimated aggregate cost or sum of all phases is not expected to exceed \$25,000.00

4.4.6. Exceptions to Competitive Requirements. Fluvanna County has determined that competition normally is either not practicable or available for small purchases of the following goods or services which, accordingly, may be purchased without receipt of quotes from additional vendors:

- A. Books, pre-printed materials, reprints and subscriptions (e.g., print or electronic), pre-recorded audio and video cassettes and slide presentations when only available from the publisher/producer;
- B. Any items purchased on state contract;
- C. Academic/research consulting services;
- D. Honoraria, entertainment (speakers, lecturers, musicians, etc.);
- E. Royalties and film rentals when only available from producer or protected distributors;
- F. Membership dues;
- G. Advertisements such as in newspapers, magazines, journals, radio, television, etc.; and
- H. Utility charges.

4.4.7. Contract Requirements

- A. Every purchase under these Small Purchasing Procedures for \$10,000 or more must be in the form of a formal written contract approved as to form and include and incorporate by reference the General Terms, Conditions and Instructions to Bidders and Contractors attached to the Policy as Appendix 1. A formal written contract can be used for purchases under 10,000 at the County Purchasing Agent's discretion.

B. All small purchases made hereunder shall be subject to the provisions of paragraph 48 of the General Terms, Conditions and Instructions to Bidders and Contractors attached to the Policy as Appendix 1.

Adopted: Board of Supervisors, November 20, 2002

Amended to include procurement of professional services: February 18, 2004

Amended to include compliance with immigration law provision: October 1, 2008

Amended to increase professional services threshold to \$50,000 in compliance with §2.2-4303 (H) of the Code of Virginia: September 16, 2009.

Amended to be incorporated into the County's Procurement Policies and Procedures: April 3, 2013.

Amended to allow one quote for Small Cooperative Procurements September 20, 2017.

Amended to increase threshold limits and to address other changes in the Virginia Public Procurement Act July 7, 2021.

Amended to address difficulties in purchasing vehicles and contract requirement on April 5, 2023.

Amended to remove Attachment A for purchases of more than \$500 but less than \$10,000 on April 3, 2024.

04. PROCUREMENT POLICIES AND PROCEDURES

4.5. Purchasing Card

BOS Approved - August 17, 2016

4.5.1. Purpose. The County of Fluvanna's (the "County") Purchasing Card Policy (the "Purchasing Card Policy") states the rules for use of the Purchasing Card and is intended to provide County departments and agencies with an efficient and reliable way to procure and pay for small dollar goods and services as a type of Small Procurement.

4.5.2. Background. This Purchasing Card Policy is intended to reduce the volume of accounts payable transactions and the associated administrative costs by eliminating vendor invoices and consolidating multiple vendor payments into one monthly payment to the "**Purchasing Card Contractor**". Vendors are paid directly by the Purchasing Card Contractor. The County is part of a cooperative contract through the Commonwealth of Virginia who has contracted with Bank of America Merrill Lynch as the Purchasing Card Contractor. In addition, the Purchasing Card Contractor provides a variety of management information reports to assist the County in maintaining control over purchases and payments via the Purchasing Card Contractor's online program management system (hereinafter "Works").

4.5.3. Definitions. For purposes of this Purchasing Card Policy, the following definitions apply:

- A. Cardholder – The individual employee who is assigned a Purchasing Card.
- B. Credit Limit – The maximum dollar amount a Cardholder is authorized to spend during a single monthly statement billing cycle.
- C. Industry Restrictions – Certain categories of vendors (i.e., travel, car rental, gas/oil, restaurant, and lodging) that, in an effort to ensure that Purchasing Cards cannot be used to make improper purchases, the PCA has blocked purchases from based on their MCC. Attempts to purchase goods or services under Industry Restrictions will result in an "unauthorized purchase" message. Requests for changes to the Industry Restrictions permitted on a Purchasing Card should be submitted to the PCA on the Card Maintenance Form, included herein in Appendix A.
- D. Merchant Category Code ("MCC") – Is a four-digit **code** used by the Purchasing Card Contractor to classify a vendor or a merchant's primary business.
- E. Purchasing Agent – The Fluvanna County Administrator who oversees the Small Purchasing Procedures, including this Purchasing Card Policy. For administrative efficiency, the authority to oversee and administer this Purchasing Card Policy is delegated to the Purchasing Card Administrator. Nothing herein, shall limit the Purchasing Agent's authority under the Small Purchasing Procedures, see Section 4.4 of the Procurement Policies and Procedures, and he shall have the right and authority to do anything that the Purchasing Card Administrator could do under this Purchasing Card Policy; and to delegate his authority in writing to another

responsible County employee if he so deems appropriate.

F. Purchasing Card – The Purchasing Card is any Purchasing Card Contractor credit card procured by the County and issued to a Cardholder.

G. Purchasing Card Administrator (“PCA”) – The PCA is the Fluvanna County Director of Finance who: (i) monitors all activities relating to the Purchasing Card Policy; (ii) is registered with the Purchasing Card Contractor; and (iii) is authorized to take all actions relating to the Purchasing Cards consistent with this Purchasing Card Policy. The PCA will serve as the primary contact for the County departments and agencies participating in the Purchasing Card program. The PCA can assign some of his or her responsibilities to a designee(s), however the PCA is ultimately responsible for implementing, overseeing and enforcing the Purchasing Card Policy. The PCA is the County's primary representative to both the State Department of Accounts and the Purchasing Card Contractor. The PCA serves at the convenience of the Purchasing Agent, and the Purchasing Agent may remove the acting PCA at any time, by written notice to the PCA of such removal. The Purchasing Agent may name a successor PCA in writing, or if one is not so named, the Purchasing Agent will be the PCA hereunder.

H. Purchasing Card Contractor (“PCC”) – See definition in Section 4.5.2, *supra*.

I. Rebate – A Rebate earned based on qualifying purchases and paid to the County by the PCC. Any such Rebate received shall be deposited into the County’s General Fund for payment of the administrative and processing costs of this Purchasing Card Policy.

J. Single Transaction Limit (“STL”) – The maximum dollar amount a Cardholder is allowed to spend on any one purchase or transaction.

K. Split Purchase – An unauthorized purchase or transaction where either the Cardholder, or Cardholders acting together, break a transaction or purchase of the same or related goods or services into multiple transactions or purchases to circumvent the STL, the Credit Limit or this Purchasing Card Policy in any way.

4.5.4. Participation

A. Application for a Purchasing Card. Any County employee who would like to be issued a Purchasing Card must first obtain their Department Head’s approval, then the Department Head must fully complete a Purchasing Card Program – Application/Agreement (the “Application”) and submit the original signed Application to the PCA. The PCA has final authority to approve the issuance of Purchasing Cards, or not, in accordance with this Purchasing Card Policy. The Application is included herein in Appendix A.

B. Issuance of Purchasing Card. Purchasing Cards will not be issued to a Cardholder by the PCC unless and until the PCA approves and signs the Application request. The PCA will notify Cardholders when their card has been received and is ready to be picked up. Cardholders must sign for their card and will be given a copy of this Purchasing Card Policy at that time.

C. Activating a Card. Cardholders must call the PCC's Customer Service Department to activate a new Purchasing Card.

D. Authorized Use

1. The County is liable for authorized charges made using the Purchasing Cards that are within the STL. Purchasing Cards shall be used for **ONLY** official County purchases. *Use of the card for personal items is not permitted, even if the County will be reimbursed later.* The County does not accept liability for the following: unauthorized use of the Purchasing Card, fraudulent use of Purchasing Card Account Number, and Purchases made with a stolen or lost Purchasing Card.

2. Authorized use of the Purchasing Card is limited to the person whose name appears on the face of the card. The Purchasing Card must not be loaned to another person.

3. Cardholders must exercise good stewardship of the County's resources and make no excessive or unnecessary purchases. Efforts should be made to use the card where appropriate in order to maximize administrative cost savings. If you have questions on the appropriate use of the Purchasing Card, please contact the PCA.

E. Requirements for Competition. Requirements for competition prior to purchasing with a County Purchasing Card are generally based on the dollar amount of the purchase or transaction, and all purchases and transactions are subject to the County Procurement Policies and Procedures, and specifically, the County Small Purchasing Procedures, see Section 4.4 *supra* (collectively the "County's Purchasing Policies").

F. Technology Items. Computer and other technology items charged to the Purchasing Card must be made in accordance with the County's Purchasing Policies, Information Technology requirements, computer uses, and approved in advance by the Purchasing Agent if more than \$100.

G. Violations. Individuals who violate this Purchasing Card Policy may have their Cardholder privileges suspended or permanently revoked, may face additional disciplinary action including termination of employment or, if appropriate, the County may take any other action against such individual permitted under law, equity or otherwise.

4.5.5. Roles & Responsibilities

A. Responsibilities of the Purchasing Card Administrator. The **Purchasing Card Administrator**, is responsible for implementing, overseeing and enforcing this Purchasing Card Policy, including, but not limited to, the following:

1. Communicating with the PCC including maintaining and reporting all Cardholder and Purchasing Card information;

2. Issuing, cancelling, terminating or suspending any Purchasing Card;

3. Setting appropriate purchase, transaction, Industry Restrictions, STLs and/or Credit Limits on each Purchasing Card based on the Cardholder's purchasing needs and the County's Procurement Policies and Procedures;
4. Ensuring that at least annually an analysis of each Cardholder's Purchasing Card usage and Credit Limit is performed and documented;
5. Monitoring on a regular basis, and at minimum monthly, the statements for the Purchasing Cards to ensure compliance with this Purchasing Card Policy;
6. Ensuring that if the paper bill from the PCC is not received within eight (8) days of the close of the Purchasing Card statement cycle that a copy of the monthly statement is downloaded from Works;
7. Managing any Purchasing Card issues including contacting vendors when goods or services are not received or for incorrect charges. If resolution cannot be made dealing directly with the vendor, then the PCA shall notify the PCC through Works;
8. Ensuring Cardholders are not paying past due invoices;
9. Periodically reviewing accounts to identify inactive Purchasing Cards, cancelling the same and notifying the Cardholder of the cancellation;
10. Removing, either permanently or temporarily any Industry Restrictions, on a Cardholder's Purchasing Card on a case-by-case maintaining adequate supporting documentation;
11. Training Cardholders at least annually in proper Purchasing Card usage and security;
12. Ensuring Cardholder compliance with this Purchasing Card Policy;
13. If there be any potential, suspected or confirmed fraudulent use of any Purchasing Card, taking any steps necessary to stop the threat of any future fraudulent use and to remedy any fraud that has already occurred; and
14. Ensuring that if a Purchasing Card ordered is not received in seven (7) business days, it is cancelled for security reasons, and a request for a new one is made.

B. Responsibilities of the Cardholder. The **Cardholder** is responsible for complying with this Purchasing Card Policy including, but not limited to, the following:

1. Complying with this Purchasing Card Policy, the County's Purchasing Policies, and all rules governing the use of the Purchasing Card;

2. Ensuring that the Purchasing Card is not, under any circumstances, used for personal expenditures, cash advances, or to obtain store credit;
3. All of the Cardholder's Purchasing Card activity;
4. Requiring and retaining all transaction or purchase documentation, including, but not limited to, vendor receipts, invoices and delivery documentation;
5. Submitting any required documentation related to the transaction or purchase to the appropriate recipient(s), in a timely manner, for coding, approval or otherwise;
6. Ensuring that no transaction or purchase made on the Purchasing Card is a Split Purchase;
7. Complying with STL and Credit Limits;
8. Placing only authorized orders and complying with Industry Restrictions;
9. Ensuring receipt of any product and/or services purchased on the Purchasing Card;
10. Verifying all purchases listed on their Purchasing Card statement are correct and made for only for official County purchases;
11. Ensuring that past due invoices are not paid with the Purchasing Card;
12. If the Purchasing Card is lost or stolen, immediately notifying the PCA;
13. Resolving delivery and credit disputes with vendors, or if such cannot be resolved by the Cardholder within seven (7) days notifying the PCA of the same; and
14. Ensuring the security of their Purchasing Card and any document containing their Purchasing Card Account Number.

4.5.6. Spending Limits. Credit Limits are set at or below the one quotation threshold established under the County's Small Purchase Procedures. Purchasing Card Credit Limits and STLs provide an important safeguard against fraud and misuse. It is important that Purchasing Card Credit Limits be set as close as possible to anticipated use. Each employee of the County can only have one Purchasing Card issued to him or her. The PCA shall choose a "Purchasing Card Type" from the table below for each Cardholder with the Credit Limit and STL as so noted prior to the issuance of any Purchasing Card. The PCA may change the "Purchasing Card Type" at any time by written notice to the Cardholder. The County has established 10 (Ten) "Purchasing Card Types". Each Purchasing Card must be one of the Purchasing Card Types listed below:

Purchasing Card Type	Credit Limit	Single Transaction Limit
CL \$500/STL \$100	\$500.00	\$100.00
CL \$500/STL \$500	\$500.00	\$500.00
CL \$1000/STL \$500	\$1,000.00	\$500.00
CL \$1000/STL \$1000	\$1,000.00	\$1,000.00
CL \$2000/STL \$1000	\$2,000.00	\$1,000.00
CL \$2000/STL \$2000	\$2,000.00	\$2,000.00
CL \$3000/STL \$1000	\$3,000.00	\$1,000.00
CL \$3000/STL \$1500	\$3,000.00	\$1,500.00
CL \$3000/STL \$2000	\$3,000.00	\$2,000.00
CL \$3000/STL \$3000	\$3,000.00	\$3,000.00

4.5.7. Card Uses

A. Proper Purchasing Card Uses. Subject to any Restrictions on a Cardholder's Purchasing Card and any limitations in this Purchasing Card Policy, the Purchasing Card may be used for the following:

1. Books, magazines, journal subscriptions, publications, etc.;
2. Car Rental;
3. Conference registration;
4. Food/Restaurant;
5. Gas for rental vehicles;
6. Lodging;
7. Office supplies;
8. Express mail service and freight service;

9. Professional organization dues, fees, and licenses;
10. Airline tickets; and
11. Travel expenses.

B. Improper Purchasing Card Uses. Purchasing Cards shall **NOT** be used for the following:

1. Cash advances;
2. Personal purchases of any kind;
3. Purchases by non-employees;
4. Split Purchases;
5. Other purchases prohibited by the VPPA or the County's Procurement Policies and Procedures; and
6. Fuel Purchases subject to the County Fuel Card Management Policies.

4.5.8. General Ordering Guidelines

A. Taxes. Tell the vendor the County is exempt from sales tax, and, if requested, the County Finance Department will fax or mail a Commonwealth of Virginia, Sales and Use Tax Certificate of Exemption to the vendor. **The County is not exempt from sales tax on restaurant, catering, and lodging charges.**

B. Shipping. Be sure to include the Cardholder's department name as part of the billing and shipping address. Try to negotiate FOB Destination, freight prepaid and allowed shipping terms. Request Inside Delivery, if applicable. Request that the vendor NOT put the Purchasing Card number on the exterior of the shipping container.

C. Supplier Information. Information to obtain from supplier: Order confirmation or tracking number; Base cost of purchase; Promised or anticipated delivery date; and Freight costs. If a fixed amount can't be provided, get a not-to-exceed amount.

D. Documentation. Save all documentation pertaining to the purchase, including such items as shipping papers and packing slips. Remember to print internet pages showing your order or confirmation of order. This type documentation must be kept on file at least three years by the Cardholder's department for reconciliation to the charge card statement, and for audit purposes.

E. Returning Purchases. The Cardholder should contact the vendor and process the return with the vendor. Be sure to save original receipts, as they will expedite credits to the Purchasing Card. The Cardholder **MUST** follow these guidelines when returning purchases, or

for other disputed items such as sales tax charged: (i) Returns should be handled as credits to the Purchasing Card (not store credits) and treated as separate transactions; (ii) A separate purchase must be made to re-order the correct item, if applicable; and (iii) **Cash refunds are not allowed.**

4.5.9. Internal Controls

A. **Cardholder Reconciliation Procedures and Responsibilities.** Cardholders shall review their monthly Cardholder statement for accuracy by comparing statement charges to the supporting documentation for each purchase.

1. Cardholder must report disputed charges as soon as possible.
2. For each transaction on the monthly Cardholder statement, the Cardholder must note on the statement near each charge that will not be charged to the default budget code, the budget code for the purchase.
3. For travel and local subsistence charges, the name of the conference attended and/or purpose of the trip and the person attending must be noted near the charge.
4. Cardholders are responsible for making sure that educational training/travel related charges to their purchasing card are included in the appropriate section of any related Travel Expense and Reimbursement Form, **BUT ARE NOT INCLUDED IN THE REIMBURSEMENT SECTION** of the Travel Expense and Reimbursement Form.
5. Either on the statement or attached to the statement, the Cardholder must **summarize all charges by budget code.**
6. Cardholders must sign the monthly statement to certify the charges and approve payment.
7. Cardholders are responsible for obtaining their monthly Cardholder statements and ensuring that the properly reconciled original signed statements are submitted to their Department Head with all original supporting documentation in a timely manner.
8. After the Cardholder statement is approved and signed by the Department Head, the Cardholder must make a copy of the Cardholder statement and attach all original supporting receipts and documentation of charges to the copy and retain for audit purposes for at least three (3) years. Then, the Cardholders **MUST** deliver the original statement with 2 signatures and a copy of the supporting documentation to the Finance Department by the deadline in the following section.

B. Department Head Responsibilities

1. Department Heads will receive electronically all Cardholder statements each month.

2. Department Heads are responsible for developing internal control procedures to ensure that its employees **original Cardholder statements, properly signed, with necessary expenses properly explained and coded for payment, are received in the Finance Department no later than three (3) business days prior to the AP cutoff for payments to be made on the SECOND PAYMENT CYCLE of each month.** For those departments that do not meet the deadline, continued delinquencies shall be cause for suspension or termination of their Purchasing Card privileges.

3. Department Heads are responsible for assigning a default budget code, i.e., VISA Holding line for each Purchasing Card.

4. Department Heads are responsible for maintaining copies of each Cardholder statement, with appropriate backup documentation, for a period of at least three (3) years.

5. Department Heads, or his or her designee, sign the original Cardholder statement to certify the charges and approve payment. The person who signs in addition to the Cardholder must verify that the charges are legitimate (other than those being disputed), the documentation is appropriate, and payment is approved. The second signature must be on the Finance Department list of persons authorized to approve County disbursements.

C. Signatures. As required above, two original signatures are required on each original Cardholder statement, the Cardholder's signature and the Department Head's signature. Statements should also be signed by the PA, or his or her designee, to approve accounts payable.

D. Errors. For any charges on the Purchasing Card that should be charged to a budget code other than the default code, but were erroneously not so indicated on the Cardholder statement sent to the Finance Department, prepare a cost transfer to change the charge to the proper budget code and send the cost transfer form to the Finance Department in a timely manner.

4.5.10. Disputing Charges

A. The County has sixty (60) days after the billing statement date to give the PCC written notice of a disputed charge.

B. The Cardholder should try to resolve the issue with the vendor and shall get written confirmation of any credit to be issued. If the Cardholder is unsuccessful in resolving the issue, the Cardholder must **immediately** fax the completed Dispute Form, included herein in Appendix A, form to PCC's Customer Service Department and notify the PCA. In any event if any issue remains unresolved more than seven (7) days after the billing statement date, then such shall be reported to the PCA immediately.

C. Payment of disputed charges properly reported to the PCC is not required while the PCC investigates the dispute. A credit will be issued upon the PCC's receipt of the written dispute. If the charge is found to be in error, the credit remains. If the charge is found to be accurate, the credit will be reversed and the department will be responsible for payment on their next billing cycle. The average time for billing dispute resolution after the receipt of the written

notice is 45 – 60 days.

4.5.11. Cancellation. The Department Head is responsible for returning a Cardholder's card to the PCA when the employee terminates employment, misuses the card, transfers to another department, or no longer needs the card. The Cardholder may personally return the card to the PCA.

4.5.12. Reissuing. As Purchasing Cards approach their expiration date, they will automatically be reissued by the PCC **UNLESS**: (i) otherwise requested; (ii) the card has not had any transaction activity for 18 consecutive months; or (iii) the Cardholder's account is currently delinquent. Reissued cards are sent to the PCA. The Cardholder will be required to pick up and sign for the new card from the PCA. Cardholders must activate the reissued card the same way the original card was activated and turn in the old card to the PCA to be destroyed.

4.5.13. Changes. The PCA can make most changes to the Purchasing Card needed by the Cardholder. The Department Head must request any requested change using the "Card Maintenance Form" in Appendix A.

4.5.14. Payment Guidelines

A. Under the supervision of the PA, the Finance Department is responsible for processing payments to the PCC for the amount certified by Department Heads on the monthly Cardholder Statements. Due to the length of time allowed for the County to pay the PCC's corporate monthly billing statement, the PCA may authorize payment from the master billing statement prior to receiving statements from all individual Cardholders. The Finance Department will process and authorize payment in time for payment to be included in the County's AP run to ensure payment is made prior to the due date. If it appears the payment cannot be made in the normal AP run in time to meet the due date, a manual check may be requested.

B. Upon receipt of the corporate monthly billing statement a representative from the Finance Department responsible for AP entry will reconcile the corporate billing statement charges with the individual Cardholder statements submitted. Charges shall be coded as indicated by the department on the Cardholder statement. If a Cardholder fails to submit a Cardholder statement, the charges shall be coded to the Cardholder's default budget code.

4.5.15. Reports. The PCA can generate Project Administrator Management Reports from Works. Cardholders will have access to online reporting, including printing of monthly statements.

4.5.16. Fraud & Misuse. Each Department Head is responsible for actively protecting each of its Purchasing Cards from fraud and misuse. The following guidelines **MUST** be followed:

A. Limit Card Access – Maintain Staff and Department Purchasing Cards in a secure environment. Limit access to this environment to provide greater security for the Purchasing Card. Consider Purchasing Card security prior to allowing an employee access to a Purchasing Card or Purchasing Card Account Number, particularly if the employee is temporary or seasonal.

B. Protect Card Information – Information regarding Purchasing Cards should be protected. This is to include Purchasing Card Account Number, name and expiration date. File reports that contain Purchasing Card numbers in locked file cabinets. When destroying reports or other paperwork containing any Purchasing Card information, shred documents; however make sure to keep all documentation for at least three (3) years for audit purposes pursuant to Subsection 4.5.8.D herein. Assure security of Purchasing Card materials that are maintained electronically. Do not send emails which contain Purchasing Card Account Numbers or other identifying information.

C. Establish Reasonable Card Limits – Establish reasonable spending and transaction limits. This will limit risk in the event the Purchasing Card or Purchasing Card number is lost or stolen.

D. Maintain Adequate Separation of Duties – Divide the Purchasing Card custodian/accounting/reconciliation duties among employees. Conduct proper upper management review of transactions and supporting receipts and associated documentation.

E. Occurrence of Fraud or Misuse - If fraud or misuse of a Purchasing Card is suspected or confirmed by any person, such must be immediately reported to the PCA who will conduct an investigation. If fraud is confirmed, the PCA must report the incident to County Administrator.

F. Compliance Reviews - The Purchasing Card program is subject to review by the Finance Department, County Administrator, and internal or external audits.

4.5.
APPENDIX A - FORMS

See Separate Attachments

04. PROCUREMENT POLICIES AND PROCEDURES

4.6. Fuel Card Program

BOS Approved - August 17, 2016

4.6.1. Overview

A. The Fluvanna County (the “County”) Fuel Card program is a program offered through the State Motor Fuel Program. **The fuel card program will utilize the Voyager card under Mansfield Oil Company and provides the flexibility to fuel vehicles at 90% of the gas stations nationwide. Contract prices under this program allow cardholders to purchase Federal excise tax-exempt motor fuels at an OPIS-based price plus the contract adder. The card will give the County the ability to purchase all brands of fuel products.**

B. This card program shall be managed in a manner consistent with all applicable County accounting policies and procedures related to the use of charge card programs. Agencies assume ultimate responsibility for employees’ use of the fuel card, as well as the accountability for the physical security of the fuel cards. The County and the County Sheriff’s Office shall each have a Fuel Card Custodian to monitor fuel cards assigned to specific vehicles and to manage their daily use, a Fuel Card Account Custodian to perform the fiscal and administrative functions required to appropriately manage the fuel card program and a County Fuel Card Administrator to oversee this Fuel Card Policy. The Fuel Card Custodian, Fuel Card Account Custodian and the Fuel Card Administrator for the County and the Fuel Card Custodian, Fuel Card Account Custodian and the Fuel Card Administrator for the County Sheriff’s Office shall be designated by the County Administrator.

4.6.2. Definitions

A. County Owned Vehicle - Any vehicle with a title held by the County of Fluvanna, Virginia or operating agency including the County Sheriff’s Office, that includes but is not limited to sedans, station wagons, minivans, pickup trucks, sport utility vehicles, or vans used primarily for the transportation of the driver and no more than 15 passengers.

A. Employee - Any individual authorized to operate a County/Agency owned vehicle on behalf of the County of Fluvanna, Virginia, e.g., part-time, hourly, and full-time employees to perform business related services.

4.6.3. Roles & Responsibilities

A. Fuel Card Custodian - The Fuel Card Custodians assume responsibility for the physical security of any Fluvanna County Fuel Card (Mansfield/Voyager Card) and the associated PINs (Personal Identification Numbers). The Fuel Card Custodians may delegate use of the card, but assumes responsibility for card transactions. The Fuel Card Custodian shall perform duties that include, but are not limited to:

1. Ensure physical security of Fuel Cards (for example, in a locked desk drawer). The card may **not** be left in the custody of a vendor.

2. Maintain a written record of all persons who have physical access to the Fuel Card (for example, a sign-out sheet for the card, or a list of persons who have keys to the locked desk drawer).

3. Ensure that the card is used only for appropriate purchases (described below), and in conjunction with County business.

4. Remind all card users to use commercial retail sites only.

5. Ensure users of vehicle fuel cards turn in receipts of purchases from commercial retail fuel sites.

6. Ensure all documentation of card use is forwarded to the Fuel Card Account Custodian.

7. Inform the Department of Public Works or Fluvanna County Sheriff's Office of any change in the Fuel Card Custodian's contact information.

B. Fuel Card Account Custodian - The Account Custodians assumes responsibility for reviewing card activity to ensure appropriate use. In addition, the Account Custodians ***should not*** be a card user. The Account Custodians shall perform duties that include but are not limited to:

1. Review the monthly Statement of Charges (downloaded from Mansfield website) for appropriateness of card usage.

2. Reconcile all charges and process payment to card vendor.

3. Report infractions to the County Administrator.

4. Maintain records of all card usage, sign out sheets, receipts, or other applicable documents.

5. Ensure that the card is used only for appropriate purchases (described below), and in conjunction with State business.

6. Inform the Department of Public Works or the Fluvanna County Sheriff's Office of any change in the Fuel Card Account Custodian's contact information.

C. County Fuel Card Contract Administrator - The Fuel Card Contract Administrators will electronically monitor all fuel card accounts in the program via the Mansfield Oil website. Monitoring responsibilities shall include, but not be limited to:

1. Creation and deletion of accounts
2. Delinquent payments
3. Inactive cards
4. Inappropriate purchases
5. Ensure agency Fuel Card and Account Custodians receive appropriate training and support from the fuel card vendor

4.6.4. County Fuel Card Management Policies

A. County assigned Fuel cards shall only be used at commercial retail fuel stations that accept the Voyager card. A list of the commercial retail stations can be found at <https://www.fleetcommanderonline.com/app/public/merchantLocator.do>.

B. Use only unleaded regular fuel or diesel fuel in gasoline powered County-owned vehicles.

C. Mid-grade or premium blends are only to be used when regular is not available or the manufacturer requires the use of high octane fuel in the vehicle. E85 fuel is to be used in Flex-Fuel vehicles where available. A list of E85 locations can be found at: http://www.afdc.energy.gov/afdc/progs/ind_state.php/VA/385. A list of approved E85 vehicles can also be found at the website listed above. Drivers are expected to use self-service pumps at commercial stations, since this service is normally more economical. A fuel card is provided for such purchases.

D. Drivers **MUST** enter correct odometer readings, no tenths, into the card readers, at all commercial self-service fueling sites. The Department of Public Works and the Fluvanna County Sheriff's Office will run daily fueling reports and will contact all drivers that consistently fail to enter correct odometer readings. Correct odometer readings are critical to the fuel card management system, and this requirement will be strictly enforced.

E. Department Directors, Constitutional Officers, and Agency Heads will be notified of unusual fuel transactions and will have fifteen (15) days to investigate and respond to the either the Department of Public Works or the Fluvanna County Sheriff's Office as applicable.

F. A Mansfield/Voyager Fuel Card assigned to a **County owned** vehicle may be used to purchase the following provided the County establishes authorization with Mansfield:

G. Fuel, either **regular** unleaded gasoline, E85 if the vehicle is capable of using E85 or diesel fuel.

H. A Mansfield/Voyager Fuel Card assigned to a **County owned** vehicle shall **not** be used to purchase:

1. Food or beverages.
2. Parts and labor for towing, road service, and mechanical repairs.
3. Other goods or services.

I. Fuel Cards will be assigned to each County owned vehicle that is currently in an “active” status. Each fuel card shall contain the following information which is vehicle specific:

1. Department
2. Vehicle Identification Number (VIN #)
3. Vehicle ID (This number is used as an "identifier" between Mansfield and Voyager's systems for the card information and is assigned by Contracts Administrator)

J. Fuels Cards that are assigned to individual vehicles cannot be used to fill up any other vehicle within the active fleet.

K. The fuel cards will not work at the Fluvanna County Public Schools gas terminal.

L. Disposal of Fuel Cards. Fuel cards are to be turned back into the Director of the Finance Department when the vehicle taken out of service or when the vehicle is replaced.

4.6
Appendix 6A

Fuel Card Dispute Form

04. PROCUREMENT POLICIES AND PROCEDURES

4.7. Design-Build Procedures

BOS Approved – May 2, 2018

In accordance with the provisions of Chapter 43.1 Construction Management and Design-Build Contracting, being § 2.2-4378 et seq. (the “D-B Code Requirements”), of the Code of Virginia (1950, as amended) (“Code”), and consistent with the procedures adopted by the Secretary of Administration utilizing Design-Build, the Fluvanna County Board of Supervisors hereby adopts the following procedures for the procurement of Design-Build (“D/B”) contracts, as defined in § 2.2-4379, which shall be followed by the County of Fluvanna, Virginia (“County”).

4.7.1. Legislative Authority

A. Generally: Section 2.2-4300 et seq. the Virginia Public Procurement Act and Section 2.2-4378 et seq. Construction Management and Design-Build Contracting, and specifically:

Section 2.2-4301 and 2.2-4379: Definitions of design-build contract and other key terms;
Section 2.2-4303(D)(4): Exceptions to competitive sealed bidding;
Section 2.2-4378 Purpose; applicability;
Section 2.2-4382 Design-Build Procedures for local public bodies; and
Section 2.2-4383 Reporting Requirements for all Public Bodies relating to design build contracting

B. Any reference in these D-B Procedures to the Code of Virginia or other relevant Federal, State or local law is incorporated in whole herein by reference as in effect at the time of the Solicitation or Contract as such statutory provisions may be amended or replaced by any statute dealing with the same or similar subject matter.

4.7.2. General. 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, roadway or other item specified in the contract. The County may contract to secure D-B projects on a fixed price or not-to-exceed price basis in accordance with *Virginia Code* § 2.2-4382(A), the requirements of that section and the D-B Code Requirements, and the procedures adopted by the Virginia Secretary of Administration for utilizing design-build or construction management contracts. The County is authorized to use competitive negotiations to procure D-B contracts when it determines in advance, and sets forth in writing, that competitive sealed bidding is not practicable or fiscally advantageous to the public, which writing shall document the basis for this determination.

4.7.3. Procedure for Approval

B. Prior to making a determination as to the use of design-build or construction management for a specific construction project, the public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project

who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals.

B. Prior to taking any action, the County shall request authority, in writing and receive approval from the Board of Supervisors, to use a D-B contract. The request shall justify and substantiate that D-B is more advantageous than a competitive sealed bid construction contract with a general contractor and shall indicate how the County will benefit from using D-B. The request shall also include a written justification that sealed bidding is not practicable and/or fiscally advantageous. These justifications for the use of D-B shall be stated in the Request for Proposals.

4.7.4. General Procedures

A. The D-B procurement shall be consistent with the procurement of nonprofessional services through competitive negotiation and shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the County determines appropriate for that particular construction project. Design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department of General Services for state agencies.

B. The County shall appoint an Evaluation Committee (“Committee”) which shall consist of at least three members from the County, including a licensed design professional, if possible. In addition to the County members, the Committee shall include a licensed professional engineer or architect. The County shall contact the County Attorney’s Office (CAO) to determine whether a representative from the CAO should be involved.

4.7.5. Selection Procedures. On projects approved for D-B, procurement of the contract shall be a two-step competitive negotiation process. The following procedures shall be used in selecting a design build contractor and awarding a contract:

A. **Selection of Qualified Offerors (STEP I):** On projects approved for D-B, the County shall conduct a prequalification process as follows to determine which offerors are qualified to receive Request for Proposals (RFPs).

1. The County shall prepare a Request for Proposals (“RFP”) containing the County's Facility Requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate RFP Responses and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All offerors shall have a licensed Class “A” contractor and an Architect or Engineer registered in the Commonwealth of Virginia as part of the Project Team.

2. The RFP shall be posted in accordance with the current standards for the posting of public bids in the Virginia Code and in accordance with the latest edition of the Construction and Professional Services Manual.

3. The Committee shall evaluate each offeror's RFP responses and any other relevant information and shall determine which offerors are fully qualified and suitable for the project.

4. The RFP evaluation shall result in a short list of two to five offerors to receive the RFP. An offeror may be denied prequalification only as specified under Virginia Code § 2.2-4317, but the short list shall also be based upon the RFP criteria.

5. At least 30 days prior to the date established for the submission of proposals, the County shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. Prequalified offerors that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.

B. Selection of Design Build Contractor (STEP II):

1. The County shall send an RFP to the design build offerors on the short list for the project and request formal proposals from them. The criteria for award shall be included in the RFP.

2. Sealed Technical Proposals as described in the RFP shall be submitted to the Committee. Separately-sealed Cost Proposals shall be submitted to the County's Purchasing Agent, and shall be secured by and kept sealed until evaluation of the Technical Proposals and the design adjustments are completed.

3. The Committee will evaluate the Technical Proposals based on the criteria contained in the RFP. It will inform each D-B offeror of any adjustments necessary to make its Technical Proposal fully comply with the requirements of the RFP. In addition, the County may require that offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the Committee during design development.

4. Based on the adjustments made to the Technical Proposals, the offeror may amend its Cost Proposal. In addition, an offeror may submit cost modifications to its original sealed Cost Proposal which are not based upon revisions to the Technical Proposals.

5. The Committee shall evaluate (and rank if technical rankings are to be considered as a criteria for award) the technical proposals. 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 after approval of the purchasing agent. Otherwise, the County shall open the cost

proposals and apply the criteria for award as specified in the RFP and approved by the purchasing agent.

6. The Committee shall make its recommendation for the selection of a design build contractor to the County head based on its evaluations of the technical and cost proposals and all amendments thereto. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the Request for Proposal.

7. The County shall notify the Board of Supervisors and the County's Purchasing Agent of its selection of the Design build contractor and shall request authority to award a contract by processing the notice of award and providing supporting documents, to the purchasing division via e-mail.

8. The County will notify all offerors who submitted proposals which offeror was selected for the project. In the alternative, the County may notify all offerors who submitted proposals of the County's intent to award the contract to a particular offeror at any time after the County head has selected the Design build contractor. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.

9. Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.

4.7.6. Basis of Award. The basis of the award of the contract shall be in accordance with applicable law including without limitation the D-B Code Requirements and the criteria for the award shall be submitted to the Purchasing Agent, in advance, for approval. It is noted that cost is a critical component of the selection process. Guidance on methods for award can be found in the Construction and Professional Services Manual (2012 Edition, as amended) Section 7.30.1.

04. PROCUREMENT POLICIES AND PROCEDURES

Appendix 1

General Terms, Conditions and Instructions to Bidders and Contractors

These General Terms, Conditions and Instructions to Bidders and Contractor (hereinafter referred to as the “General Conditions”) shall apply to all purchases and be incorporated into and be a part of each Solicitation (as defined below) and every Contract (as defined below) awarded by Fluvanna County, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as the “County”) unless otherwise specified by the County in writing. Bidders, Offerors and Contractors or their authorized representatives are expected to inform themselves fully as to these General Conditions before submitting Bids or Proposals to and/or entering into any Contract with the County: failure to do so will be at the Bidder’s/Contractor’s own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation, including the County’s Procurement Policies and Procedures, Bids or Proposals on all Solicitations issued by County will bind Bidders or Offerors, as applicable, and Contracts will bind Contractors, to all applicable terms, conditions, instructions, rules and requirements herein set forth unless otherwise SPECIFICALLY set forth by the County in writing in the Solicitation or Contract. All provisions of these General Conditions are material to any contract between the County and a Contractor.

INTRODUCTION

1. **VIRGINIA PUBLIC PROCUREMENT ACT AND ETHICS IN PUBLIC CONTRACTING.** The Virginia Public Procurement Act of Virginia Code §§ 2.2-4300 *et seq.* (hereinafter the “VPPA”) is incorporated herein by reference. Nothing in these General Conditions is intended to conflict with the VPPA and in case of any conflict, the VPPA controls. Specifically, the provisions of Article 6 of the VPPA (Virginia Code §§ 2.2-4367 through 2.2-4377) relating to ethics in contracting, shall be applicable to all Solicitations and Contracts solicited or entered into by the County. By submitting their Bids or signing any Contract, all Bidders and Contractors certify that they have not violated any of the provisions of Article 6 of the VPPA, including, but not limited to, that their Bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements.
2. **DEFINITIONS.** The definitions of Virginia Code §§ 2.2-4301, 2.2-4302.1 and 2.2-4302.2 are specifically incorporated herein by reference and as used in these General Conditions, whether capitalized or not, any of such defined terms have the same meaning as such terms have under the VPPA: such defined terms include: “Affiliate”, “Best Value”, “Business”, “Competitive Negotiation”, “Competitive Sealed Bidding”, “Construction”, “Construction Management Contract”, “Design-Build Contract”, “Employment Services Organization”, “Goods”, “Informality”, “Job Order Contracting”, “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 these General Conditions, the following terms, whether capitalized or not, have the following meanings:

- a. 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 these General Conditions and where appropriate includes the term “Proposal” or any modifications or amendments to any Bid or Proposal.
- b. 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 these General Conditions and where appropriate includes the term “Offeror” and/or “Vendor”.
- c. Contract: Any contract to which the County will be a party.
- d. 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.
- e. County: The County of Fluvanna, a political subdivision of the Commonwealth of Virginia, including where applicable all agencies and departments of the County.
- f. County Administrator: The Fluvanna County Administrator.
- g. County Attorney: The Fluvanna County Attorney.
- h. 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. 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.
- i. General Terms, Conditions and Instructions to Bidders and Contractors (also referred to herein as the “General Conditions”): These General Terms, Conditions and Instructions to Bidders and Contractors shall be attached to and made a part of all Solicitations by the County and all Contracts to which the County is party.
- j. His: Any references to “his” shall include his, her, their, or its as appropriate.
- k. 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.

- l. Purchasing Officer: The Purchasing Officer employed by the County and to whom Bidders/Contractors can submit questions relating to any Bid or Contract.
- m. 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.
- n. Small Purchasing Procedures: The County’s Small Purchasing Procedures, being Section 4.4 of the County’s Procurement Policies and Procedures, 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.
- o. 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 may consist of 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.
- p. State: The Commonwealth of Virginia.

3. AUTHORITY

- a. 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 the County’s Procurement Policies and Procedures. 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”).

- b. Unless specifically delegated by the Board or the Purchasing Agent, and consistent with the limited authority granted thereto, 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. Any purchase or contract made which is contrary to such authority shall be of no effect and void and the County shall not be bound thereby.
- c. 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 as stated supra only the Board or County's Purchasing Agent can bind the County and only upon the conditions stated supra.

CONDITIONS OF BIDDING

4. **COMPETITION INTENDED.** It is the County's intent to encourage and permit open and competitive bidding in all Solicitations. It shall be the Bidder's responsibility to advise the County in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in a Solicitation to a single source. The County must receive such notification not later than seven (7) business days prior to the deadline set for acceptance of the Bids. In submitting a Bid, the Bidder guarantees that he or she has not been a party with other Bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render the Bid of any Bidder involved void.
5. **DISCRIMINATION PROHIBITED.** Pursuant to Virginia Code § 2.2-4310, the County does not discriminate against Bidders, Offerors or Contractors 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 Small Business and Supplier Diversity. Pursuant to Virginia Code § 2.2-4343.1, 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.
6. **CLARIFICATION OF TERMS.** Pursuant to Virginia Code § 2.2-4316, if any Bidder has questions or comments about the specifications or other Solicitation documents, the prospective Bidder should contact the County no later than seven (7) business days prior to the date set for the opening of Bids or receipt of Proposals. Any revisions to the Solicitation will be made only by written addendum issued by the County. Notifications regarding specifications may not be considered if received in less than seven (7) business days of the date set for opening of Bids/receipt of Proposals.

7. **MANDATORY USE OF COUNTY FORM AND TERMS AND CONDITIONS.** Unless otherwise specified in the Solicitation, all Bids must be submitted on the forms provided by the County, including but not limited to, a Cover Sheet or Pricing Schedule, if applicable, properly signed in ink in the proper spaces and submitted in a sealed envelope or package. Unauthorized modification of or additions to any portion of the Solicitation may be cause for rejection of the Bid. However, the County reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject any Bid or Proposal which has been modified. These General Conditions are mandatory provisions of all Solicitations and all Contracts of the County.

8. **LATE BIDS & MODIFICATION OF BIDS.** Any Bid or modification thereto received at the office designated in the Solicitation after the exact time specified for receipt of the Bid is considered a late Bid or modification thereof. The County is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder to ensure their Bid reaches County by the designated date and hour. The following rules apply to all Bids submitted to the County:
 - a. The official time used in the receipt of Bids/Proposals is that time on the automatic time stamp machine in the Finance Department;
 - b. Late Bids or modifications thereof will be returned to the Bidder UNOPENED, if Solicitation number, due date and Bidder's return address is shown on the container;
 - c. If a Bid is submitted on time, however a modification thereto is submitted after the due date and time, then the County in its sole discretion may choose to consider the original Bid except that the County may not consider such original Bid if the Bid is withdrawn by the Bidder pursuant to Paragraph 9 below; and
 - d. If an emergency or unanticipated event or closing interrupts or suspends the County's normal business operations so that Bids cannot be received by the exact time specified in the Solicitation, then the due date/time specified for receipt of Bids will be deemed to be extended to the same time of day specified in the Solicitation on the first work day on which normal County business operations resume.

9. **WITHDRAWAL OF BIDS**
 - a. Pursuant to Virginia Code § 2.2-4330, a Bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his Bid from consideration if the price bid was substantially lower than the other Bids due solely to a mistake in the Bid, provided the Bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn.

If a Bid contains both clerical and judgment mistakes, a Bidder may withdraw his Bid from consideration if the price bid would have been substantially lower than the other Bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a Bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the Bid sought to be withdrawn. The Bidder shall give notice in writing to the County of his or her claim of right to withdraw his or her Bid within two (2) business days after the conclusion of the Bid opening procedure and shall submit original work papers with such notice.

- b. A Bidder for a Contract other than for public construction may request withdrawal of his or her Bid under the following circumstances:
 - (1) Bids may be withdrawn on written request from the Bidder received at the address shown in the Solicitation prior to the time of opening.
 - (2) Requests for withdrawal of Bids after opening of such Bids but prior to award shall be transmitted to the County, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, Bidder work sheets, etc. If Bid bonds were tendered with the Bid, the County may exercise its right of collection.
- c. No Bid may be withdrawn under this Paragraph 9 when the result would be the awarding of the Contract on another Bid of the same Bidder or of another Bidder in which the ownership of the withdrawing Bidder is more than five percent (5%).
- d. If a Bid is withdrawn under the authority of this Paragraph 9 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 County shall notify the Bidder in writing within five (5) business days of its decision regarding the Bidder's request to withdraw its Bid. If the County denies the withdrawal of a Bid under the provisions of this Paragraph 9, it shall State in such notice the reasons for its decision and award the Contract to such Bidder at the Bid price, provided such Bidder is a responsible and responsive Bidder. At the same time that the notice is provided, the County shall return all work papers and copies thereof that have been submitted by the Bidder.
- g. Under these procedures, a mistake shall be proved only from the original work papers,

documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of Virginia Code § 2.2-4342.

10. **ERRORS IN BIDS.** When an error is made in extending total prices, the unit Bid price will govern. Erasures in Bids must be initialed by the Bidder. Carelessness in quoting prices, or otherwise in preparation of the Bid, will not relieve the Bidder. Bidders/Offerors are cautioned to recheck their Bids for possible error. Errors discovered after public opening cannot be corrected and the Bidder will be required to perform if his or her Bid is accepted.
11. **IDENTIFICATION ON BID ENVELOPE.** All Bids, Proposals and requested copies thereof submitted to the County shall be in a separate envelope or package, sealed and identified with the following information clearly marked on the outside of the envelope or package:
 - a. Addressed as indicated on page 1 of the solicitation;
 - b. Solicitation number;
 - c. Title;
 - d. Bid due date and time;
 - e. Bidder's name and complete mailing address (return address); and
 - f. Pursuant to Virginia Code § 2.2-4311.2, the Bidder's identification number issued by the State Corporation Commission, or if the bidder 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 include in its bids or proposal a statement describing why the bidder or offeror is not required to be so authorized.

If a Bid is not addressed with the information as shown above, the Bidder takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the Bid to be disqualified. Bids may be hand delivered to the designated location in the County's offices. No other correspondence or other Proposals/Bids should be placed in the envelope. Any Bidder or Offeror that fails to provide the information required in (f) above shall not receive an award unless a waiver is specifically granted by the County Administrator.

12. **ACCEPTANCE OF BIDS.** Unless otherwise specified, all formal Bids or Proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for opening or receipt, respectively, unless extend by mutual agreement of the parties. At the end of the one hundred twenty (120) calendar days the Bid/Proposal may be withdrawn at the written request of the Bidder. Thereafter, unless and until the Proposal is withdrawn, it remains in effect until an award is made or the Solicitation

is canceled by the County. The County may cancel any Solicitation at any time by notice of such cancelation to the Bidders.

13. **COMPLETENESS.** To be responsive, a Bid must include all information required by the Solicitation.
14. **CONDITIONAL BIDS.** Conditional Bids are subject to rejection in whole or in part.
15. **RESPONSE TO SOLICITATIONS.** In the event a Bidder cannot submit a Bid on a Solicitation, the Bidder is requested to return the Solicitation cover sheet with an explanation as to why the Bidder is unable to Bid on these requirements, or if there be no cover sheet for the Solicitation a letter to the County explaining the same.
16. **BIDDER INTERESTED IN MORE THAN ONE BID AND COLLUSION.** More than one bid from an individual, firm, partnership, corporation or association under the same or different name will be rejected. Reasonable grounds for believing that a bidder is interested in more than one bid for the work contemplated will cause rejection of all bids in which the bidder is interested. Any or all bids may be rejected if there is any reason for believing that collusion exists among the bidders. Participants in such collusion may not be considered in future bids for the same work. Each bidder, as a condition of submitting a bid, shall certify that he is not a party to any collusive action as herein defined. However, a party who has quoted prices on work, materials, or supplies to a Bidder is not thereby disqualified from quoting prices to other Bidders or firms submitting a Bid directly for the work, materials or supplies.
17. **BID OPENING.** Pursuant to Virginia Code § 2.2-4301, all Bids received in response to an IFB will be opened at the date, time and place specified, and announced publicly, and made available for inspection as provided in Paragraph 21 of these General Conditions. Proposals received in response to an RFP will be made available for inspection as provided in Paragraph 21 of these General Conditions.
18. **TAX EXEMPTION.** The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder.
19. **DEBARMENT STATUS.** By submitting their Bids, Bidders certify that they are not currently debarred from submitting Bids on Contracts by the County, nor are they an agent of any person or entity that is currently debarred from submitting Bids or Proposals on Contracts by the County or any agency, public entity/locality or authority of the State.
20. **NO CONTACT POLICY.** No Bidder shall initiate or otherwise have contact related to the Solicitation with any County representative or employee, other than the Purchasing Officer or Purchasing Agent, after the date and time established for receipt of Bids. Any contact initiated by a Bidder with any County representative, other than the Purchasing Officer or Purchasing Agent, concerning this Solicitation is prohibited and may cause the disqualification of the Bidder.

21. **VIRGINIA FREEDOM OF INFORMATION ACT.** As provided under Virginia Code § 2.2-4342, all proceedings, records, Contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act of Virginia Code §§ 2.2-3700 *et seq.*, except:

- a. Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be open to public inspection;
- b. Any competitive sealed bidding Bidder, upon request, shall be afforded the opportunity to inspect Bid records within a reasonable time after the opening of Bids but prior to award, except in the event that the County decides not to accept any of the Bids and to reopen the Contract. Otherwise, Bid records shall be open to public inspection only after award of the Contract;
- c. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect Proposal records within a reasonable time after the evaluation and negotiations of Proposals are completed but prior to award except in the event that the County decides not to accept any of the Proposals and to reopen the Contract. Otherwise, Proposal records shall be open to the public inspection only after award of the Contract;
- d. Any inspection of procurement transaction records under this Paragraph 21 shall be subject to reasonable restrictions to ensure the security and integrity of the records;
- e. Trade secrets or proprietary information submitted by a Bidder, Offeror or Contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Bidder, Offeror or Contractor must invoke the protections of this Paragraph 21 prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and State the reasons why protection is necessary; and
- f. Nothing contained in this Paragraph 21 shall be construed to require the County, when procuring by “competitive negotiation” (RFP), to furnish a Statement of reasons why a particular Proposal was not deemed to be the most advantageous to the County.

22. **CONFLICT OF INTEREST.** Bidder/Contractor certifies by signing any Bid/Contract to/with the County that no conflict of interest exists between Bidder/Contractor and County that interferes with fair competition and no conflict of interest exists between Bidder/Contractor and any other person or organization that constitutes a conflict of interest with respect to the Bid/Contract with the County.

SPECIFICATIONS

23. **OMISSIONS OR DISCREPANCIES.** Any items or parts of any equipment listed in a Solicitation which are not fully described or are omitted from such specification, and which

are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications. Should a Bidder find a discrepancy or ambiguity in, or an omission from, the Solicitation, including the drawings and/or specifications, he or she shall so notify the County within twenty-four (24) hours of noting the discrepancy, ambiguity or omission and in any event no less than five (5) days prior to the date set for the opening of Bids. If necessary, the County will send a written addendum for clarification to all Bidders no later than three (3) days before the date set for opening of Bids. Any notification regarding specifications received less than five (5) days prior to the date set for the opening of Bids may or may not be considered by the County in its sole discretion. The Bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

24. **BRAND NAME OR EQUAL ITEMS.** Pursuant to Virginia Code § 2.2-4315, unless otherwise provided in the Solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which 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. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the County to determine if the product offered meets the requirements of the Solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the Bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a Bid non-responsive. Unless the Bidder clearly indicates in its Bid that the product offered is "equal" product, such Bid will be considered to offer the brand name product referenced in the Solicitation.
25. **FORMAL SPECIFICATIONS.** When a Solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the Bidder will be required to furnish articles in conformity with that specification.
26. **CONDITION OF ITEMS.** Unless otherwise specified in the Solicitation, all items shall be new, in first class condition.

AWARD

27. **RESPONSIBLE BIDDERS.** In determining whether a Bidder is a responsible Bidder as defined herein, at minimum, the following criteria will be considered.

- a. The ability, capacity and skill of the Bidder to perform the Contract or provide the service required under the Solicitation;
- 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 Services;
- f. The sufficiency of the 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 provide future maintenance and service for the use of the subject of the Contract;
- i. The number and scope of the conditions attached to the Bid;
- j. Whether the Bidder is in arrears to the County on debt or Contract or is a defaulter on surety to the County or whether the Bidder's County taxes or assessments are delinquent; and
- k. Such other information as may be secured by the County, the Purchasing Agent or the Purchasing Officer having a bearing on the decision to award the Contract. If an apparent low Bidder is not awarded a Contract for reasons of nonresponsibility, the County shall so notify that Bidder and shall have recorded the reasons in the Solicitation or Contract file.

28. **AWARD OR REJECTION OF BIDS; WAIVER OF INFORMALITIES.** The County shall award the Contract to the lowest responsive and responsible Bidder complying with all provisions of the IFB, provided the Bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified Offeror whose Proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The County reserves the right to award a Contract by individual items, in the aggregate, or in combination thereof, or to reject any or all Bids and to waive any informality in Bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many Bidders/Offerors as deemed necessary to fulfill the anticipated requirements of the County. The County also reserves the right to reject the Bid if a Bidder is deemed to be a non-responsible Bidder. Pursuant to Virginia Code § 2.2-4319, an IFB, a RFP, any other

solicitation, or any and all bids or proposals, may be canceled or rejected by the County at any time. The reasons for cancellation or rejection shall be made part of the contract file. The County shall not cancel or reject an IFB, a RFP, any other solicitation, bid or proposal solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

29. **EXCLUSION OF INSURANCE BIDS PROHIBITED.** Pursuant to Virginia Code § 2.2-4320, notwithstanding any other provision of law or these General Conditions, no insurer licensed to transact the business of insurance in the State or approved to issue surplus lines insurance in the State shall be excluded from presenting an insurance bid proposal to the County in response to a RFP or an IFB; excepting that the County may debar a prospective insurer pursuant to its Debarment Policy, see Section 4.2 of the County's Procurement Policies and Procedures.
30. **ANNOUNCEMENT OF AWARD.** Upon the award or announcement of the decision to award a Contract as a result of this Solicitation, the County will publicly post such notice on the County's bulletin board located at [72 Main Street, 2nd Floor, Palmyra, Virginia 22963](#). Award results may also be viewed on the County's website.
31. **QUALIFICATIONS OF BIDDERS OR OFFERORS.** The County may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder to perform the work/furnish the item(s) and the Bidder shall furnish to the County all such information and data for this purpose as may be requested. The County reserves the right to inspect Bidder's physical facilities prior to award to satisfy questions regarding the Bidder's capabilities. The County further reserves the right to reject any Bid or Proposal if the evidence submitted by or investigations of, such Bidder fails to satisfy the County that such Bidder is properly qualified to carry out the obligations of the Contract and to complete the work/furnish the item(s) contemplated therein.
32. **TIE BIDS AND PREFERENCE FOR VIRGINIA PRODUCTS WITH RECYCLED CONTENT AND FOR VIRGINIA FIRMS**
 - a. Pursuant to Virginia Code § 2.2-4328, in the case of a tie bid on an IFB only, the County may give preference to Goods, Services and construction produced in Fluvanna County or provided by persons, firms or corporations having principal places of business in Fluvanna County. If such choice is not available, preference shall then be given to Goods produced in Virginia, or for goods, services or construction provided by Virginia persons, firms, corporations, pursuant Virginia Code § 2.2-4324. If no County or State choice is available, the tie shall be decided publicly by lot. The decision by the County to make award to one or more such Bidders shall be final.
 - b. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be

allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this Paragraph 32, the County may rely upon the accuracy of the information posted on this website.

- c. Notwithstanding the provisions of subsections a and b, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.
- d. For the purposes of this Paragraph 32, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

33. **NEGOTIATION WITH LOWEST RESPONSIBLE BIDDER.** Pursuant to Virginia Code § 2.2-4318, unless cancelled or rejected, a responsive Bid from the lowest responsible Bidder shall be accepted as submitted, except that if the Bid from the lowest responsible Bidder exceeds available funds, the County may negotiate with the apparent low Bidder to obtain a Contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the County prior to issuance of the IFB and summarized therein.

CONTRACT PROVISIONS

34. **APPLICABLE LAW AND COURTS.** Any Bid or Contract resulting from a Solicitation and its terms, including, but not limited to, the parties' obligations under it, and the remedies available to each party for breach of it, shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Virginia, and exclusive jurisdiction and venue of any dispute or matters involving litigation between the parties hereto shall be in the courts of Fluvanna County, Virginia. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the Commonwealth of Virginia, that would cause the application of any laws other than those of the Commonwealth of Virginia, shall not apply. The Contractor shall comply with applicable federal, State and local laws, ordinances, rules and regulations in performance of the Contract.

35. **PROVISION AND OWNERSHIP OF INFORMATION.** The County shall make a good faith effort to identify and make available to the Contractor all non-confidential technical and administrative data in the County's possession which the County may lawfully release including, but not limited to Contract specifications, drawings, correspondence, and other information specified and required by the Contractor and relating to its work under any Contract. The County reserves its rights of ownership to all material given to the Contractor

by the County and to all background information documents, and computer software and documentation developed by the Contractor in performing any Contract.

36. **DOCUMENTS.** All documents, including but not limited to data compilations, drawings, reports and other material, whether in hard copy or electronic format, prepared, developed or furnished by the Contractor pursuant to any Contract shall be the sole property of the County. At the direction of the County, the Contractor shall have the right to make copies of the documents produced available to other parties. The County shall be entitled to delivery of possession of all documents, upon payment in accordance with the terms of any Contract for the service incurred to produce such documents.
37. **CONFIDENTIALITY.** Contractor shall not publish, copyright or otherwise disclose or permit to be disclosed or published, the results of any work performed pursuant to this contract, or any particulars thereof, including forms or other materials developed for the County in connection with the performance by Contractor of its services hereunder, without prior written approval of the County. Contractor, cognizant of the sensitive nature of much of the data supplied by the County, shall not disclose any information (other than information which is readily available from sources available to the general public) obtained by it in the course of providing services hereunder without the prior written approval of the County, unless disclosure of such information by it is required by law, rule or regulation or the valid order of a court or administrative agency.
38. **INDEPENDENT CONTRACTOR.** The Contractor and any agents, or employees of the Contractor, in the performance of any Contract shall act as an independent contractor and not as officers, employees or agents of the County.
39. **INSURANCE.** The Contractor agrees that, during the period of time it renders services to the County pursuant to any Contract, it shall carry (and provide the County with evidence of coverage) the following minimum amounts of insurance.

Automobile	\$500,000	Liability Medical Payment Comprehensive Collision
Public Liability	\$1,000,000	
Professional Liability	\$1,000,000	
Excess Liability	\$2,000,000	Aggregate Over Above Policy Limits (Excluding Professional Liability)
Worker's Compensation	Amount required by Virginia law	

The Contract may specifically require the Contractor to carry higher minimum amounts of insurance.

In addition, the Contractor shall require, and shall include in every subcontract, that any subcontractor providing any goods or services related to such Contract obtain, and continue to maintain for the duration of the work, workers' compensation coverage in the amount required by Virginia law.

40. **KEY PERSONNEL.** For the duration of any Contract, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment, or as expressly approved by the County. The Contractor shall notify the County within five (5) calendar days after the occurrence of any of these events and provide the information required by the paragraph below.

The Contractor shall provide a detailed explanation of the circumstances necessitating any proposed substitution, complete resumes for the proposed substitute, and any additional information requested by the County. The proposed substitute should have comparable qualifications to those of the person being replaced. The County will notify the Contractor within fifteen (15) calendar days after receipt of all required information of its approval or disapproval of the proposed substitution.

41. **SEVERABILITY.** If any term, covenant or provision of these General Conditions or any Contract shall be held to be invalid, illegal or unenforceable in any respect, these General Conditions and any Contract shall remain in effect and be construed without regard to such provision.
42. **TITLES.** The titles and paragraph headings herein and in any Contract are inserted solely for convenience and are not to be construed as a limitation on the scope of the provisions to which they refer.
43. **ATTORNEYS' FEES.** In the event of a dispute between the County and Contractor under any Contract which cannot be amicably resolved, in addition to all other remedies, the party substantially prevailing in any litigation shall be entitled to recover its reasonable expenses, including, but not limited to, reasonable attorneys' fees.
44. **NO WAIVER.** Neither any payment for, nor acceptance of, the whole or any part of the services by the County, nor any extension of time, shall operate as a waiver of any provision of any Contract, nor of any power herein reserved to the County, or any right to damages herein provided, nor shall any waiver of any breach of any Contract be held to be a waiver of any other or subsequent breach. Failure of the County to require compliance with any term or condition of any Contract shall not be deemed a waiver of such term or condition or a waiver of the subsequent enforcement thereof.
45. **NO FINANCE CHARGES.** No finance charges shall be paid by the County.
46. **ANTITRUST.** By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the County all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States or the State,

relating to the particular Goods or Services purchased or acquired by the County under said Contract. Consistent and continued tie bidding could cause rejection of Bids by the County and/or investigation for antitrust violations.

47. **PAYMENT.** Pursuant to Virginia Code § 2.2-4352, unless more time is provided in the Solicitation or Contract, payment will be made forty-five (45) days after receipt by the County of a proper invoice, or forty-five (45) days after receipt of all Goods or acceptance of work, whichever is later. The County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the Contract or any modifications thereto. Within twenty (20) days of receipt of proper invoice or of goods or services, the County shall notify the Contractor if any defect or impropriety that would prevent payment by the payment date. The following provisions apply to such payments.

- a. Invoices for items/Services ordered, delivered/performed and accepted shall be submitted by the Contractor in duplicate directly to the payment address shown on the purchase order, Solicitation or Contract, as applicable. All invoices shall show the Contract number, purchase order number, or Solicitation number, as applicable, and as required under Virginia Code § 2.2-4354, either the individual Contractor's social security number or the Contractor's federal employer identification number, whichever is applicable.
- b. Any payment terms requiring payment in less than forty-five (45) days will be regarded as requiring payment forty-five (45) days after receipt of proper invoice or receipt of all Goods or acceptance of work, whichever occurs later. Notwithstanding the foregoing, offers of discounts for payment in less than forty-five (45) days are valid and enforceable.
- c. Pursuant to Virginia Code § 2.2-4353, the date any payment shall be deemed the date of postmark in all cases where payment is made by mail.
- d. The County's fiscal year is July 1 to June 30. Contractors are advised to submit invoices, especially for Goods and/or Services provided in the month of June, for the entire month (i.e., June 1 - June 30), so that expenses are recognized in the appropriate fiscal year.
- e. Any payment made by the Contractor to the County shall only be made in U.S. Dollars. If payment is received in foreign currency the County may, in its sole discretion, reject such payment and require immediate compensation in U.S. Dollars.

48. **SUBCONTRACTORS.** Pursuant to Virginia Code § 2.2-4354, in the event that any subcontractors are used by Contractor in connection with the work, Contractor shall.

- a. Within seven (7) days after receipt of amounts paid to the Contractor for work performed by a subcontractor, either.
 - i. Pay the subcontractor for the proportionate share of the total payment received attributable to the work performed by the subcontractor under any Contract; or

- ii. Notify the County and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- b. Contractor shall require each subcontractor to provide either (i) for an individual, their social security numbers, or (ii) for proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
- c. The Contractor shall pay interest to any subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under any Contract, except for amounts withheld as allowed in subdivision (a)(II) above. Unless otherwise provided under the terms of any Contract, interest shall accrue at the rate of one percent (1%) per month.
- d. The Contractor shall include in each of its subcontracts under any Contract a provision requiring each subcontractor to include or otherwise be subject to the above payment and interest requirements (a), (b) and (c) with respect to each lower tier subcontractor.
- e. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this Paragraph 48 shall not be construed to be an obligation of the County. No Contract modification may be made for the purpose of providing reimbursement for such interest charge. No cost reimbursement claim may include any amount for reimbursement for such interest charge.

49. RETAINAGE ON CONSTRUCTION CONTRACTS. Pursuant to Virginia Code 2§ 2.2-4333, if a Contract for construction provides for progress payments in installments based upon an estimated percentage of completion, then the contractor shall be paid at least ninety-five percent (95%) of the earned sum when payment is due, with no more than five percent (5%) being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment. Any subcontract related to work on a Contract that provides for similar progress payments shall be subject to the provisions above and the Contractor agrees to include such provisions in every subcontract.

50. SUCCESSORS AND ASSIGNS. The County and the Contractor bind themselves and their respective successors and assigns to any Contract. The foregoing notwithstanding, the Contractor shall not assign, sublet or transfer its interest in any Contract without the prior written consent of the County, which may be granted or withheld in the County's sole discretion. Nothing hereinafter mentioned shall be construed as creating any personal liability on the part of any officer, agent or employee of the County, nor shall it be construed as giving any benefits hereunder to anyone other than the County and the Contractor.

51. DEFAULT. Failure of a Contractor to deliver Goods or Services in accordance with Contract terms and conditions and/or within the time specified, or within reasonable time as interpreted by the County in its sole discretion, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the County, or failure of the Contractor to act in accordance with the Contract in any material respect, as

reasonably determined by the County, shall constitute a “default” by the Contractor and shall further authority for the County to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the County, for any expense incurred in excess of Contract prices including, but not limited to, any purchase and administrative costs. Such purchases shall be deducted from the Contract quantities, if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the County. In case of any default, the County, after due oral or written notice if required in accordance with the Contract, may terminate the Contract at its option in its sole discretion effective immediately. These remedies shall be in addition to any other remedies which the County may have, including but not limited to, any remedies at law, under the Contract or in equity.

Notwithstanding the foregoing, the Contractor shall not be liable for damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the County's opinion, are beyond the control of the Contractor. Under such circumstances, however, the County may, at its sole discretion, terminate or cancel the Contract effective immediately.

52. **NON-DISCRIMINATION ASSURANCES.** The Contractor shall conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, and § 2.2-4311 of the Virginia Procurement Act.

- a. During the performance of any Contract, the Contractor agrees as follows. 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. 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. 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 Paragraph 52.
- b. The Contractor shall include the provisions of paragraph (a) above in every subcontract or purchase over \$10,000.00 so that the provisions will be binding upon each subcontractor or Vendor.

53. **MODIFICATION**

- a. Pursuant to Virginia Code § 2.2-4309, these General Conditions and any Contract entered into by the County and any Contractor shall not be subject to change, modification, or discharge except by written instrument signed by the County and Contractor, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the County's Board. 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.
- b. The County may, but is not obligated to, extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.
- c. Nothing in this Paragraph 53 shall prevent the County from placing greater restrictions on contract modifications.

54. **INDEMNIFICATION**. Contractor agrees to indemnify, keep and save harmless the County, its officers, agents, officials, employees and volunteers against any and all claims, claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, losses, costs and expenses, including but not limited to costs of investigation, all reasonable attorneys' fees (whether or not litigation results), and the cost of any appeal, occurring or arising in connection with the Contractor's, its agents', subcontractors', employees', or volunteers' negligence or wrongful acts or omissions in connection with its performance of any Contract. The Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expenses, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by any Contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided. Nothing contained in this Solicitation or the Contract shall be deemed to be a waiver of the County's sovereign immunity.

55. **DRUG-FREE WORKPLACE**. Pursuant to Virginia Code § 2.2-4312, in every Contract over \$10,000.00 the following provisions apply. During the performance of any 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.

For the purposes of this Paragraph, “*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 the VPPA and the County’s Procurement Procedures, 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.

56. **TERMINATION.** Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless.
 - a. Terminated prior to expiration date by satisfactory deliveries of entire Contract requirements;
 - b. Terminated by the County upon thirty (30) days written notice to the Contractor at the County’s convenience in the County’s sole discretion (“termination for convenience”), unless a termination for convenience is specifically and expressly prohibited by the Contract. Any Contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of the termination;
 - c. Terminated by the County for cause, default or negligence on the part of the Contractor. However, pursuant to Paragraph 51 of these General Conditions, the County may hold the Contractor responsible for any resulting additional purchase and administrative costs. There is no advance notice requirement in the event of Termination for Cause and termination is effective immediately upon notice to Contractor of the termination for cause;
 - d. Extended upon written authorization of County and accepted by Contractor, to permit ordering of unordered balances or additional quantities at Contract prices and in accordance with Contract terms.
57. **APPROPRIATIONS.** Notwithstanding any other provision of any Contract, the payment of the County’s obligations under any Contract shall be subject to annual appropriations by the Board of Supervisors of the County in each fiscal year of monies sufficient to satisfy the same.
58. **REFERENCES TO VIRGINIA LAW.** Any reference in these General Conditions to the Code of Virginia or other relevant Federal, State or local law is incorporated in whole herein by reference as in effect at the time of the Solicitation or Contract as such statutory provisions may be amended or replaced by any statute dealing with the same or similar subject matter.
59. **COOPERATIVE PROCUREMENT.** Except as prohibited by the current Code of Virginia, all resultant Contracts will be extended to other Public Bodies of the Commonwealth of Virginia, to permit their ordering of Goods, supplies and/or Services at the prices and terms

of the resulting Contract (“cooperative procurement”). By submitting any Bid or entering into any Contract with the County a Bidder/Contractor expressly authorizes cooperative procurement under Virginia Code § 2.2-4304 to the full extent permitted by law. If any other public body decides to use any Contract, the Contractor must deal directly with that public body concerning all matters relating thereto, including but not limited to, the placement or orders, issuance of the purchase order, contractual disputes, invoicing and payment. The County acts only as the “Contracting Agent” for these public bodies. Any resulting contract with other public bodies shall be governed by the laws of that specific entity. It is the Contractor’s responsibility to notify the public bodies of the availability of the Contract. Fluvanna County shall not be held liable for any direct or indirect costs, damages or other claim of any kind incurred by another public body or any Contractor as a result of any cooperative procurement.

60. **AUDIT.** The Contractor hereby agrees to retain all books, records and other documents relative to any Contract for five (5) years after final payment, or until audited by the County, whichever is sooner. The County, its authorized agents, and/or County auditors shall have full access to and right to examine any of said materials during said period.
61. **GUARANTIES AND WARRANTIES.** All guarantees, representations and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on any Contract is made. In addition to any guarantees, representations and warranties required under the Contract, the Contractor agrees to.
 - a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or owner;
 - b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery;
 - c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to the Contractor’s own work or to the work of other contractors, for which the Contractor’s workers are responsible;
 - d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County; and
 - e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor;
 - f. At minimum supply all Goods or Services with the manufacturer's standard warranty, if applicable; and
 - g. For any Contract involving Services of any nature, the Contractor further agrees to.

- (1) Enter upon the performance of Services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence;
- (2) Allow Services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County;
- (3) Acknowledges that the County shall be under no obligation to compensate Contractor for any Services not rendered in strict conformity with the Contract; and
- (4) Stipulates that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the Contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of any Contract Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material.

62. **PRICE REDUCTIONS.** If at any time after the date of the Bid/Contract the Contractor makes a general price reduction in the comparable price of any material covered by the Contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to any Contract for the duration of the Contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this Solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the Contract documents. The Contractor in addition will within ten (10) days of any general price reduction notify the County of such reduction by letter. FAILURE TO DO SO IS A DEFAULT UNDER THE CONTRACT AND MAY RESULT IN TERMINATION OF THE CONTRACT IN THE COUNTY'S DISCRETION. The Contractor, if requested, shall furnish, within ten (10) days after the end of the Contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the Bid or Contract, or (2) if any such general price reductions were made, that as provided above, they were reported to the County within ten (10) days and the County was billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the County was notified of any such reduction.

63. **COMPLIANCE WITH IMMIGRATION LAW.** Pursuant to Virginia Code § 2.2-4311.1, in every Contract the following provision applies. the Contractor does not, and shall not

during the performance of the Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

64. **VIRGINIA STATE CORPORATION COMMISSION.** Pursuant to Virginia Code § 2.2-4311.2, Any Bidder or Contractor organized as a stock or non-stock 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 of the Code of Virginia, or as otherwise required by law, at the time of the Bid, Proposal or any response to Solicitation and during the term of the Contract and any Contract renewal. The Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required, to be revoked or cancelled at any time during the term or any renewal of the Contract. If the Contractor fails to remain in compliance with the provisions of this Paragraph 64, the Contract may become void at the option of the County.

65. **CLAIMS PROCEDURE**

- a. The procedure for consideration by the County of contractual claims for any Contract shall be that set forth in Virginia Code § 15.2-1243, *et seq.*
- b. In addition, pursuant to Virginia Code § 2.2-4364, contractual claims, whether for money or other relief, shall be submitted in writing to the County Administrator no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a Contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the Goods. Pendency of claims shall not delay payment of amount agreed due in the final payment.
- c. 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 Board or the County Administrator. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the County fails to render a decision within ninety (90) days of submission of the claim. Failure of the County to render a decision within ninety (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 County's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.
- d. A Contractor may not institute legal action, prior to receipt of the County's decision on the claim, unless the County fails to render such decision within the time specified by law. A failure by the County to render a decision within the time provided by law shall be deemed a final decision denying the claim by the County.

- e. The decision of the Board or the County Administrator shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in Virginia Code § 2.2-4364.
- f. No administrative appeals procedure pursuant to Virginia Code § 2.2-4365 has been adopted for contractual claims by the County.
- g. Nothing herein shall be construed to prevent the County from instituting legal action against any Contractor or Bidder.

66. **NOTICES.** All written notices required or permitted under any Solicitation, Bid or Contract shall be deemed sufficient if delivered in person to the County Purchasing Agent or Bidder/Contractor, as applicable, or sent by first class mail to the County or Bidder/Contractor at the addresses set forth in the Solicitation, Bid or Contract or at such other address as a party may designate from time to time by notice given in accordance with the terms of this Paragraph 66; except that where a Solicitation, Bid or Contract expressly requires notice to a specific individual or at a specific location, such shall control. Such notices are deemed received when actually delivered to the party or its representative or agent if hand delivered, or one (1) business day after deposited into the United States mail, if mailed.

DELIVERY

67. **SHIPPING INSTRUCTIONS-CONSIGNMENT.** Unless otherwise specified in the Solicitation or Contract, as applicable, each case, crate, barrel, package, etc., delivered under the Contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8.00 a.m. – 3.00 p.m. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.

68. **RESPONSIBILITY FOR SUPPLIES TENDERED.** The Contractor shall be responsible for the materials or supplies covered by the Contract until they are delivered at the designated point. The Contractor shall additionally bear all risk on rejected materials or supplies after notice of rejection is tendered by the County. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at the Contractor's risk and expense or dispose of them as abandoned property.

69. **INSPECTIONS.** The County reserves the right to conduct any test/inspection it may deem advisable to assure supplies and Services conform to the specification in the Solicitation, Bid or Contract, as applicable. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. Unless otherwise specified in the Contract, if inspection is made after delivery at the destination specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.
70. **COMPLIANCE.** Delivery must be made as ordered and in accordance with the Solicitation, Bid or Contract, as applicable, or as directed by the County when not in conflict with the Bid/Contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of Goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the County, such extension applying only to the particular item or shipment affected. Unless otherwise specified in the Contract, should the Contractor be unreasonably delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction Contracts.
71. **POINT OF DESTINATION.** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated specifically in the Solicitation, Bid or Contract, as applicable. The materials must be delivered to the “Ship To” address indicated on the purchase order or Solicitation, as applicable.
72. **REPLACEMENT.** Materials or components that have been rejected by the County, in accordance with the terms of the Contract, shall be replaced by the Contractor at no cost to the County.
73. **DAMAGES.** Any and all damages to property of the “County” that is the direct result of the Contractor, the employees of the Contractor and/or its subcontractors, agents, licensees, successors, or assigns, shall be the sole responsibility of the Contractor. The property shall be repaired to its last known condition prior to the damages and/or replaced at no cost to the County. The County shall approve any and all repairs/replacements prior to acceptance of the repairs/replacement.
74. **PACKING SLIPS OR DELIVERY TICKETS.** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered.
- a. Purchase Order Number;

- b. Name of Article and Stock Number;
- c. Quantity Ordered;
- d. Quantity Shipped;
- e. Quantity Back Ordered; and
- f. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the Goods.

75. **ADDITIONAL CHARGES.** No delivery charges of any kind shall be added to any invoice; except that (i) if Goods are expressly bought F.O.B. "shipping point" under the Contract and the Contractor prepays transportation, then delivery charges shall be added to invoices; and (ii) if express delivery is authorized and substituted by the County on orders for the method specified in the Contract, then the difference between freight or mail and express charges may be added to invoice.
76. **METHOD AND CONTAINERS.** Unless otherwise specified, Goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.