

PROCUREMENT POLICIES AND REGULATIONS OF STAFFORD COUNTY, VIRGINIA

I. IN GENERAL

1. Title.

This Policy shall be known and may be cited as the “Procurement Policies and Regulations of Stafford County, Virginia” (hereinafter “Policy”). This Policy applies to the purchase of goods and services from nongovernmental sources as contained in the Virginia Public Procurement Act, Virginia Code § 2.2-4300 *et seq.*

2. Definitions.

For purposes of this Policy, the following terms have the meanings ascribed to them herein, except where the context clearly requires another meaning:

Best value means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the county’s needs.

Board of Supervisors or Board means the Board of Supervisors of Stafford County, Virginia.

Change order means a written order, signed by a person authorized in this Policy or otherwise, directing a contractor to make changes which the changes clause of the contract authorizes to be ordered without the consent of the contractor.

Construction or construction contract means contracts for the building, altering, repair, improvement, or demolition of any public structure or building, or other public improvements of any kind to any public real property. It shall not include the routine operation, routine repair, or routine maintenance of existing buildings, structures, or real property, including publicly owned or operated utility lines or storm sewers.

Contractor means any individual, committee, club, association, or other organization or group of individuals, or any corporation, partnership, sole proprietorship, joint stock company, joint venture, or any other private legal entity, having or proposing a contract with the Board of Supervisors or any using department.

Contracts means all types of county agreements, regardless of what they may be called, for the procurement or disposal of services, supplies, or construction.

County of Stafford means Stafford County, Virginia.

County Attorney or County Attorney's Office means the Stafford County Attorney or his designee(s).

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

Potential bidder or offeror means a person who, at the time the Board 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.

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract and all phases of contract administration.

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, dentistry, medicine, optometry, pharmacy, or professional engineering and the services of an economist procured by the State Corporation Commission.

Requisition means a document or documents, in a form prescribed by the Chief Financial Officer (hereinafter "CFO"), which constitutes demand by the using department for the provision of supplies, services or construction.

RFP means a request for proposals.

Service contract means any contract which may be entered into by or on behalf of the Board or any using department for the provision of any service, to include time, labor or effort by the contractor, but not involving the delivery of a specific end product, other than reports incidental to the required performance; provided that the term shall not include contracts for regular employment in the county service; and provided further that it shall not include any contract for professional services which may be governed by an independent Policy pertaining to such services. The term "services" shall specifically include, but not be limited to, banking services.

Supplies means all property, articles or things, including, but not limited to, all equipment and materials, but not including real property or any interest in real property, which are to be used by or furnished to any using department.

Using department means all departments, offices, constitutional officers, agencies, divisions, boards, districts, or services within the county government, deriving their support, in whole or in part, from funds budgeted and appropriated by the Board, specifically including, but not limited

to, the school board and the social services department. This term shall include volunteer fire and rescue companies, except as may be otherwise provided in this Policy.

3. Violations of Policy.

The willful violation of any provision of this Policy or any rule or regulation adopted hereunder shall constitute a Class 1 misdemeanor. Upon conviction, any employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

4. Purpose and general application of chapter.

(a) The regulations contained in this Policy are promulgated by ordinance of the Board pursuant to Code of Virginia, §§ 2.2-4300(C) and 2.2-4302, to effectuate the purposes of those sections with regard to procurement and disposition of supplies, services, and construction for the county.

(b) Except as otherwise specifically provided, the regulations prescribed in this Policy shall apply to any contract for supplies, services or construction entered into after their effective date, unless the parties agree to their application to a contract solicited or entered into prior to their effective date.

(c) Except as otherwise specifically provided, the regulations contained in this Policy shall apply to every expenditure of funds appropriated by the Board, by or on behalf of the Board or any using department, specifically including, but not limited to, the county school board, constitutional officers of the county, and the social services department of the county, for the procurement of any supplies, services, or construction, except as otherwise provided by law or this Policy. Such regulations shall apply to all dispositions of county supplies.

5. Compliance with Policy.

All procurements of supplies, services, and construction shall be made in accordance with the provisions of this Policy.

6. Policy does not prevent compliance with conditions of grant, gift, or bequest.

Nothing contained in this Policy shall prevent the Board or any using department from complying with the terms and conditions of any grant, gift, or bequest.

7. Rights of school board as to purchases; Policy not applicable to procurement of capital improvements by school board.

Notwithstanding any other provisions of this Policy, the County school board shall retain its right to specify the goods and services it wishes to purchase and to approve or reject all purchases made on its behalf. Furthermore, this Policy shall not apply to the procurement of capital improvements by the school board which shall be governed by applicable state law.

8. Conflict of interests.

For the purposes of this Policy, conflict of interests shall be governed by the State and Local Government Conflict of Interests Act, Code of Virginia, § 2.2-3100 *et seq.*, and by the Virginia Public Procurement Act, Code of Virginia § 2.2-4367 *et seq.*

9. County not to discriminate against persons on basis of race, creed, sex, etc.

The County shall not discriminate against any person on the basis of race, color, creed, religion, national origin, sex, or handicapped status.

10. General powers and duties of County Administrator as purchasing agent.

(a) The County Administrator shall be the purchasing agent for the county and shall be under the supervision and control of the Board for the faithful execution and performance of such function. He shall perform the purchasing function through the finance department, but he may delegate such duties to the CFO.

(b) The County Administrator shall make all procurements and dispositions for the county in such manner and with such exceptions as may be provided for in this Policy. He shall have authority to transfer or trade supplies between using departments and he shall have charge of the storerooms and warehouses of the county.

(c) The County Administrator is hereby authorized to develop and implement suitable specifications or standards for any or all supplies to be purchased by the county. He shall, except where otherwise provided, inspect or provide for the inspection of all deliveries to ensure their compliance with the specifications so established.

(d) The County Administrator may delegate all authority to act as purchasing agent to the CFO, except as otherwise provided in this Policy.

11. General powers and duties of CFO under Policy; generally.

(a) The CFO personally shall interpret the meaning and application of this Policy and his/her decision on questions pertaining thereto shall be final. The CFO may seek the assistance of the County Attorney's office in rendering any decision or interpretation requested.

(b) The CFO shall maintain complete records pertaining to the performance of the procurement and disposition functions assigned to him by this Policy. With the exception of materials provided in connection with competitive procurements, prior to opening of bids or the award of a contract in competitive negotiations, such records shall be public documents and shall be open for inspection in accordance with the provisions of the Virginia Freedom of Information Act, Code of Virginia, § 2.2-3700 *et seq.*

(c) The CFO is hereby authorized to delegate any and all of the authority and duties set forth in this Policy not reserved specifically to him to such other officers and employees of the county as he shall deem appropriate. He may designate a person to be purchasing agent, one for the county and the other for the school board, who shall be employees of the finance department, but such designation shall not be deemed to relieve the CFO of responsibility for supervision and control of the purchasing function assigned to him by this Policy.

(d) Any purchasing agent designated pursuant to this section shall perform such duties as may be assigned by the CFO consistent with this Policy, and shall have charge of the purchasing office of the county.

12. Cooperation with department of minority business enterprise.

Within the limits of the funds appropriated and the provisions of law, the CFO shall cooperate with the Virginia Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies in promoting the purposes of that office.

13. Unauthorized procurements and dispositions generally.

(a) No person shall have the authority to bind the county or any using department to any contract, except as provided in this Policy.

(b) Any procurement or disposition made by any person in the name of the county or any using department, which procurement or disposition is not in compliance with this Policy shall be deemed unauthorized. Any person who makes an unauthorized procurement or sale may be personally liable therefore to the vendor or purchaser of supplies, services or construction. Such sales or procurements shall be voidable, in the discretion of the Board.

(c) The County Administrator and his employees shall not be liable and shall be held harmless for any unauthorized procurement or disposition which was not initiated or approved by them.

(d) A determination as to whether any procurement or disposition was unauthorized shall be made, in the first instance, by the purchasing agent, if there be one. The purchasing agent shall report his finding(s) to the CFO, who shall consult with the County Attorney's office. If the CFO personally determines that the procurement or disposition was unauthorized, he/she shall bill the person allegedly responsible for the amount of any damages sustained by the county. The person allegedly responsible shall have a right of appeal to the County Administrator, provided that the appeal is filed, in writing, within fourteen (14) calendar days of the submission of a bill to him/her. Should an appeal be denied, or not taken in a timely fashion, and the bill not be paid, the County Attorney's office shall undertake legal proceedings to recover the money owed.

(e) Any unauthorized procurement or disposition may be grounds for termination of the responsible employee from county employment or for the imposition of other adverse action which may be provided for in the county personnel regulations.

14. Requisition or purchase order and sufficient funds (budgeted, unencumbered and appropriated) required.

The CFO shall not prepare or maintain a procurement for any using department unless and until he has received, in advance, a properly completed requisition or purchase order for which there are budgeted, unencumbered, and appropriated funds sufficient to pay for the proposed procurement, except as may be otherwise provided in this Policy.

15. Initiation and processing of requisitions.

A requisition shall be initiated by the using department and processed by the purchasing office in accordance with such rules as the County Administrator has listed below:

(a) The County Administrator is hereby authorized to promulgate, after consultation with the CFO to establish rules for the internal administration of the purchasing office and such other matters as may be provided herein, including the method and manner of administratively processing procurements and sales. Such rules shall be consistent with the laws of the United States and Virginia, and shall have the force and effect of law.

(b) Rules which may be promulgated by the County Administrator in accordance with subparagraph (a) above shall be in effect from the date on which they are promulgated and may be amended, altered, or repealed by him as he shall deem appropriate. However, copies of all such action by the County Administrator with regard to such rules shall be immediately forwarded to the Board, which may overrule the County Administrator. The Board additionally reserves to itself the authority to amend, alter, or repeal any provision of the rules so promulgated.

(c) The following rules shall be promulgated in regards to the purchasing Policy:

(1) The regulations set out in this Policy, shall be kept current, including references to state and federal law, which may be applicable to certain procurements or sales.

(2) Specimen copies of all forms, including standard invitations for bids, standard contracts, and standard specifications.

(3) Internal operating procedures of the purchasing office, including the manner of processing requisitions and purchase orders, and methods for expediting purchases when the CFO determines them to be necessary

(4) A detailed procedure to be followed for all procurements for the school board to implement the provisions of Paragraph 7 of this Policy.

(5) Such other matters as the County Administrator shall deem necessary and proper to the efficient administration of the purchasing office or which shall be authorized in this Policy.

16. Compliance with federal law and regulations as to expenditure of federal assistance or contract funds.

Where the procurement of any supplies, services, or construction involves the expenditure of federal assistance or contract funds, the County Administrator shall comply with such federal law and authorized regulations as are mandatorily applicable and which may not be reflected in the regulations set out in this Policy.

17. General requirements for contracts.

(a) All contracts for fifty thousand dollars (\$50,000) or more to which the county is a party shall be in writing.

(b) All contracts shall be in a form prepared by the county and approved by the County Attorney or his designee, or shall be individually prepared for a specific procurement, and all such contracts shall incorporate provisions of this Policy by reference insofar as they may apply. Nothing herein shall prevent the use of a contract prepared by a vendor, if a standard contract has not been prepared for the procurement or if such use has been approved by the County Attorney's office. Notwithstanding the provisions of Paragraph 17, the provisions of this Policy shall be deemed incorporated, insofar as they may be applicable, into any contract to which a using department or the Board shall be a party, whether specifically referenced therein or not.

(c) All contracts shall be in the name of the Board, or where appropriate, in the name of a using department, which has independent statutory authority to enter into contracts; provided, however, that all leaseholds entered into by any using department shall be in the name of the Board.

18. Specific provisions to be included in contracts.

(a) *Generally.* Every contract to which the county is a party shall expressly contain the provisions required by this paragraph, in addition to such other terms and conditions as may be agreed to among the parties.

(b) *Termination for convenience of county.* Each contract shall contain appropriate provisions which permit work or delivery thereunder to be terminated, in whole or from time-to-time in part, whenever the County Administrator shall determine that such termination is in the best interests of the county and which provide for fair and reasonable compensation to any contractor who is so terminated.

(c) *Termination for default.* Each contract to which the county is a party shall contain an express provision which permits termination of the contract for failure of the contractor to perform his contractual obligations.

(d) *Termination for nonfunding.* Each contract to which the county is a party which requires that the county make payments beyond the fiscal year in which such contract was made shall

contain a provision for termination of the contract in the event that the Board shall cease to appropriate funds for the purposes of the contract.

(e) *Examination and copying of contractor's records.* Unless the County Attorney's office shall authorize an exception to this subparagraph, each contract for more than fifty thousand dollars (\$50,000) shall expressly provide that the contractor shall agree that the CFO, or his duly authorized agent, shall, until the expiration of three (3) years following the final payment on the contract, have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the contractor involving transactions related to the contract in question. Such contracts shall further contain a provision that the contractor shall include a similar access, examination, and copying requirement in any subcontract which is for more than ten thousand dollars (\$10,000). Such contracts and subcontracts shall further provide that, in the event there is litigation or arbitration involving the contract, rights of access, examination, and copying thereunder shall continue until any litigation, appeals, claims, or arbitration shall have been finally disposed of.

(f) *Employment discrimination.* Every contract over ten thousand dollars (\$10,000) shall include the following provisions:

(1) During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where religion, sex, or national origin 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.
- b. 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.
- c. 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.

(2) The contractor will include the provisions of the foregoing subparagraphs a, b, and c in every subcontract or purchase order of over ten thousand dollars (\$10,000) so that the provisions will be binding upon each subcontractor or vendor.

(g) *Faith-based clause.* This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, status as a service

disabled veteran, or any other basis prohibited by federal and/or state law relating to discrimination in employment.

(h) *Drug Free Workplace.* During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over ten thousand dollars (\$10,000), so that the provisions will be binding upon each subcontractor or vendor.

(i) *Legal Status.* All individuals performing work pursuant to this contract must be U.S. Citizens or possess documents that allow them to be employed and work in the United States.

19. Legal review of certain contracts.

All contracts for ninety-nine thousand nine hundred ninety-nine dollars (\$99,999) or more shall be reviewed by the County Attorney's office, prior to award of the contract, except where the contract is a lawful renewal of an existing contract to which there has been no material change. The County Attorney shall review nonstandard contracts at any amount.

20. Execution of contracts.

(a) Contracts in the amount of less than fifty thousand dollars (\$50,000) may be entered into by a using department under this Policy and shall be executed by the director of the using department, or his principal deputy, and by no other person, if authorized by the County Administrator.

(b) The County Administrator is authorized to execute contracts for less than one hundred thousand dollars (\$100,000) subject to this Policy and subject to the approved budget and appropriated funds.

(c) Contracts which are to be entered into directly by the Board may be signed by the County Administrator or his designee.

(d) Contracts which may be entered into directly by the purchasing office shall be executed by the such other person as the CFO may direct.

21. Contract administration.

(a) The using department shall, unless the CFO shall otherwise direct, inspect and approve or disapprove all deliveries under contracts and the performance thereunder. Discrepancies in deliveries or in the performance of the contract shall initially be brought to the attention of the

vendor by the using department. The using department shall also promptly notify the CFO of any such discrepancies. Failure to satisfactorily resolve any discrepancies that has been identified shall be brought to the attention of the CFO, who shall institute formal complaint with the vendor. If satisfaction is still not forthcoming, the CFO shall contact the County Attorney for further proceedings.

(b) Notwithstanding any other provision of this Policy, the Board may specifically provide for separate contract administration in construction contracts.

22. Blanket purchase agreements and purchase orders.

(a) Blanket purchase agreements are requirements-type contracts for supplies, which are regularly required by using departments and used on an as-needed basis.

(b) The CFO may determine those supplies which may reasonably be acquired by the county on such contracts for the use of one or more using departments and may require any or all using departments to obtain such supplies by requisitions filed against such uniform blanket purchase orders.

(c) The County Administrator is authorized to promulgate such rules as may be necessary to account for the cumulation of funds among several using departments for application against a uniform blanket purchase order.

(d) Blanket purchase agreements shall be instituted on an annual basis, unless the CFO shall authorize a shorter term. Any such blanket purchase agreement shall be subject to the requirements for bidding which are applicable to the reasonable estimated value of such agreement.

(e) No blanket purchase agreement shall be of itself construed to constitute a contract with the vendor for the full estimated amount of the annual agreement, and a contractual obligation shall exist with any vendor only to the extent that requisitions shall have actually been made against such agreement.

(f) It shall be the responsibility of the head of the using department to ensure that no unauthorized purchases are made against any properly awarded blanket purchase agreement, and he shall report any unauthorized purchase to the CFO, in accordance with this Policy.

23. Procurements of less than five thousand dollars (\$5,000).

Procurements of less than five thousand dollars (\$5,000) shall be made directly by the using department, after having made such reasonable investigation into price and other terms as may be necessary to protect the interests of the county.

24. Procurements five thousand dollars (\$5,000) and greater and less than fifty thousand dollars (\$50,000).

Purchases of five thousand dollars (\$5,000) or more, but less than fifty thousand dollars (\$50,000), may be made on the open-market from competitive quotations. The using department shall solicit at least three (3) written price quotations by mail, telephone, fax, electronic mail, or other means. A record shall be kept of quotes solicited, quotes received, and the vendor selected.

25. Procurements from state penitentiary or pursuant to joint purchasing agreements.

Procurements of supplies from the state penitentiary or through state, federal, council of governments, or other political jurisdiction bids, or any other source with which the county has entered or shall enter a joint purchasing agreement, shall be exempt from the competitive bidding requirements of this Policy; provided, that other provisions of this Policy shall apply where otherwise appropriate.

26. Sole source procurements.

Sole source procurements shall be exempt from the regulations of this Policy for competitive bidding. Where services or supplies are only available from a single source, because of legal requirements, specific patents or copyrights, peculiar qualifications and skills, technical specifications, or other reasons, the CFO may obtain such supplies or services from the sole source. It shall be the responsibility of the using department to justify the need for sole source procurement. Upon a determination in writing from the using department that there is only one (1) source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The CFO shall issue a written notice stating that only one (1) source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the Board awards or announces its decision to award the contract, whichever occurs first. The CFO or his designee is authorized to enter into direct negotiations with the sole source supplier to obtain such terms and conditions as he may determine to be in the best interest of the county. He shall, at the outset of such negotiations, set detailed cost and price objectives, and shall maintain a record of negotiations with the sole source supplier.

27. Purchases for special police work.

Purchases for special police work shall be exempt from the regulations of this Policy governing competitive bidding. When the sheriff or his designee certifies to the CFO that any items are needed for special police work, including undercover police operations, the CFO may procure the needed items without competitive bidding.

28. Emergency procurements generally.

(a) Emergency procurements shall be exempt from the regulations of this Policy for competitive bidding.

(b) For the purposes of this Policy, an emergency shall be deemed to exist when there is a breakdown in any county service or any time that supplies are needed for immediate use in work which may be essential to, or may vitally affect, the public health, safety, or general welfare. An emergency may include work undertaken under court order or in anticipation of court order.

(c) If an emergency occurs during office hours, the using department shall notify the CFO and he shall either procure supplies or services directly or authorize the using department to do so.

(d) If an emergency occurs after office hours, the using department shall procure necessary supplies or services. The head of the using department shall forward a requisition to the purchasing office, within seventy-two (72) hours after the emergency situation, together with a written justification for the procurement and a copy of the delivery record.

(e) The head of the using department shall initially determine in writing whether an emergency exists which justifies the application of these provisions, and shall make a written determination of the basis for the emergency and for the selection of the particular contractor. The purchasing agent shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the board awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. If, upon subsequent review, the CFO personally determines that no emergency actually existed, he shall proceed under the regulations pertaining to unauthorized procurements. Prior authorization for emergency procurements shall be obtained from the CFO personally whenever possible.

29. Confirming orders for emergency procurements.

When any using department makes an emergency procurement, it shall execute a requisition. Such requisitions shall be forwarded directly to the purchasing office for review and processing.

30. Review and payment of demands on open accounts, etc.

Demands for payment made on open accounts for supplies, services, or construction or emergency procurements, for which contracts have previously been awarded, shall be forwarded directly to the CFO for review and payment.

31. Public inspection of procurement 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, Virginia Code § 2.2-3700 *et seq.*

(b) Cost estimates relating to a proposed procurement transaction prepared by or for the county shall not be open to public inspection.

(c) Any bidder or offeror, upon request, shall be afforded the opportunity to inspect bid and proposal 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 and proposal records shall be open to public inspection only after award of the contract.

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

(e) Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction or prequalification application submitted pursuant to the Virginia Code, § 2.2-4317(B), shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor must invoke the protections of this subparagraph 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.

32. Sale, transfer or other disposal of property.

(a) The CFO is authorized to sell, trade, transfer, or otherwise dispose of any property which is the property of the Board and is determined to be surplus either to the using department or the county generally.

(b) The using department shall be required to certify what of its property is surplus to it and may be disposed of. The CFO shall determine whether such property is surplus to the county generally. Such determination shall be final. The using department shall be responsible for the storage, maintenance, and safekeeping of all supplies in its charge, including surplus property, and for the transportation of surplus property to the site of sale or other disposal.

(c) The CFO may authorize any using department to sell any property certified to be surplus to the county generally; provided that any such sale shall be consistent with this paragraph.

(d) When the head of the using department certifies to the CFO that any property is irreparable or unsalvageable, and that the costs of storage are excessive, and that such property could not be sold for sufficient funds to cover the costs of storage or other disposal, upon receipt of written authorization from the CFO, the head of the using department may cause such property to be transported to the county landfill for disposal. The head of the using department shall make and keep, for not less than two (2) years, a complete written record of all such dispositions of property.

(e) The County Administrator may promulgate additional rules governing in-house transfers and trades not inconsistent with this section.

(f) Sales of surplus property shall be by electronic auction, competitive verbal bids, or by other method. The CFO shall determine which method is likely to obtain the highest price in each case or class of cases, and his decision shall be final.

(g) Property that has been certified by the head of the using department as surplus may be used for trade-in value in connection with any procurement, provided that, if the procurement is required by this Policy to be by competitive sealed bidding, the bidder shall be required to state the value that he assigns the property to be traded in as a part of his bid, and to provide prices both with and without trade-in.

(h) Whenever any person acquires county property disposed of pursuant to this paragraph, and is required to remove the property from premises owned by the county, such person shall execute a written agreement to indemnify and hold the county harmless from any and all liability which may be incurred during removal. Such person shall provide the CFO with evidence of the existence of liability insurance covering the risks potentially involved and, if required by law, workers' compensation insurance.

II. COMPETITIVE BIDDING

1. General requirements for procurements of fifty thousand dollars (\$50,000).

All procurements of supplies and services estimated to be fifty thousand dollars (\$50,000) or more shall be made on the basis of sealed competitive bids, except as otherwise provided in this Policy. The CFO shall solicit bids from prospective contractors by mailing them Invitation for Bids ("IFB") prepared as provided in this section, by posting a copy of the IFBs on a bulletin board in the purchasing office and, where required by law or this Policy, or where deemed appropriate by the CFO, by publication of a notice of IFBs in a newspaper of general circulation in the county or elsewhere. The CFO may advertise the bid by means of professional or trade publications. All notices shall be designed and intended to obtain as many bidders reasonably able to meet the specifications as possible, but no procurement shall be subject to challenge solely on the ground that a qualified bidder was not solicited. The CFO may require the using department to identify potential bidders for receipt of notice in accordance with this section.

2. General requirements for procurements for five thousand dollars (\$5,000) to fifty thousand dollars (\$50,000).

Procurements of supplies or services estimated to cost five thousand dollars (\$5,000) or more, but less than fifty thousand dollars (\$50,000), may be made by the department director in the open-market, without competitive sealed bids. Except as otherwise provided in this Policy, the department director shall solicit no fewer than three (3) written quotes for such supplies or contractual services by mail, by fax, by electronic mail, or by other public notice. The department director shall maintain a public record of all quotes solicited and all quotes received, and shall indicate in such records which quote was accepted.

3. Exemptions generally.

(a) Notwithstanding any other provision of this Policy, the items listed in this paragraph are exempt from the requirements of competitive sealed bidding, but shall comply with other applicable provisions of this Policy. These items may be solicited and contracted for by the CFO as he/she deems appropriate. The list of exempt items may be amended by the Board whenever it deems it appropriate. The CFO, may, however, elect to comply with any or all of the requirements for competitive bidding for the items listed in this section.

(b) The exempt items and categories of items are as follows:

- (1) Advertising.
- (2) Audit fees.
- (3) Bank service charges.
- (4) Books, manuscripts and pamphlets.
- (5) Care, search and housing of prisoners.
- (6) Dues, subscriptions and publications, Dunn & Bradstreet reports.
- (7) Educational films.
- (8) Freight charges.
- (9) Inspection fees and costs.
- (10) Legal services, including, but not limited to, court costs, witness fees (lay and expert), transcripts, court reporters, exhibits and the like, jury verdicts and settlements.
- (11) Perishable food.
- (12) Prescriptions/medicines.
- (13) Self-insurance claims.
- (14) Service and maintenance agreements.
- (15) State and local government entities.
- (16) Travel and related fees.
- (17) Tuition and training.

(18) Utility services.

(c) Notwithstanding that any item may be exempt from competitive sealed bidding as a consequence of this paragraph, any expenditure of one hundred thousand dollars (\$100,000) or more for such item must be approved by the Board, unless such procurement has been previously approved by the Board in connection with the annual budget process or in the case of emergencies.

4. Preparation and contents of IFBs; equal brand provisions.

(a) Competitive sealed bids, where required, shall be solicited by IFBs, which shall be prepared by the CFO, with such assistance from the using department as he shall require. IFBs shall be comprised generally of an invitation, instructions to bidders, plans, and specifications for the supplies or services desired and proposed contracts. IFBs may include such other information as the CFO deems appropriate and necessary.

(b) IFBs and specifications for all supplies or services shall include the following provisions relating to equal brand products other than those which may be set forth by name or other clear identification in the specifications:

- (1) The name of a certain brand, make, manufacturer, or definite specifications is to denote the quality standard of article desired, but does not restrict bidders to the specific brand, make, manufacturer, or specification named; it is to set forth and convey to prospective bidders the general style, type, character and quality of article desired, and
- (2) Wherever in specifications or contract documents a particular brand, make of material, device, or equipment is shown or specified, such brand, make of material, device, or equipment shall be regarded merely as a standard. Any other brand, make of material, device, or equipment which is recognized as the equal of that specified, considering quality, workmanship and economy of operation, and is suitable for the purpose intended, shall be considered responsive to the specifications.

5. Cancellation of IFB.

Any IFB(s) or other solicitation(s) may be canceled when the CFO determines that it is in the best interests of the county to do so. The reasons therefor shall be made a part of the record in the matter.

6. Prequalification of prospective contractors.

(a) The CFO is authorized to prequalify prospective contractors prior to any solicitation of bids, whether for supplies, services, insurance, or construction, by requiring prospective contractors to submit such information as the director deems appropriate, including samples, financial reports, and references; provided, however, that opportunity to prequalify shall be given to any prospective contractor who has not been suspended or debarred under this Policy.

(b) The CFO may refuse to prequalify any prospective contractor, provided that written reasons for refusing to prequalify are made a part of the record in each case. The decision of the CFO shall be final.

(c) In considering any request for prequalification, the CFO shall determine whether there is reason to believe that the prospective contractor possesses the management, financial soundness, and history of performance which indicates the apparent ability to successfully complete the plans and specifications of the IFB(s). The CFO may employ standard forms designed to elicit necessary information or may design other forms for the purpose.

(d) Prequalification of a prospective contractor shall not constitute a conclusive determination that the prospective contractor is responsible and such contractor may be rejected as nonresponsible on the basis of subsequently discovered information.

(e) Failure of a prospective contractor to prequalify with respect to a given procurement shall not bar the contractor from seeking prequalification as to future procurements or from bidding on procurements which do not require prequalification.

7. Submission of sealed bids.

Written sealed bids, where required by this Policy, shall be returned to the CFO or designee. Bid submission may be in any sealed envelope which is clearly identified by project or procurement name, the name of the bidder, the due date, and the time of bid opening, and which further states plainly that the envelope is not to be opened prior to bid opening. Should any bid be received which is not so identified, the bidder assumes the risk that the submission will be opened prior to bid opening. Bids opened prior to the time of bid opening shall be disqualified.

8. Alternate bids.

Any bidder may submit a bid which he knows varies materially from the specifications. Such bid shall be clearly labeled as an ALTERNATE BID and may be provided in addition to, or in lieu of, a responsive bid. Such bids may be accepted only where no responsive bid is received and only when the alternate bid is in substantial compliance with the specifications.

9. Bidder's certification as to price.

All bidders may be required to certify, in writing at the time of bid, that the price being offered to the county in connection with the particular solicitation is the price offered to the bidder's most favored customer(s).

10. Rejection of bids.

The CFO may reject any or all bids.

11. Opening of bids.

Bids shall be opened publicly in the presence of one (1) or more witnesses, at the time and place designated in the IFB(s) or any amendment thereto. Bids which are received after the time designated shall not be opened or considered.

12. Withdrawal of bid after opening.

(a) Any bidder for supplies, services, or construction may withdraw his 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. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The CFO shall require, and so state in the IFBs, the following procedure for withdrawal of a bid:

- (1) The bidder must give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.
 - (2) 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 (5%).
 - (3) If a bid is withdrawn under this paragraph, the lowest responsible and responsive remaining bid shall be deemed to be the low bid.
 - (4) 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 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, without the approval of the CFO. The person or firm to whom the contract was awarded and the withdrawing bidder are jointly liable to the county in an amount equal to any compensation paid to, or for the benefit of, the withdrawing bidder without such approval.
- (b) The CFO may contest withdrawal of any bid by any means provided by law.

13. Evaluation of bids.

Bids shall be evaluated on the basis of requirements which may be set forth in the IFB(s) and which may include criteria to determine acceptability as to inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

14. Waiver of bid informalities.

The CFO may waive any informality in any bid; provided, however, that bids or amendments thereto which are received after the time specified for the opening of bids will neither be opened nor considered.

15. Award of contract generally.

(a) All procurements of supplies or services which are subject to the competitive sealed bidding requirements set forth in this section shall be unconditionally awarded to the lowest responsive and responsible bidder, without alteration or correction, by the CFO, except where authority to award or reject is given to some other person or reserved to the Board, or where only alternate bids are received and handled in accordance with Section II, Paragraph 8.

(b) The contract shall be awarded with reasonable promptness by written notice to the successful bidder. Nothing herein shall prevent the CFO from giving notice of intention to award to the apparently successful bidder, but such notice shall not constitute award.

16. Procedure when only one responsive and responsible bid received.

In the event that only one (1) responsive and responsible bid is received for supplies or services which require solicitation of competitive sealed bids, the IFB(s) may be canceled and the item(s) rebid, unless the CFO determines that the price bid is reasonable and in the best interests of the county, on the basis of price comparison, value analysis, prior price history, an engineering estimate, or other method which establishes the reasonableness of the price bid. When the CFO personally determines that the above-methods of establishing price reasonableness are not feasible, he may authorize his agent(s) to enter into negotiations with the single responsible and responsive bidder. Such negotiations shall consist of detailed discussions with regard to the cost of labor, materials, overhead and profit. The CFO shall establish a detailed cost/price objective which he determines to be in the best interests of the county, prior to the initiation of any negotiations. Any bidder who is party to such negotiations shall be required to certify that his price proposal is complete, current, and accurate prior to the initiation of such negotiations. A record of negotiations shall be prepared upon the completion thereof, which shall detail the most significant considerations which resulted in the agreed upon contract price.

17. Tie bids.

(a) In the case of a tie bid, preference shall be given to goods, services, and construction produced in Virginia or provided by Virginia persons, firms, or corporations, if such a choice is available; otherwise the tie shall be decided by lot.

(b) Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.

(c) Notwithstanding the provisions of subparagraphs (a) and (b) above, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

18. Negotiations with successful bidder.

No negotiations may be entered into with an apparently successful bidder with respect to any contractual term or condition which would constitute a material change in the specifications or the contract price.

19. Record of bids.

Each bid received, with the name of the bidder, shall be entered on a record and each successful bidder shall be specifically noted on such record after the award of the contract.

20. Protest of award--Generally.

(a) Any bidder or offeror may protest the award of, or the decision to award, a contract to any other bidder or offeror, by submitting a written protest to the CFO within the times specified in this paragraph.

(b) No protest shall lie for any claim that the selected bidder or offeror is not a responsible bidder or offeror, except as provided in Code of Virginia § 2.2-4359, nor shall any protest lie for any matter which the CFO determines could reasonably have been ascertained prior to the time set for the opening of bids or proposals, unless such protest shall have been filed in writing not less than ten (10) business days prior to such time.

(c) Any protest, other than one required to be made before the opening of bids or proposals shall be filed not later than ten (10) calendar days after the award or decision to award the contract to the successful bidder or offeror is publicly posted.

(d) Any protest shall state in detail the basis therefor and the specific relief requested.

(e) The CFO shall inform the County Attorney's office of the receipt of any protest and shall provide all relevant information and documentation.

(f) The CFO shall personally decide all protests within ten (10) days of receipt thereof, and shall issue written findings as provided in this paragraph. His decision shall be final, unless appealed within ten (10) days to the County Administrator. The County Administrator shall conduct a hearing conforming to the requirements of the Code of Virginia § 2.2-4365. The

decision of the County Administrator shall be final unless appealed to the circuit court of the county within thirty (30) days of receipt of the written decision.

(g) 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 (10) days after posting or publication of the notice of such contract as provided in Section I, Paragraph 26.

21. Legal actions.

(a) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the IFB.

(b) A bidder denied withdrawal of a bid under this Policy may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of Stafford County was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the IFB.

(c) A bidder, offeror, or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided, whose protest of an award or decision to award is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, within ten (10) days, 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 or not in accordance with the Constitution of Virginia, statutes, regulations, ordinances or the terms and conditions of the IFB or Request for Proposal (hereinafter "RFP").

(d) If injunctive relief is granted, the court, upon request of the County, shall require the posting of reasonable security to protect the County.

(e) A contractor may bring an action involving a contract dispute with the County in the appropriate circuit court.

(f) A bidder, offeror, or contractor need not utilize administrative procedures meeting the standards of this Policy, if available, but if those procedures are invoked by the bidder, offeror, or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the county agrees otherwise.

(g) Nothing herein shall be construed to prevent the county from instituting legal action against a contractor.

22. Same--Remedies.

(a) In the event that the CFO determines that a decision to award a contract is arbitrary or capricious, prior to the award of a contract, then the sole relief shall be a finding to that effect and he may cancel the proposed award or revise it to comply with law.

(b) In the event that the CFO makes the determination required in subparagraph (a) after a contract has been awarded, the sole remedy shall be a finding to that effect and relief as provided in the Code of Virginia § 2.2-4360. In no case may the protester be awarded anticipated profits or the costs or expenses of protest or appeal of any decision to the courts.

(c) In the event that the CFO determines that a protest filed under Section I, Paragraph 20(b) is well-founded, he may cancel the solicitation or revise it to comply with law.

(d) The validity of any contract awarded in good faith in accordance with this Policy shall not be affected by any protest or appeal, and award of a contract need not be delayed for the period during which a bidder or offeror may protest; provided that, in the event of a timely protest, no award shall be made unless the CFO personally determines that it is necessary to proceed to award without delay to protect the public interest, or unless the bid or offer would otherwise expire.

23. Bid bonds.

The CFO may require that each bidder on a competitively bid procurement for supplies or services for one hundred thousand dollars (\$100,000) or more submit with his bid, a certified check, payable to the county, for a sum not to exceed five percent (5%) of the bid total, as a guarantee that the bidder will enter into a contract for the supplies or services sought should he be awarded the contract. In lieu of a certified check, it shall be sufficient that the bidder provide an irrevocable letter of credit or corporate surety bond, issued by a company licensed to do business as a surety in Virginia, for a sum equal to the amount of any certified check which would otherwise have been required. The conditions of such bond shall be established by the CFO, unless otherwise established by law. Noncompliance with this section may require the rejection of the bid. Annual bid bonds may be accepted.

24. Payment and performance bonds.

(a) The CFO may require any bidder for supplies or services to execute a performance bond in an amount equal to one hundred percent (100%) of the contract price solely for the protection of the county, conditioned upon the faithful performance of the work in strict conformity with the contract documents.

(b) The CFO may require any successful bidder for supplies or services to execute a payment bond in an amount equal to one hundred percent (100%) of the price specified in the contract, conditioned upon the faithful payment of all persons who have and fulfill contracts which are

directly with the contractor for performing labor or furnishing materials in the prosecution of the work provided for in any such contract.

(c) Any performance or payment bond required hereunder shall be in the form of a certified check, irrevocable letter of credit or a bond executed by a surety company authorized to do business as a surety in the commonwealth.

III. COMPETITIVE PROPOSALS

1. When authorized; factors to be considered for authorization.

(a) When the CFO personally determines in writing (specifically setting forth the basis for the determination) that the use of competitive sealed bidding is either not practicable or is not advantageous to the county or any using department, a contract for supplies or other than professional services may be entered into by competitive sealed proposals.

(b) In making his determination under this section, the CFO shall consider whether:

- (1) Quality, availability, or capability is overriding in relation to price in procurements for research and development, technical supplies, or special services;
- (2) The initial installation needs to be evaluated together with subsequent maintenance and service capabilities, and what priority should eventually be given these requirements in the best interest of the county; or
- (3) The marketplace will respond better to a solicitation permitting not only a range of alternative proposals, but also evaluation and discussion of them before making an award (for example, with respect to the acquisition of data processing hardware and software).

2. Solicitation of proposals generally.

Proposals shall be solicited under this article through RFPs and adequate public notice shall be provided to obtain the widest range of offerors.

3. Preparation and contents of Request for Proposal (RFP).

(a) When authorization has been received to employ competitive sealed proposals, a RFP shall be prepared by such person as the CFO shall direct.

(b) A RFP shall contain at least the following information:

- (1) The type of supplies or services required;
- (2) A description of the work involved and its location;

- (3) An estimate of when and for how long the services shall be required;
- (4) The type of contract which will be used;
- (5) The date by which proposals shall be submitted;
- (6) A statement that all proposals shall be in writing;
- (7) Statement that information received will not be disclosed to other offerors during selection;
- (8) A statement of the minimum information that the proposal must contain, to include, but not limited to, where appropriate:
 - a. The name and the location of the offeror's principal place of business;
 - b. If deemed relevant by the draftsman of the RFP, the age of the offeror's business and average number of employees over a previous period of time, as may be specified;
 - c. The abilities, qualifications, and experience of all persons who would be assigned to provide the required services or supplies;
 - d. A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous, specified period of time, and a list of current references, including telephone numbers, and e-mail addresses who may be contacted with respect to such contracts;
 - e. A plan giving as much detail as practical explaining how the required services shall be performed, how the required services shall be provided, or of what they shall consist; and
- (9) The factors, including the offeror's proposed compensation, to be used in the evaluation and selection process, listed in descending order of their relative importance or accorded a prespecified point value. Such criteria shall include, among other relevant things, proximity to the place where services are to be performed, the offeror's present workload, the applicability of prior experience, and the suitability of the supplies to meet the identified needs.

4. Criteria for evaluation of proposals.

The criteria which shall be used in the evaluation of competitive sealed proposals shall be set forth in detail in the RFP, as provided in Section III, Paragraph 3(b)(9), and shall be strictly adhered to in the selection process. Any such criteria may include judgmental factors, in addition to objective factors, relating to the procurement.

5. Opening and register of proposals.

Proposals shall be opened so as to avoid disclosure of the contents of offers to competing offerors during the process of negotiation. A register of proposals shall be provided in accordance with rules promulgated by the County Administrator.

6. Discussions with responsible offerors.

As shall be provided in the RFPs and as may be further provided in this Policy, discussions may be conducted with responsible offerors who submit proposals determined by the CFO to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion of proposals, and revisions thereto may be made by the offeror after submissions and prior to award, for the purpose of making and obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

7. Negotiations with selected offeror.

(a) The CFO or a specific designee shall negotiate a contract with the selected offeror, for the required supplies or services at a compensation determined to be fair and reasonable. Assistance in the conduct of negotiations may be requested of the County Attorney.

(b) Negotiations under this section shall be directed toward:

- (1) Making certain that the offeror has a clear understanding of the scope of the services or the supplies, specifically the essential requirements involved in providing the required supplies or services;
- (2) Determining that the offeror will make available the necessary personnel and facilities to perform the services in the required time, or provide the needed supplies; and
- (3) Agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services and the scope, complexity and nature of such services or the supplies required.

8. Award of contracts; protests.

Award of a contract shall be made by the County Administrator to the responsible offeror whose proposal is most advantageous to the county and with whom negotiations have been successful. The County Attorney may be consulted with respect to the form and content of the contract with the selected offeror. Protests shall be made in accordance with Section II, Paragraph 20.

IV. SPECIAL PROVISIONS RELATING TO CONSTRUCTION CONTRACTS

1. Application of article.

Contracts for construction shall be governed generally by this Policy, and by the additional regulations set out in this section. Where a regulation set forth in this section is in conflict with any other provision of this Policy, the provisions of this section shall govern.

2. Applicability of state and federal law.

Contracts for construction which are subject to the provisions of state and federal law shall be governed thereby and by the regulations of this Policy, where they do not conflict with such state or federal law.

3. Solicitation of bids.

Bids for construction shall be solicited by the CFO by means of formal IFBs, instructions to bidders, plans, and specifications for the project and proposed contracts for the work, which shall be prepared by the CFO in consultation with appropriate persons, including architects, engineers and other consultants who may be employed by the county for the purposes of any project. Invitations may be distributed by any such party employed by the county.

4. Award of contract; rejection of bids.

(a) All contracts for construction of one hundred thousand dollars (\$100,000) or more shall be awarded by the Board, in accordance with the regulations governing the award of contracts generally. The Board may reject any or all bids, without giving reason therefor.

(b) Construction contracts for less than one hundred thousand dollars (\$100,000) may be awarded by the County Administrator, in accordance with the regulations governing the award of contracts generally, subject to this policy and subject to approved budget and appropriated funds. The County Administrator may reject any or all bids, without giving reason therefor.

(c) The Board may direct that the authority provided in this section may be exercised by any other person specified herein.

5. Bid Bonds

(a) All bids or proposals for construction contracts for one hundred thousand dollars (\$100,000) or more shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent (5%) of the bid amount.

(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.

(c) Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than one hundred thousand dollars (\$100,000).

6. Payment and performance bonds.

(a) The CFO shall require any bidder for a construction contract of one hundred thousand dollars (\$100,000) or more to execute a performance bond in an amount equal to one hundred percent (100%) of the price specified in the contract, solely for the protection of the county, conditioned upon the faithful performance of the work in strict conformity with the plans, specifications and conditions for same.

(b) The CFO shall require any successful bidder for a construction contract of one hundred thousand dollars (\$100,000) or more to execute a payment bond in an amount equal to one hundred percent (100%) of the price specified in the contract. This shall be conditioned upon the faithful payment of all persons who have and fulfill contracts directly with the contractor for performing labor or furnishing materials provided for in such contract.

(c) Any performance or payment bond required hereunder shall be in the form of a certified check, irrevocable letter of credit, or a bond executed by a surety company authorized to do business as a surety in the commonwealth.

7. Change orders.

Any owner's representative appointed by the Board, or should there be no such representative, the County Administrator, may approve any change order which does not involve cumulative change in the contract price of not more than fifty thousand dollars (\$50,000) or twenty-five percent (25%), whichever is greater and a change in the time of performance of not more than an estimated thirty (30) days.

8. Special provisions for design-build, fast track, and construction manager contracts.

(a) Notwithstanding any other provisions of this Policy, the Board may authorize the use of design-build, fast track, or construction manager type contracts for construction. When such authorization has been given, it shall not be necessary to bid the work competitively, nor shall the provisions of this Policy, with respect to construction, be applicable.

(b) The County Administrator, in consultation with the County Attorney, shall execute such RFPs and enter into such negotiations as he deems appropriate to enter into a contract for the work under this section. Any such contract shall be submitted to the Board for approval prior to execution of the contract documents. The County Administrator may designate any person to administer the contract on behalf of the county.

V. SELECTION OF PROFESSIONALS

1. Applicability of article.

(a) This article governs the selection of professional services by using departments and by the Board and such selection shall not be subject to the competitive bidding requirements of this Policy.

(b) This article shall apply to those using departments subject to the provisions of this Policy. It shall govern the format for the drafting of RFPs, and the procedure to be followed in their use.

(c) The procedure set forth in this section is recommended for any procurement of professional services, but shall be required only for professional services reasonably estimated to cost fifty thousand dollars (\$50,000) or more.

2. Board authorization required for certain contracts.

Contracts for professional services, excluding those obtained pursuant to Section V, Paragraph 3(c)(3), anticipated to cost fifty thousand dollars (\$50,000) or more, may be entered into only with the specific authorization of the Board.

3. Determination of need for professional services; approving authority.

(a) The head of the using department in the area most directly affected by the need for professional services shall determine, in the first instance, the need for professional services. He shall recommend selection of a professional to the appropriate approving authority, as provided herein.

(b) If the funds necessary for acquisition of professional services have not previously been budgeted and appropriated by the Board, the using department shall prepare a request for such action and forward it to the County Administrator for approval and presentation to the Board. The Board shall either approve or disapprove the request, in whole or in part. Approval shall constitute authorization for the using department to obtain the identified professional services, in accordance with this article.

(c) When the Board approves a request, as provided in subparagraph (b), or when the funds for professional services have already been included in a using department's budget and appropriated in accordance with that budget, such services may be acquired by an approving authority as follows:

- (1) Professional services estimated to cost less than fifty thousand dollars (\$50,000) shall be obtained by the head of the using department or his designee by obtaining a written proposal from the firm. Proposal information shall be forwarded to the purchasing office for approval and to act as support for the purchase order.

- (2) Professional services estimated to cost fifty thousand dollars (\$50,000) or more shall be obtained only by the issuance of a written RFP indicating the general terms for services sought, specifying the factors that will be used in evaluating the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.
- (3) The County Attorney shall have the authority to obtain professional services for a total sum of less than fifty thousand dollars (\$50,000) without executing a standard contract for services, as long as the County Attorney accepts a contractor's proposal or engagement letter in writing, and promptly sends the acceptance and the proposal or engagement letter to the purchasing office.

4. Format for RFP.

RFPs for professional services shall be prepared in the same format provided in Section III.

5. Distribution of RFP; advertising for prospective offerors.

The person charged with responsibility for the RFP for professional services shall ensure that it is widely-distributed among persons and firms reasonably able to provide the required services. When such person determines that sufficient time exists, he shall advertise for prospective offerors in a newspaper of general circulation, in trade journals, and other publications and as he shall otherwise deem appropriate to obtain the highest practical number of responses.

6. Receipt and handling of proposals.

Proposals submitted under this section shall be dated and the time received shall be recorded thereon. Proposals shall not be publicly opened nor disclosed to any person not a member of the evaluation committee referred to in Section V, Paragraph 7, except the County Administrator or County Attorney or their designees. Nothing contained in any offer shall be open for public inspection until such time as an award has been made, except as may be otherwise required by the Virginia Freedom of Information Act, Code of Virginia § 2.2-3700 *et seq.*

7. Evaluation of proposals.

(a) Following distribution of the RFP under this section, the approving authority shall appoint an evaluation committee, which shall review and evaluate any proposals which are received and prepare a recommendation to the approving authority.

(b) The evaluation committee shall evaluate proposals solely on the basis of the evaluation factors, which were set out in the RFP.

8. Discussions with offerors.

(a) The evaluation committee appointed pursuant to this article may conduct discussions with any offeror and shall invite three (3) to five (5) offerors for such discussions. The purposes of the discussions shall be limited to the determination in greater detail of the offeror's qualifications and the exploration, with the offerors, of the scope and nature of the required services, the offeror's proposed method of performance, the relative utility of alternate methods of approach and cost of the services. A record shall be kept and maintained for a reasonable time of all such discussions.

(b) No information may be conveyed to any offeror which was submitted by any other offeror in the conduct of discussions under this section.

(c) Proposals may be modified or withdrawn at any time prior to the conclusion of the discussions entered into under this section.

9. Selection of best qualified offerors.

(a) Following discussions provided for in Section V, Paragraph 8 to determine the qualifications of the offerors, the evaluation committee shall select, in the order of their respective qualifications ranking, no fewer than three (3) acceptable offerors (or such lesser number, if less than three (3) acceptable proposals were received) deemed to be the best-qualified to provide the required services.

(b) The evaluation committee shall forward its recommendations to the appropriate approving authority as provided in this paragraph, which authority shall select the best-qualified offeror.

10. Submission of cost or pricing data by selected offeror.

The offeror selected by the approving authority pursuant to Section V, Paragraph 9 may be required to submit cost or pricing data to the person responsible for the preparation of the RFP at a time specified prior to the commencement of negotiations in accordance with Section V, Paragraph 11.

11. Negotiations with selected offeror.

Negotiations with the best-qualified offeror selected under Section V, Paragraph 9 may be conducted in accordance with Section III.

12. Award of contract.

If a contract can be agreed upon with the best-qualified offeror pursuant to negotiations provided for in Paragraph 11 above, the contract shall be awarded to that offeror.

13. Failure of negotiations to produce contract.

(a) If a contract cannot be agreed upon between the county and the best-qualified offeror under this section, a written record stating the reasons therefor shall be placed in the file and the county negotiator shall advise the offeror of the termination of negotiations.

(b) Upon failure of negotiations to produce an acceptable contract, the county negotiator may enter into negotiations with the next most-qualified offeror as determined by the evaluation committee's recommendation to the approving authority under this section. If negotiations with such offeror again fail, the negotiator shall terminate the negotiations and commence them with the next most-qualified offeror.

(c) If all negotiations fail to produce a contract with any of the three (3) most-qualified offerors, the evaluation committee may make additional recommendations to the approving authority.

14. Records of negotiations.

The county negotiator shall keep detailed records of any negotiations which were entered into in accordance with any provision of this section.

VI. DEBARMENT OR SUSPENSION OF PROSPECTIVE CONTRACTORS

1. Authority.

(a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the CFO personally, after consultation with the using department and the County Attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of three (3) years or less.

(b) The CFO, after consultation with the using department and the County Attorney, shall have authority to suspend a person from consideration for award of contracts, if there is probable cause for debarment. The suspension shall be for a period of three (3) months or less.

2. Grounds.

The grounds for debarment or suspension pursuant to this section include the following:

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

(b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a

lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor with the county.

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.

(d) Violation of contract provisions, as set forth below, of a character which is regarded by the CFO to be so serious as to justify debarment action:

- (1) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
- (2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

(e) Any other cause that the CFO determines to be so serious and compelling as to affect responsibility as a contractor with the County, including debarment by another governmental entity.

3. Decision generally.

The CFO shall issue a written decision to debar or suspend. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the debarred or suspended person involved of his rights to review as provided in this section.

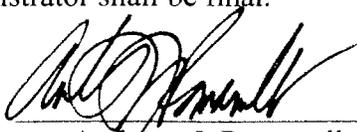
4. Copy of decision to be furnished to person involved.

A copy of the decision under Section VI, Paragraph 3, shall be mailed or otherwise furnished immediately to the debarred or suspended person.

5. Finality of decision; appeal.

A decision under this section shall be final, unless fraudulent or the debarred or suspended person appeals in writing to the County Administrator within fourteen (14) calendar days of notice of disbarment or suspension. The County Administrator shall conduct a hearing at which the debarred or suspended person may be present and present evidence. The decision of the County Administrator shall be final.

Authorized by:



Anthony J. Romanello
County Administrator

Date:

11/18/10