



PROCUREMENT POLICY  
OF  
SPOTSYLVANIA COUNTY  
VIRGINIA

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PROCUREMENT POLICY  
OF  
SPOTSYLVANIA COUNTY, VIRGINIA

**ARTICLE 1 - GENERAL PROVISIONS**

1-1 Purpose

The purpose of this policy is to ensure that:

1. Spotsylvania County obtains high quality goods and services at a reasonable cost;
2. all procurement procedures are conducted in a fair and impartial manner without impropriety or appearance of impropriety;
3. all qualified vendors are given access to County business;
4. no offeror is arbitrarily or capriciously excluded;
5. competition is maximized and specifications reflect the procurement needs of the County rather than being drafted to favor a particular vendor;
6. the rules governing procurement are made clear in advance of the competition;
7. the County enjoys broad flexibility in fashioning the details of competition;
8. the County and vendors freely exchange information concerning what is sought to be procured and what is offered; and
9. to obtain the greatest possible revenue from the disposal of surplus, damaged, or obsolete materials and equipment.

1-2 Effective Date

This policy shall be in effect on and after April 14, 1992.

This version of the Procurement Policy has been updated and approved by Board of Supervisors on December 8, 2020.

1-3 Authority

This policy is adopted pursuant to Virginia Code §2.2-4302, 1950, as amended. Virginia Code §2.2-4302, 2.2-4302.1, 2.2-4302.2, §2.2-4303, 2.2-4303.1, 2.2-4303.2, 2.2-4304, 2.2-4323.1, 2.2-4344 and those code sections itemized in §2.2-4343 are incorporated herein by reference. No other provisions of the Virginia Public Procurement Act shall apply except as specifically incorporated throughout this policy. This policy shall be amended only by resolution of the Board.

1-4 Definitions

"Board" or "Board of Supervisors" means the Board of Supervisors of Spotsylvania County, Virginia.

"Change Order" is a written alteration to a contract or purchase order in accordance with the terms of the contract.

"Competitive sealed bidding" is a method of contractor selection which includes the following elements:

- (a) Issuance of a written Invitation for Bid (IFB) containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Purchasing Agent has provided for prequalification of bidders, the Invitation to Bid 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 Invitation for Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
- (b) Public notice of the Invitation to Bid at least ten days prior to the date set for receipt of bids by posting on the County Procurement website. In addition, the public notice of the Invitation to Bid may also be posted on the Virginia Department of General Services' central electronic procurement website, known as eVA, published in a newspaper of general circulation, and/or solicited directly from potential contractors, as deemed appropriate by the Purchasing Agent, in accordance with Virginia Code § 2.2-4302.1.
- (c) Public opening and announcement of all bids received.
- (d) 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.
- (e) Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided in the Invitation to Bid, awards may be made to more than one bidder.
- (f) Competitive sealed bidding shall not be required for procurement of professional services.

"Competitive Negotiation" is a method of contractor selection which includes the following elements:

- (a) Issuance of a written Request for Proposal (RFP) indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals;

- (b) Public notice of the Request for Proposal at least ten days prior to the date set for receipt of proposals by posting on the County Procurement website and posting on the Virginia Department of General Services' central electronic procurement website, known as eVA. If the notice of the Request for Proposal is not posted on eVA, publication in a newspaper of general circulation is required in accordance with Virginia Code §2.2-4302.2. In addition, proposals may be solicited directly from potential contractors.
  
- (c) Procurement of professional services in excess of \$80,000.00 shall consist of 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 Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Purchasing Agent 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, which is clearly identified as such by the offeror, from competing offerors shall not be disclosed to the public or to competitors pursuant to the offeror's compliance with the Virginia Freedom of Information Act. At the conclusion of discussion as outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and in Section 2-18 of this policy, and all information developed in the selection process to this point, the Purchasing Agent 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 Request for Proposal, the County may award contracts to more than one offeror. Should the Purchasing Agent 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.
  - (1) 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 Request for Proposal and in Section 2-18 of this policy, including price if so stated in the Request for Proposal. 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 Purchasing Agent shall select

the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the Purchasing Agent 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.

- (2) Professional services with a value greater than \$5,000.00 but less than \$80,000.00 may be procured by an informal solicitation method pursuant to section 2-8. In the event professional services with a value less than \$5,000.00 are to be procured, the requirements set forth in section 2-8 (a) shall apply.
  
- (d) A contract for architectural or professional engineering services relating to construction projects may be negotiated by Spotsylvania County, for multiple projects provided that: (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost, whichever occurs first authorized by Virginia Code §2.2-4303.1. Such contract may be renewable for four 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 \$6 million, and the project fee of any single project or Task Order may not exceed \$1.5 million.<sup>1</sup>

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

“Construction” means building, altering, repairing, improving or demolishing any structure, building or highway, or any draining, dredging, excavation, grading or similar work upon real property.

“Construction Management Contract (CM)” means a contract in which a party is retained by the County to coordinate and administer contracts for construction services for the benefit of the County and may also include, if provided in the contract, the furnishing of construction services to the County.

“Contract” means a legally binding promise, enforceable by law. An agreement between parties with binding legal and moral force, usually exchanging goods or services for money or other considerations. A contract shall also include a County Purchase Order.

“County” means Spotsylvania County, Virginia.

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<sup>1</sup> Virginia Code §2.2-4303.1 allows for 8 million and 2.5 million. The County’s limits will not increase and will remain at the stated limits.

“Department” means all county departments, offices, Constitutional Officers, agencies or boards within the County, who are using County funds to procure goods or services or are surplus items that were purchased with County funds. County funds include resources of the County regardless of how they are derived.

“Design-Build Contract (D/B)” means a contract between the County and another party in which the party contracting with the County agrees to both design and build the structure, or other item specified in the contract.

“Electronic Signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. An electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the effectiveness of any security procedure applied to determine the person to which the electronic signature was attributable.

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

“Informality” means a minor defect or variation in a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

“Nonprofessional services” means any services not specifically identified as professional services in the definition of professional services.

“Posting” means a notice placed on the County Procurement website.

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

“Professional services” means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, medicine, optometry, pharmacy or professional engineering.

“Purchase Order” means a written contract to a vendor providing the details of the goods/services being purchased and the county’s terms and conditions.

“Purchasing Agent” means the County Administrator of Spotsylvania County, Virginia or any person so designated by the County Administrator.

“Request for Quote” means an informal solicitation where written quotes are obtained to seek competition from vendors without formal advertising or receipt of sealed bids or proposals.



"Responsible bidder" or "Responsible offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity, references and reliability which will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the Invitation to Bid.

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

"Task Order Based Contract" means a contract for services that does not procure or specify a firm quantity of services and that provides for the issuance of task orders for the performance of tasks during the period of the contract.

"Task Order" means a written document supplementary to an existing task order based contract detailing the work statement of the task(s) to be performed by the contractor.

#### 1-5 Application of Policy

- (a) This policy shall provide for competitive purchasing and covers all purchasing by all departments, officers, and employees of the County.
- (b) This policy shall apply to all purchases or contracts for the purpose of procuring goods, services, insurance, and construction involving the expenditure of public funds.
- (c) When any procurement involves the expenditure of state or federal assistance, grant, loan, or contract funds, the procurement shall be conducted in accordance with any mandatory state or federal requirements which are not reflected in this policy if the receipt of such funds is conditioned upon compliance with the mandatory procedures.
- (d) This policy shall not prohibit compliance with the terms and conditions of any grant, gift, or bequest which are otherwise consistent with law. The County reserves the sole authority to make such determinations.
- (e) This policy shall not apply to contracts existing on its effective date and such contracts may be performed or extended according to their terms.

#### 1-6 Delegation of Authority

- (a) The Purchasing Agent shall serve as the principal public purchasing official for the County, and shall be responsible for the procurement of all goods, services, insurance and construction. The Purchasing Agent also shall be responsible for managing and disposing of surplus materials.

- (b) The Purchasing Agent shall conduct all purchasing activities in compliance with the terms of this policy.
- (c) The Purchasing Agent may delegate to and supervise the performance of other persons performing the duties of Purchasing Agent.
- (d) The Purchasing Agent shall prepare forms and regulations for the purpose of implementing the provisions of this policy. These forms and regulations shall be prepared within the parameters of this policy and shall be deemed a part of this policy.
- (e) The Board expressly delegates to the County Administrator the duty, power and authority to act in its name when carrying out the provisions of this policy.
- (f) The County Administrator is authorized to enter into contracts for procurements in value of \$100,000.00 or less. The Purchasing Agent or designee (Senior Procurement Officer or Chief Accounting Officer) is authorized to enter into contracts for procurements in value of \$80,000 or less. Procurements in value of \$50,000 or less may be approved by Department Directors or their designee. Procurements of more than \$100,000 shall be authorized by the Board, except for emergency procurements authorized under Section 2-9(i) of this policy.
- (g) The Board of Supervisors must approve all task orders that are \$100,000 or over for task order based agreements. The Board authorizes the Procurement staff to exceed \$100,000 without Board approval in cases where the aggregate of previously approved task orders exceeds that amount.

#### 1-7 Decisions of Purchasing Agent Final

The Purchasing Agent shall decide issues regarding the quality of what is offered, of the offeror, and qualifications of the offeror. Decisions of the Purchasing Agent shall be the final decisions of the County. All offerors, as a condition precedent to submitting any bid or proposal, consent to abide by the decisions of the Purchasing Agent and the provisions of this policy. Decisions of the Purchasing Agent may be appealed only as provided in Article 4 of this Policy.

#### 1-8 Contracts or Purchases Made in Violation of Policy

No County official, elected or appointed, nor any County employee shall purchase or contract for any goods, services, insurance or construction except as provided in this policy. Any purchase made contrary to the provisions of this policy shall be void at the option of the Board of Supervisors. Notwithstanding the foregoing, any and all such contracts which are made contrary to this policy but which are not voided by the Purchasing Agent and are not otherwise contrary to law shall be deemed compliant with this policy and shall be performed and enforced according to their terms and according to any terms of this policy not inconsistent therewith.

## ARTICLE 2 - PROCUREMENT

### 2-1 Joint and Cooperative Procurement

The Purchasing Agent may participate in, sponsor, conduct or administer a joint procurement agreement or purchase from a cooperative contract not otherwise covered by this policy in accordance with Virginia Code §2.2-4304.

### 2-2 Division of Procurement

Procurements and contracts shall not be divided into separate tasks or parts with the intent of avoiding any dollar amount limitations set forth in this policy.

### 2-3 Contract Requirements and Review

- (a) As required by Virginia Code §15.2-1237, all contracts shall be approved as to form by the Office of the County Attorney. To meet this requirement, the County shall use standard contract forms, previously approved by the Office of the County Attorney, whenever practicable. Any changes to the approved contract forms shall be reviewed by the Office of the County Attorney. Changes to previously approved contract forms will include, but are not limited to, changes to any terms and conditions or additions of new terms and/or conditions. The Purchasing Agent is encouraged to consult the Office of the County Attorney if he or she needs any assistance in evaluating this requirement.
- (b) Purchases or procurements which exceed \$5,000 in value shall be made by entering into a written contract.
- (c) Invitations to Bid and Request for Proposals shall be prepared on forms approved by the Purchasing Agent.
- (d) All contracts over \$100,000 and all related contract documents pertaining thereto shall be reviewed for approval as to form by the Office of the County Attorney.

### 2-4 Posting

- (a) All Invitation for Bids, Request for Proposals, and Request for Quotes, shall be posted on the County Procurement website. It shall be the responsibility of any bidder, offeror, or interested party to check the County Procurement website for these procurement opportunities, including any updates.
- (b) All decisions relating to procurement matters, except determinations of non-responsibility or ineligibility of a bidder, shall be posted on the County Procurement website.
- (c) Posting shall occur when records and documents related to the procurement are available for public inspection, as required by the provisions of this policy.

2-5 Preference for Recycled Paper and Paper Products<sup>2</sup>

- (a) In determining the award of any contract for paper and paper products for use by the County, the Purchasing Agent shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than ten percent greater than the bid price of the lowest responsive and responsible bidder offering a product that does not qualify under subsection B of this section.
- (b) For purposes of this section recycled paper and paper products means any paper or paper products meeting EPA Recommended Content Standards.

2-6 State Contractor's Licensing

- (a) All bidders and offerors shall meet the requirements of Virginia Code Title 54.1 prior to submitting any bid or offer to the County;
- (b) Any Invitation for Bids or Request for Proposals shall announce the terms contained in Subsection (a) of this section and require that bidders and offerors provide a state contractor's license number in each bid and proposal submitted to the County.

2-7 Certification of Bid/Offer

Each bidder and offeror shall certify that its bid or offer is not the result of, or affected by any act of collusion with another person engaged in the same line of business or commerce, or any act of fraud punishable under Chapter 12 of Title 18.2 of the Virginia Code.

2-8 Competition

Prior to any purchase of goods, insurance, services or construction, the Purchasing Agent shall endeavor to ensure that there is reasonable price competition. Except as otherwise provided in this policy, the competitive pricing methods set forth below shall be followed:

- (a) For purchases in the amount of \$5,000 or less only one quote is required. The procuring department shall ensure price reasonableness and shall keep on file documentation supporting the quote.
- (b) For purchases in excess of \$5,000 but less than \$50,000, written quotes shall be obtained from at least three (3) suppliers, if practicable. The procuring department shall ensure price reasonableness and shall keep on file the written quotes obtained.

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<sup>2</sup> Virginia Code §2.2-4323 applies to State Agencies only. This section has been in the county Policy for a number of years and will remain here with no change.

- (c) For purchases in excess of \$50,000 but less than \$80,000, the procuring department shall submit a Procurement Requisition Form to the Procurement Division. Procurement shall issue an informal solicitation (Request for Quote) by posting the RFQ on the County Procurement Division's website.
- (d) When a procurement transaction is made under subsections a, b or c of this section, the purchase shall be made from the supplier quoting the lowest price, unless for reasons approved by the Purchasing Agent, it is in the best interest of the County to purchase from another supplier quoting a higher price. Such reasons shall include but are not limited to: required delivery times or methods, lowest supplier quoted an item not deemed "or approved equal" by the County, or poor documented performance of a supplier.
- (e) Purchase of goods and services in excess of \$80,000 shall be made by either competitive sealed bidding (IFB) or competitive negotiation (RFP) for single or term contracts. Departments shall submit a Procurement Requisition Form to the Procurement Division. Procurement shall issue a formal solicitation (IFB or RFP).
- (f) All vehicle purchases require submission of a Vehicle Acquisition Form to the Procurement Division. Vehicles for surplus require submission of a Vehicle Surplus Form to Joint Fleet Services.
- (g) Professional services, as defined in this policy, which are expected to exceed \$80,000 in value shall be procured by competitive negotiation. Professional services not expected to exceed \$80,000 may be procured by informal solicitation method. (Virginia Code §2.2-4303 and §2.2-4343 state the dollar limit for procuring Professional services using competitive negotiation.)
- (h) Procurement of insurance may be conducted through a licensed agent or broker selected in the manner described in Section 2-9(e) of this Policy if the Purchasing Agent determines in advance and in writing that competitive negotiation directly with insurance companies is either not practicable or not fiscally advantageous to the county.
- (i) Procurement of construction may be conducted through competitive negotiation if the Purchasing Agent determines in advance and in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the County, and if the underlying project involves the construction of highways and any draining, dredging, excavation, grading or similar work upon real property. Otherwise, procurement of construction shall be conducted through use of competitive sealed bidding or Design-Build (D/B) Procedures.
- (j) No contract for the construction of any building or for an addition to or improvement of an existing building by the County for which state funds of \$50,000.00 or more, 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 Section 2-8 (i) of this Policy. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this Policy. A person or firm who has

been engaged as an architect or engineer for the same project under a separate contract shall not be eligible to bid on or submit a proposal for any such contract or to have the contract awarded to it.

- (k) Nothing in this Policy shall prevent the use of competitive sealed bidding or competitive negotiation in procurements under \$80,000.00, if deemed appropriate by the Purchasing Agent.

## 2-9 Exemptions from Competition for Certain Transactions<sup>3</sup>

Section 2-8 of this Policy shall not apply, and no price competition other than as specified in this section is required, in the following procurement transactions:

- (a) The purchase of items under procurement contracts made available to the County by the Commonwealth of Virginia or to purchases made available to the County through other state, federal, or local governmental entities.
- (b) Contracts for legal services, expert witnesses, and other services associated with litigation, regulatory proceedings, or other legal matters.
- (c) Purchases for special police work when the Sheriff certifies that the purchases are needed for undercover law enforcement operations.
- (d) Purchases of goods or services (1) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department of the Visually Handicapped; or (2) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.
- (f) The Purchasing Agent may extend the terms of an existing contract to allow completion of any work undertaken but not completed during the original term of the contract. The Purchasing Agent may also extend the terms of an existing contract upon mutual consent with the contractor one time to allow for completion of the re-bidding process and contract award when exceptional or extenuating circumstances have impacted the ability to rebid the contract. An exceptional or extenuating circumstance shall be determined by the Purchasing Agent, and shall include, but not limited to, such circumstances as not receiving bids/proposals to

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<sup>3</sup> Pursuant to Virginia Code § 2.2-4344 (B), an Economic Development Authority “EDA” may enter into contracts without competition with respect to any item of cost of “authority facilities” or “facilities” as defined in Virginia Code §15.2-4902 or “facility” as defined in §15.2-6400. The EDA is an authority created under Virginia Code § 152-4900 *et. seq.* The EDA is a separate entity from the County and is not subject to the County’s Procurement Policy; however, the EDA is subject to the Virginia Public Procurement Act (VPPA). This reference to the competition exemption is added to the County Procurement Policy for clarification since there are often County departments that have matters related to the EDA and procurement.

a solicitation causing the need for re-solicitation or the issuance of addendums to solicitations that makes an extension of the due date for receipt of bids/proposals necessary. The Purchasing Agent is encouraged to consult the Office of the County Attorney if he or she needs any assistance in evaluating this requirement. This action shall be documented in writing by the Procurement Division. Such extension of the contract shall not exceed six (6) months from the expiration of the original contract term.

- (g) Purchases of insurance through an association which is formed and maintained for the purpose of promoting the interests and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the Purchasing Agent has determined, in advance and in writing after reasonable notice to the public by posting, that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the County.
- (h) If it is determined that there is only a single source that can provide what is sought to be procured, the department requesting the procurement must submit a Sole Source Form detailing why competition is not practical. Upon receipt of the Sole Source Form from the requesting department, the Purchasing Agent or designee (Senior Procurement Officer or Chief Accounting Officer) will issue a determination in writing to the department. Once the determination is finalized, a contract may be negotiated and awarded to said source without competition. For sole source purchases exceeding \$80,000 a notice of sole source award shall be posted on the County Procurement Division website for ten days. The notice shall state that only one source was determined to be practicably available, identify that which is being procured, the contractor selected and the date on which the contract was or will be awarded.
- (i) In cases of emergency; provided, however, such procurement shall be made with such competition as is practicable under the circumstances. Department Directors will submit an Emergency Procurement Documentation Form detailing the goods and/or services to be procured and justifying the need for the emergency procurement. Whenever practicable, the emergency procurement must be approved by the Purchasing Agent or designee (Senior Procurement Officer or Chief Accounting Officer and the County Administrator or designee in advance of the purchase. The Emergency Procurement Documentation Form shall serve as the written statement of the basis for the emergency and for the selection of the particular supplier shall be included in the papers relating to the procurement. For emergency procurements exceeding \$80,000 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 shall be posted on the County Procurement website. The term "emergency" as used in this subsection means a situation where there exists a threat to public health, welfare, or safety or when an unforeseen circumstance causes disruption of an essential service. In emergency procurements, the Purchasing Agent is authorized by the Board to enter into contracts that exceed the normal \$80,000.00 limitation. However, the Purchasing Agent should advise the Board of the circumstances involved at the earliest opportunity.

- (j) Travel advances, travel reimbursements, or travel expenses.
- (k) Payments for services to jurors, board and commission members, sports officials, and medical examiners.
- (l) Contracts for telephone, electric, or other utility services.
- (m) Interdepartmental or interagency expenses or purchases.
- (n) Contracts of employment.
- (o) Advertising and legal notices.
- (p) Dues and subscriptions
- (q) Registration/Training Fees for Conferences, Seminars, Workshops, Lectures, etc. While competition is not required, it is expected that departments will choose the most cost effective approach for training and avoid out of state travel whenever feasible.
- (r) Energy conservation or operational efficiency measures under an energy performance-based contract entered into by another contracting entity pursuant to Virginia Code Chapter 6.1 of Title 11, as set out in §11-34.3(B), in a cooperative procurement.
- (s) Services related to the management of assets to fund Postemployment Benefits as set out in Virginia Code §15.2-1548.
- (t) An entity that is constructing road improvements pursuant to a proffered zoning condition or special exception condition in order to expand the scope of the road improvements in accordance with Virginia Code §15.2-2303.2 (C).
- (u) The purchase of Virginia-grown food products where the annual cost of the product is not expected to exceed \$100,000, provided that the procurement is accomplished by (i) obtaining written informal quotes from a minimum of three (3) bidders or offers, if practicable and (ii) including a written statement regarding the basis for awarding the contract in accordance with Virginia Code §2.2-4343 (22) .

## 2-10 Purchases at Auction

Notwithstanding any other provision of this policy, upon written determination by the Purchasing Agent that the purchase of certain designated goods from a public auction sale including online public auctions is in the best interest of the County, such items may be purchased at an auction sale.



## 2-11 Documentation Required

Documentation of competitive pricing or other documentation required by this policy, including a complete copy of the solicitation for competitive bids or proposals, shall be retained along with other papers related to the procurement in the office of the Purchasing Agent or in the department for those cases where the department is responsible for maintaining the data. Such documentation shall be retained until the acquisition of goods is completed or the services have been rendered and until after such time that they may be destroyed in accordance with County and State procedures governing records retention.

## 2-12 Cancellation, Rejection of Bids; Waiver of Informalities

- (a) The Purchasing Agent may cancel or reject any and all invitations to bid, requests for proposal, and any other solicitations when the Purchasing Agent determines it is in the best interest of the County to do so. The Purchasing Agent shall document the reason for the taking of such action.
- (b) The Purchasing Agent may waive informalities, as defined in Section 1-4. Any waiver of informalities is at the sole discretion of the Purchasing Agent.
- (c) No bidder shall be permitted to alter, modify or amend a bid after the time fixed for submission of the bid, except as otherwise provided in Section 2-24 of this Policy.
- (d) No bid received after the time fixed for submission shall be opened or considered. Bid package shall not be accepted or shall be returned unopened to bidder if delivered by mail courier, however, if possible.
- (e) No limiting or qualifying statement or notation whatsoever, whether written, printed, typed or otherwise set out in any bid or offer envelope, including any addition or deduction in contract price, shall be recognized or considered in the review and tabulation of any bid or offer or for any other purpose. Price quotes and other responses shall be placed only in the appropriate spaces provided on the bid form.

## 2-13 Tie Bids

If more than one bid is received for the same total amount and unit price, quality and service being equal, preference shall be given to goods, services and construction produced in Spotsylvania County or Virginia (in that order); or provided by persons, firms or corporations located in Spotsylvania County or Virginia (in that order). Otherwise the tie shall be decided by lot.

## 2-14 Contract Pricing

- (a) Except as prohibited herein, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by the Virginia Public Procurement Act.
- (b) Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus percentage of costs. A

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policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus 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.

## 2-15 Discrimination Prohibited

Spotsylvania County shall not discriminate against faith-based organizations in the solicitation or awarding of contracts.

For purposes of this section, "Faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services, for programs funded by the block grant Opportunity Reconciliation Act of 1996, P.L. 104-193.

## 2-16 Prequalification of Offerors

The Purchasing Agent may prequalify offerors prior to any solicitation of offers by requiring prospective offerors to submit such information as the Purchasing Agent shall deem appropriate, including, but not limited to, such things as samples, financial reports, or references. The opportunity to prequalify shall be given to any prospective offeror who has not been suspended or debarred under this policy.

The Purchasing Agent may refuse to prequalify any prospective offeror, provided that written reasons for refusing to prequalify are provided to the offeror and made a part of the file. The decision of the Purchasing Agent shall be final.

In evaluating requests for prequalification, the Purchasing Agent shall determine whether offerors possess the management, financial soundness, and history of performance which indicate apparent ability to successfully complete the plans and/or specifications of the procurement solicitation.

Prequalification of an offeror shall not constitute a conclusive determination that the offeror is responsible, and such offeror may be rejected as not responsible on the basis of a more thorough evaluation.

The failure of an offeror to prequalify with respect to a given procurement shall not bar the offeror from seeking prequalification as to future procurements or from bidding on procurements which do not require prequalification.

The criteria for denying prequalification found in Virginia Code §2.2-4317 is incorporated by reference into this section and shall be utilized by the Purchasing Agent.

## 2-17 Pre-Bid and Pre-Proposal Conferences

For complex purchases of goods or services, a pre-bid or pre-proposal conference with prospective bidders/offerors may be held after the bid or proposal has been advertised. The purpose of a pre-bid or pre-proposal conference is to detect and resolve unclear specifications and to widen competition, if possible. Any changes to the bid or proposal requirements made after the pre-bid or pre-proposal conference will be distributed to all known prospective

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bidders/offerors and posted accordingly to the requirements set in this policy through an Addendum to the Invitation for Bid or Request for Proposal.

## 2-18 Evaluation of Proposal Under Competitive Negotiation

- (a) A selection committee will be established to review and score each proposal. The Project Manager will provide a list of suggested members for which there is no conflict of interest, as established in Article 6 of the Virginia Public Procurement Act. The Purchasing Agent will make the final selection of members who will serve on the committee. The selection committee may consult with an approved subject matter expert, if deemed necessary, to assist in the review of highly technical or complex proposals. The Purchasing Agent and/or the County Administrator may replace any member on the selection committee or reconstitute the selection committee in any way deemed appropriate at any time in the process to protect the best interest of the County.

Members of the selection committee must be employed by the County and must sign a Statement of Understanding concerning their role in the process and their understanding of their ethical responsibility to ensure a fair and unbiased review (as per Article 6 of the Virginia Public Procurement Act). Members will individually evaluate each proposal based on preapproved guidelines and rating criteria.

- (b) When competitive negotiation is the method of procurement selected, the following evaluation factors, where applicable, may be considered in determining the most qualified firm or individual. Other evaluation factors may be included to assist in evaluating proposals:
- (1) Any special qualifications or requirements set forth in the proposal documents.
  - (2) Qualifications of the project manager and project teams.
  - (3) Overall qualifications and experience of the firm and any subcontractors to be used.
  - (4) Quality of the content of the proposal and its responsiveness to the Request for Proposal.
  - (5) The sufficiency of financial resources and ability of the bidder to perform the contract or provide the services.
  - (6) The location of the office that will have the responsibility for providing the services and the ability of the offeror to respond quickly to requests and requirements of the County.
  - (7) Non-Binding Cost estimates (which may or may not be required at the time of the submission of the proposal, depending upon the circumstances).

## 2-19 Comments or Questions Regarding Invitations to Bid or Requests for Proposal

Prospective offerors or bidders that find any discrepancy or ambiguity in, or omissions from, the specifications, request for proposal, invitation to bid, or other contract documents, shall notify in writing the specified County contact person who will, if he or she determines that an amendment is necessary, send written instructions to all bidders. The County shall not be responsible for any oral instructions.

## 2-20 Use of Brand Names

Unless otherwise provided in the procurement documents, 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 Purchasing Agent in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

## 2-21 Employment Discrimination by Contractor Prohibited; Contractor Compliance with Federal and State Law

All contracts for over \$10,000.00 shall include the following provisions:

- (a) During the performance of this contract, the contractor agrees as follows:
  - 1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - 2. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - 3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- (b) The contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.
- (c) The contractor shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

- (d) A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1-601 through 13.1-1123 or Title 50-73.1 through 50-75 or as otherwise required by law.

## 2-22 Public Inspection of Certain Records

- (a) Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act and the provisions of this policy.
- (b) Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be open to public inspection.
- (c) Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all 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.
- (d) 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 public inspection only after award of the contract.
- (e) Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- (f) Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to this policy shall not be subject to public disclosure under the Virginia Freedom of Information Act (2.2-3700 *et seq.*), in particular Virginia Code §2.2-4342 (F); however, the bidder, offeror, or contractor must invoke the protections of this section 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. Further, a bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (i) an entire bid, proposal, or prequalification application (ii) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (iii) line item prices or total bid, proposal, or prequalification application prices, as stated in this section.

## 2-23 Negotiation with Lowest Responsive and Responsible Bidder

Unless canceled or rejected, a responsive bid from the lowest responsive and responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsive and responsible bidder exceeds available funds, the Purchasing Agent may negotiate with the apparent low bidder to obtain a contract price within available funds; however, such negotiation may be undertaken only under the following conditions and procedures which shall be summarized in the Invitation to Bid:

- (a) If not already a part of the bid, the apparent low bidder shall submit unit prices for each separate and severable part of the work, and a list of all materials for which substitution may be made with materials of lesser cost but equal functional value.
- (b) The Purchasing Agent may elect to delete work and/or substitute materials, if the Purchasing Agent deems that such action is in the best interest of the County. If deletions and/or substitutions decrease the bid to an amount within the County appropriation, the Purchasing Agent may award the contract.

## 2-24 Withdrawal of Bids or Proposals

- (a) Except as otherwise provided in this Section, an offeror may withdraw or cancel a bid or proposal at any time prior to the time set for opening. After such time, the bid or proposal may not be withdrawn for a period of 150 calendar days. Any offeror may be required to clarify its bid or proposal or to acknowledge that the minimum requirements of the specifications are included in the bid or proposal.
- (b) A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw its bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing of the claim of right to withdraw, along with all documentary proof associated with the claim, to the Purchasing Agent within two (2) business days after the conclusion of the bid opening procedure.
- (c) No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
- (d) If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
- (e) No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the

person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

- (f) The Purchasing Agent shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the Purchasing Agent denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating 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) All invitations to bid shall include written notice of the terms of this Section of this policy which shall be incorporated into the contract between the bidder and the County.

#### 2-25 Workers' Compensation Requirements for Construction Contractors and Subcontractors

- (a) No contractor shall perform any work on a construction project for Spotsylvania County unless it:
  - (1) has obtained, and continues to maintain during the duration of such work, such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 of Title §65.2 of the Virginia Code; and
  - (2) provides to the County prior to the award of the contract evidence of such coverage.
- (b) No subcontractor shall perform any work on a construction project for Spotsylvania County unless it has obtained, and continues to maintain for the duration of such work, such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 of Title §65.2 of the Virginia Code.

#### 2-26 Commercial Activities List; Publication of Notice; Opportunity to Comment

In accordance with the provisions of §2.2-614.4, if, at any time, the County intends to purchase a service for an amount over \$25,000 from another government agency, and such service is found on the commercial activities list, which is maintained by the Department of Planning and Budget in accordance with Virginia Code § 2.2-1501.1, the County shall post notice on its procurement website. Additionally, the County shall provide the opportunity for comment by, or the submission of information from, the private sector on each such intended purchase. The provisions of this section shall not apply to mandatory purchases pursuant to Virginia Code § 53.1-47 or contracts specifically exempted pursuant to Article 3 (§ 2.2-4343 et seq.) of the Virginia Public Procurement Act.

## 2-27 Purchase of Flags of the United States and Commonwealth

In accordance with the provisions of § 2.2-4323.1, notwithstanding any provision of law to the contrary, whenever the County purchases a flag of the United States or a flag of the Commonwealth for public use, such flag shall be made in the United States from articles, materials, or supplies that are grown, produced, and manufactured in the United States, if available. Compliant flags are available and can be purchased from the Virginia Distribution Center.

## 2-28 Construction Management (CM) Procedures

In accordance with the provisions of §2.2-4382 of the Virginia Code, the following procedures outline the standard two-step competitive negotiation process (RFP), as defined below in subsections d and e, to be used when contracting for Construction Management Services:

- (a) Criteria for Use of CM Contracts: CM contracts may be approved for use on projects where 1) fast tracking of construction is needed to meet County program requirements, or 2) value engineering and/or constructability analyses concurrent with design are required.

CM contracts may be utilized for projects where the project cost is expected to be less than the project cost threshold established in the procedures adopted by the Secretary of Administration for the Commonwealth of Virginia for utilizing construction management contracts, provided that (i) the project is a complex project (refer to the Definitions Section of the policy for “Complex Project”) and (ii) the project procurement method is approved in writing by the Purchasing Agent and maintained in the procurement file.

The CM Procedures established by the Secretary of Administration can be located on the Virginia Department of General Services, Division of Engineering and Building website.

- (b) Approval for use of CM: Prior to taking any action to pursue a CM project, the County shall have in its employ or under contract a licensed Architect or Engineer with professional competence appropriate to the project who shall advise the County regarding the use of CM for the specific project and (ii) assist the County with the preparation of the Request for Proposal (RFP) and the evaluation of such proposals (Virginia Code §2.2-4382).

The using department shall request approval, in writing and receive approval from the Purchasing Agent to utilize the CM method. The written request shall include the following, 1) justification and substantiation that a CM contract meets the criteria found in the section above, Criteria for Use of CM Contracts, 2) include the stipulation that the CM contract will be initiated no later than the Schematic Phase of design, unless prohibited by authorization of funding restrictions and 3) justification that the competitive sealed bidding (IFB) method is not practicable or



fiscally advantageous. These justifications for use of the CM method shall be included in the Request for Qualifications, Step I of the CM process.

- (c) General Procedures for CM: On projects approved for CM, procurement of the contract shall be a two-step competitive negotiation process (RFP) as detailed in sections 4 and 5 below. The following procedures shall be used in selecting a Construction Management firm and awarding a contract:
- (1) Selection Committee: A selection committee shall be established following the requirements stated in this policy (Section 2-18 "Evaluation of Proposal Under Competitive Negotiation"). For CM specific projects, a licensed Professional Architect or Engineer, either under the employment of the County or under contract to the County shall also be part of the selection committee and serve as a subject matter expert.
  - (2) Basis of Award: The basis of award of the contract shall be in accordance with Virginia Code §2.2-4382 and price shall be a critical component of the selection process.
- (d) Selection of Qualified Offerors (STEP I): On projects approved for CM, the County shall conduct a prequalification process as follows to determine which offerors are qualified to receive Request for Proposals (RFPs):
- (1) The County shall prepare a Request for Qualifications (RFQ) containing the County's Facility Requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate RFQ 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 Request for Qualifications shall be posted on the Virginia Department of General Services' central electronic procurement website, known as eVA and on the County Procurement website at least 30 days prior to the date set for receipt of qualification proposals.
  - (3) The Committee shall evaluate each offeror's Request for Qualifications responses and any other relevant information and shall determine which offerors are fully qualified and suitable for the project.
  - (4) The Request for Qualifications 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 Request for Qualifications 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. Notwithstanding the foregoing, the County reserves the right to reject all responses and cancel the Request for Proposals.

(e) Selection of Construction Manager (STEP II):

- (1) The County shall send a Request for Proposal (RFP) to the CM 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) The Selection Committee will evaluate the proposals based upon the criteria contained in the RFP and shall make its recommendation for the selection of a Construction Manager to the County Purchasing Agent based on its evaluations of the proposals and any negotiations 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. 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, pursuant to Virginia Code § 2.2-4302.2.
- (3) The Procurement Division will notify all offerors who submitted proposals which offeror was selected for the project. Any award decision for a CM contract shall be posted in accordance with the current County Procurement Policy for postings. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
- (4) Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.

(f) Required Construction Management Contract Terms:

Any Guaranteed Maximum Price construction management contract entered into by the County shall contain provisions requiring that, 1) not more than 10% of the construction work, as measured by cost of the work, will be performed by the CM with its own forces and (2) the remaining 90% of the construction work, as measured by the cost of the work, will be performed by subcontractors of the CM, which the CM shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable. Documentation shall be placed in the file detailing the reasons any work is not procured by publicly advertised competitive sealed bidding. The Purchasing Agent may modify these contractual requirements in whole or in part for projects where it would be fiscally advantageous to the County to increase the amount of construction work performed by the Construction Manager.

The Guaranteed Maximum Price shall be established at the completion of working drawings unless a waiver has been granted to this requirement by the Purchasing Agent.

## 2-29 Design-Build (D/B) Procedures

In accordance with the provisions of Virginia Code §2.2-4382, the following procedures outline the standard two-step competitive negotiation process (RFP), as defined below in subsections d and e, to be used when contracting for Design-Build services:

- (a) Criteria for Use of D/B Contracts: D/B contracts are intended to minimize the project risk for the County and to reduce the delivery schedule by overlapping the design phase and construction phase of a project.
- (b) Approval for use of D/B: Prior to taking any action to pursue a D/B project, the County shall have in its employ or under contract a licensed Architect or Engineer with professional competence appropriate to the project who shall (i) advise the County regarding the use of D/B for the specific project and (ii) assist the County with the preparation of the Request for Proposal (RFP) and the evaluation of such proposals (Virginia Code §2.2-4382).

The using department shall request approval, in writing and receive approval from the Purchasing Agent to utilize the D/B method. The written request shall justify and substantiate that the competitive sealed bid (IFB) construction method with a general contractor is not practicable or fiscally advantageous and shall indicate how the County will benefit from using the D/B method. The justifications for use of the D/B method shall be included in the Request for Qualifications, Step I of the D/B process.

- (c) General Procedures for D/B: On projects approved for D/B, procurement of the contract shall be a two-step competitive negotiation process (RFP) as detailed in sections 4 and 5 below. The following procedures shall be used in selecting a Design-Builder and awarding a contract:
  - (1) Selection Committee: A selection committee shall be established following the requirements stated in this policy (Section 2-18 "Evaluation of Proposal Under Competitive Negotiation"). For D/B specific projects, a licensed Professional Architect or Engineer, either under the employment of the County or under contract to the County shall also be part of the selection committee and serve as a subject matter expert.
  - (2) Basis of Award: The basis of award of the contract shall be in accordance with Virginia Code §2.2-4382 and price shall be a critical component in the selection process.
- (d) 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 Qualifications (RFQ) containing the County's Facility Requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate RFQ 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 Request for Qualifications shall be posted in accordance with the current County Procurement Policy for postings.
  - (3) The Committee shall evaluate each offeror's Request for Qualifications responses and any other relevant information and shall determine which offerors are fully qualified and suitable for the project.
  - (4) The Request for Qualifications 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 the Virginia Code §2.2-4317, but the short list shall also be based upon the Request for Qualifications 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. Notwithstanding the foregoing the County reserves the right to reject all responses and cancel the Request for Proposals.
- (e) Selection of Design-Build Contractor (STEP II):
- (1) The County shall send a Request for Proposal (RFP) to the D/B 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 County's Procurement Division in accordance with the submittal instructions included in the RFP. Separately-sealed Cost Proposals shall be submitted to the County's Procurement Division and shall be secured by and kept sealed until evaluation of the Technical Proposals and the design adjustments are completed.
  - (3) The Selection Committee will evaluate the Technical Proposals based upon the criteria contained in the RFP. If a D/B offeror's proposal is in need of any adjustments necessary to make its Technical Proposal fully comply with the requirements of the RFP notification will be sent to the D/B offeror

by the Procurement Division. In addition, the County may require that offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the Selection Committee during design development.

- (4) Based upon 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 Selection 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, pursuant to Virginia Code § 2.2-4302.2. 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 Selection Committee shall make its recommendation for the selection of a design builder to the Purchasing Agent 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 Procurement Division will notify all offerors who submitted proposals which offeror was selected for the project. Any award decision for a D/B contract shall be posted in accordance with the current County Procurement Policy for postings. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
- (8) Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.

### **ARTICLE 3 – CONTRACT ADMINISTRATION**

#### 3-1 Modification of the Contract

- (a) A contract may include provisions for modification of the contract during performance, when mutually agreed upon by all parties to the contract, but no fixed-price contract may be increased by more than 25% of the amount of the contract or \$50,000.00, whichever is greater, without the advance written approval of 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 bid or offer, in accordance with Virginia Code §2.2-4309.

- (b) The Project Manager or designee must send **all** Change Orders to the Procurement Division. The Procurement Division will initiate in writing official changes, additions, deletions and adjustments to contracts at the direction and request of the Project Manager. Change Orders are not official until they are fully executed by all parties to the contract. Issuing Change Orders through the Procurement Division ensures the contract is up to date with all required modifications and ensures compliance with the limits stated above for any fixed-price contract.

Prior to submitting a Change Order to the Procurement Division, the Project Manager shall be responsible for:

- (1) Verification of budgeted funds for any contract increases; and
- (2) Obtaining required department-level approvals.

### 3-2 Retainage on Construction Contracts

- (a) For contracts for construction, which provide for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid ninety-five percent of the earned sum when payment is due, with five percent being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.
- (b) Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

### 3-3 Deposit of Certain Retained Funds on Certain Contracts with Local Governments; Penalty for Failure to Timely Complete

- (a) Public contracts of \$200,000.00 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the bid documents an option for the contractor to use an escrow account procedure to utilize 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 by the contractor to the Purchasing Agent within fifteen calendar days after notification. If the "Escrow Agreement" form is not submitted within the fifteen-day period, the contractor shall forfeit its right to the use of the escrow account procedure.
- (b) In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an "Escrow Agreement" form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal

office located in the Commonwealth. The "Escrow Agreement" shall be substantially the same as that used by the Commonwealth of Virginia Department of Transportation.

- (c) This section shall not apply to public contracts for construction of railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.
- (d) Any such contract for construction 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.
- (e) Any subcontract for such public project which provides for similar progress payments shall be subject to the provisions of this section.

3-4 Public Construction Contract Provisions Barring Damages for Unreasonable Delays Declared Void

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

if the contractor's claim is determined through litigation or arbitration to be false or to have no basis in law or in fact.

### 3-5 Bid Bonds<sup>4</sup>

- (a) Except in cases of emergency, all bids or proposals for nontransportation related construction contracts in excess of \$100,000.00 shall be accompanied by a bid bond in a form acceptable to the County from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall be five percent of the amount bid.
- (b) No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.
- (c) Nothing in this section shall preclude the Purchasing Agent from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$100,000.00 for nontransportation-related projects.

### 3-6 Performance and Payment Bonds<sup>5</sup>

- (a) Upon the award of any public construction contract exceeding \$100,000 awarded to any prime contractor; (i) construction contract exceeding \$100,000 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; (ii) construction contract exceeding \$100,000 in which the performance of labor or the furnishing of materials will be paid with public funds; or (iii) transportation-related projects exceeding \$250,000 that are partially or wholly funded by the Commonwealth, such contractor shall furnish to the Purchasing Agent the following bonds:

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<sup>4</sup> The County is aware of provisions in Virginia Code §2.2-4336 wherein the County may adopt higher bonding limits and may waive the requirement for prequalification upon a written determination made in advance that waiving the requirement is in the best interest of the County. However, the County's Procurement Policy will remain unchanged.

<sup>5</sup> The County is aware of provisions in Virginia Code §2.2-4337 wherein the County may adopt higher bonding limits and may waive the requirement for prequalification upon a written determination made in advance that waiving the requirement is in the best interest of the County. However, the County's Procurement Policy will remain unchanged.



- (1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.
  - (2) A payment bond in the sum of the contract amount. Such 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 the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "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.
- (b) Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.
  - (c) All bonds shall be payable to the County, and shall be in a form acceptable to the County.
  - (d) Each of the bonds shall be filed with the Purchasing Agent.
  - (e) Nothing in this section shall preclude the Purchasing Agent from requiring payment or performance bonds for construction contracts below \$100,000.00.
  - (f) Nothing in this section shall preclude such 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 which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.
  - (g) All performance bonds and payment bonds (regardless of the form) shall remain effective until at least one year after the secured work is completed and accepted by the County.

### 3-7 Action on Performance Bond

No action against the surety on a performance bond shall be brought unless brought within five (5) years after completion of the contract. For the purposes of this section, completion of the contract is the final payment to the contractor pursuant to the terms of the contract. However, if a final certificate of occupancy, or written final acceptance of the project, is issued prior to final payment, the five-year period to bring an action shall commence no later than 12 months from the date of the certificate of occupancy or written final acceptance of the project.

- (a) Statute of limitations on construction contracts

No action may be brought by the County on any construction contract, including construction contracts procured by Construction Management (CM) or Design-

Build (D/B) as allowed under this policy, unless such action is brought within 15 years after completion of the contract. For the purposes of this section, completion of the contract is the final payment to the contractor pursuant to the terms of the contract. However, if a final certificate of occupancy or written final acceptance of the project is issued prior to final payment, the 15-year period to bring an action shall commence no later than 12 months from the date of the certificate of occupancy or written final acceptance of the project. In no case shall such action be brought more than five years after written notice by the County to the contractor of a defect or breach giving rise to the cause of action. The County shall not unreasonably delay written notice to the contractor.

(b) Statute of limitations on Architectural and Engineering contracts

No action may be brought by the County on any architectural or engineering services contract, including architectural or engineering services contracts procured by Construction Management (CM) or Design-Build (D/B) as allowed under this policy, unless such action is brought within 15 years after completion of the contract. For the purposes of this section, completion of the contract is the final payment to the contractor pursuant to the terms of the contract. However, if the architectural or engineering services are for a construction project for which a final certificate of occupancy or written final acceptance of the project is issued prior to final payment, the 15-year period to bring an action shall commence no later than 12 months from the date of the certificate of occupancy or written final acceptance of the project. In no case shall such action be brought more than five years after written notice by the County to the contractor of a defect or breach giving rise to the cause of action. The County shall not unreasonably delay written notice to the contractor.

3-8 Action on Payment Bond

- (a) 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 prosecution of the work provided in any contract for which a payment bond has been given, and who has not been paid in full therefor before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.
- (b) Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under Section 3-6(f) but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 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. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under Section 3-6(f) but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. 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.

- (c) Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.
- (d) Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

### 3-9 Alternative Forms of Security

- (a) Except as provided below, all bid, payment or performance bonds shall be in the form of a corporate bond surety legally authorized to do business as such in Virginia.
- (b) In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.
- (c) If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety bond.

### 3-10 Bonds on Other Than Construction Projects

The Purchasing Agent may require bid, payment and/or performance bonds for contracts for goods and services if it is specified in the Invitation to Bid or Request for Proposal.

### 3-11 Offeror Responsibilities

By submitting a bid or proposal an offeror agrees and warrants that it has examined all contract documents and, if appropriate, the subject of the contract, and where the specifications require a given result to be produced, that the specifications are adequate and the required results

can be produced under the specifications in the contract. Omissions from the specifications shall not relieve the offeror from the responsibility of complying with the general terms and intent of the contract as indicated by the specifications. Once the award has been made, failure to have read all the conditions, instructions, and specifications of the contract will not be cause to alter the original contract or proposal, or for the offeror to request additional compensation.

The offeror waives any right to have any ambiguity in the contract documents construed against the County if the offeror fails to notify the County of the ambiguity prior to award of the contract for procurement.

### 3-12 Signatures on Offers or Bids

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

### 3-13 Contract Administration

County employees designated as a Project Manager and/or Contract Administrator for a contract shall sign the Designation and Responsibilities of Contract Administration Form. This form details the responsibilities of managing the assigned contract and will be kept in the official contract file in the Procurement Office.

### 3-14 Debarment and Suspension

After giving fifteen (15) days written notice and providing an opportunity to be heard, the Purchasing Agent, after consultation with the County Attorney, is authorized for cause to debar any offeror from consideration for the award of contracts. The debarment shall not be for a period of more than three (3) years.

After consultation with the County Attorney, the Purchasing Agent is authorized to suspend an offeror from consideration for the award of a contract if there is probable cause to believe that the offeror has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three (3) months. Notice of any debarment or suspension shall be provided to the Board and to the contractor, stating the reasons for the action taken.

Project Managers are responsible for submitting Vendor Complaint Forms to the Procurement Office to report any and all concerns with the performance of a contractor throughout the contract period. These reports will be maintained in the Procurement Office and will serve as support documentation should a debarment be considered. The causes for any such debarment or suspension may include, but are not necessarily limited to, the following which apply to anyone with an ownership interest in the offeror or to any officer of the offeror:

- (a) Conviction of a criminal offense 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 of moral turpitude indicating a lack of business or personal integrity or honesty which currently, seriously, and directly affects responsibility as a County offeror;
- (c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (d) Prior violations of contract provisions of a character regarded by the Purchasing Agent to be so serious as to justify a debarment action including, but not limited to:
  - (1) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract with the County; or
  - (2) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts.
- (e) Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity.

### 3-15 Use of Electronic Signatures

Electronic signatures are permitted by the Procurement Division on contracts, modifications, renewals, task orders and any other contract document, in accordance with the provisions of this policy and all applicable state and federal law. An electronic signature shall have the full force and effect of a manual signature.

## **ARTICLE 4 – REMEDIES**

### 4-1 Ineligibility

- (a) Any bidder, offeror or contractor who is refused permission to participate or is disqualified from participation in public procurements shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror, or contractor appeals within ten days of the written decision by appealing to the Spotsylvania County Circuit Court as provided in Section 4-8 of this policy.
- (b) If, upon appeal, it is determined that the action taken was arbitrary or capricious, the sole relief shall be restoration of eligibility.

### 4-2 Appeal of Denial of Withdrawal of Bid

- (a) A decision denying withdrawal of a bid under the provisions of Section 2-24 shall be final and conclusive unless within ten days after the posting of the decision the

bidder appeals the decision to the Spotsylvania County Circuit Court as provided in Section 4-8 of this Policy.

- (b) If no bid bond was posted, a bidder whose withdrawal of a bid is refused under the provisions of Section 2-24, shall prior to appealing, as a condition precedent to the appeal and within the limitation period, deliver to the Purchasing Agent 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.
- (c) If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

#### 4-3 Determination of Non-Responsibility

- (a) Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days by appealing to the Spotsylvania County Circuit Court as provided in Section 4-8 of this Policy.
- (b) If, upon appeal, it is determined that the decision of the Purchasing Agent or Board was arbitrary or capricious, the relief shall be as set forth in Section 4-4(b).
- (c) A bidder contesting a determination that it is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under Section 4-4 of this Policy.
- (d) Nothing contained in this section shall be construed to require the Purchasing Agent or Board, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

#### 4-4 Protest of Award or Decision to Award

- (a) Any bidder or offeror who desires to protest the award or decision to award a contract shall submit such protest in writing to the Purchasing Agent no later than ten days after notice of the award or decision to award is posted, whichever occurs first. 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 such protest in the same manner no later than ten days after posting of the notice of such award. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. The Purchasing Agent is encouraged to consult the Office of the County Attorney if he or she needs any assistance in evaluating this requirement. This decision shall be final unless the bidder or offeror appeals within

ten days of the written decision by appealing to the Spotsylvania County Circuit Court as provided in Sections 4-8 of this Policy.

- (b) If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall then either cancel the proposed award or revise it to comply with the law. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.
- (c) Where the Purchasing Agent determines 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 5 of this Policy, the Purchasing Agent may enjoin the award of the contract to a particular bidder.

#### 4-5 Effect of Appeal Upon Contract

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

#### 4-6 Stay of Award During Protest

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 that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire. In such cases the appellant has no right to injunctive relief to restrain the progress of the procurement project.

#### 4-7 Contractual Disputes

- (a) Contractual claims, whether for money or other relief, shall be submitted in writing no later than 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. Any notice or claim shall be delivered to the Purchasing Agent and shall include a description of the factual basis for the claim and a statement of the amounts claimed or other relief requested. The Purchasing Agent shall render a decision on the claim and shall notify the Contractor within 30 days of receipt of the claim. The Contractor may appeal the decision of the Purchasing Agent to the Board of Supervisors, by providing written notice to the Purchasing Agent, within 15 days of the date of the decision. The Board of Supervisors shall render a decision of the claim within 60 days of the date of receipt of the appeal notice and such decision shall be final unless the Contractor appeals the decision in accordance with the Virginia Public Procurement Act.

- (b) The decision of the Board on the claim shall be final unless appealed to the Spotsylvania County Circuit Court as provided by law.

#### 4-8 Legal Actions

- (a) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the Spotsylvania County Circuit Court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious or that such decision was not based upon the criteria for denial of prequalification set forth in this policy. Said action shall be filed with the Clerk of the Court within the limitation periods listed in the preceding Sections.
- (b) A bidder denied withdrawal of a bid may bring an action in the Spotsylvania County Circuit Court challenging that decision which shall be reversed only if the bidder establishes that the decision of the Purchasing Agent was clearly erroneous, and only within the limitation period stated in Section 4-2 of this policy.
- (c) A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis, whose protest of an award or decision to award under Section 4-4 of this Policy is denied, may, within the limitation period stated in Section 4-4, bring an action in the Spotsylvania County Circuit Court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious.
- (d) If injunctive relief is granted, the Court, upon request of the Purchasing Agent, shall require the posting of reasonable security to protect the interest of the County.
- (e) A contractor may bring an action involving a contract dispute against the County only in the Spotsylvania County Circuit Court, or General District Court, as provided by law, and within the limitation periods stated in the relevant preceding sections.
- (f) Nothing contained herein shall prevent or limit the County from instituting legal action against a contractor.

### **ARTICLE 5 – ETHICS**

#### 5-1 Purpose

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



## 5-2 Definitions

The words defined in this section shall have the meanings set forth below throughout this article.

**"Immediate family"** shall mean a spouse and any other person living in the same household as the officer or employee who is a dependent of the officer or employee or of whom the officer or employee is dependent.

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

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

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

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

## 5-3 Proscribed Participation by Public Employees in Procurement Transactions

Except as may be specifically allowed by subdivisions B 1, 2 or 3 of Virginia Code § 2.2-3112, the State and Local Government Conflict of Interests Act, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the County when the employee knows that:

- (a) The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or
- (b) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or
- (c) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- (d) The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

#### 5-4 Solicitation or Acceptance of Gifts

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

#### 5-5 Disclosure of Subsequent Employment

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

#### 5-6 Participation in Bid Preparation; Limitation on Submitting Bid for Same Procurement

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of the County shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, the County may permit such person to submit a bid or proposal for that procurement or any portion thereof if the County determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the County.

#### 5-7 Kickbacks

- (a) No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
- (b) No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

- (c) No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
- (d) If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the County and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

5-8 Purchase of Building Materials, etc., from Architect or Engineer Prohibited

- (a) No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure; or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in Virginia Code §2.2-3101.
- (b) No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by the County to furnish architectural or engineering services in which such person has a personal interest as defined in Virginia Code §2.2-3101.
- (c) The provisions of subsections A and B shall not apply in cases of emergency.

5-9 Misrepresentations Prohibited

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 it to contain any false, fictitious or fraudulent statement or entry.

5-10 Penalty for Violation

Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any County employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

**ARTICLE 6 - DISPOSITION OF SURPLUS PROPERTY AND UNCLAIMED PROPERTY IN THE SHERIFF'S POSSESSION**

6-1 Sale of Surplus Property

All departments shall submit a Goods Surplus Form when there are County items to be disposed of in their possession. The Purchasing Agent shall have the authority to transfer such

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surplus stock to other County departments or using agencies of the Commonwealth. All property not so transferred shall be exchanged, traded in on new items, salvaged, or sold as deemed appropriate by the Purchasing Agent.

Joint Fleet Services shall be responsible for the surplus of County-owned vehicles. Departments shall contact Joint Fleet Services for assistance.

In general, all sales shall be made through an auction either public or online auction services, or issuance of an Invitation for Bid (IFB). Public auctions require a minimum of ten (10) calendar days prior advertisement in a newspaper of general circulation in the County of Spotsylvania. If a solicitation for Auctioneer Services for a public auction is needed, the requirements set forth in this policy in Section 2-8 shall apply.

The Commonwealth of Virginia's Department of General Services has authorized local public bodies the usage of the General Services' Surplus Property Program for the disposition of surplus materials. Proceeds from the sale of the surplus property are required to be returned to the County minus a service fee, which shall be set at the same rate charged by the Department to state public bodies. This method of disposition is optional and should be directed to the Purchasing Agent for further instructions.

Individual items may be scrapped, if in the opinion of the Purchasing Agent, the cost of storage and sale exceeds the value of the item.

However, the County shall honor the exceptions to this requirement pursuant to Virginia Code §15.2-951.

#### 6-2 Unclaimed Property in the Sheriff's Possession

Unclaimed, found or lost property in the Sheriff's possession shall be disposed of through report to Spotsylvania County Sheriff's Department, which shall dispose of the same as required by the Virginia Code and Section 2-9 of the County Code.