

MOTION: ANGRY

November 26, 2019

SECOND: NOHE

Regular Meeting

Res. No. 19-564

RE: AMEND THE PRINCE WILLIAM COUNTY PROCUREMENT REGULATIONS TO BE CONSISTENT WITH THE SECTION 2.2-4303 OF THE CODE OF VIRGINIA, VIRGINIA PUBLIC PROCUREMENT ACT, AS AMENDED

ACTION: APPROVED

WHEREAS, the Prince William County Procurement Regulations were originally adopted in 1981; and

WHEREAS, the last major revision and recodification to the Procurement Regulations occurred in 2016; and

WHEREAS, the Virginia Public Procurement Act and Code of Virginia have been updated each time the legislature has been in session; and

WHEREAS, the most efficient way to bring the Prince William County Procurement Regulations consistent with the Section 2.2-4300 of the Code of Virginia, Virginia Public Procurement Act, as amended is through minor changes due to editorial, legislative or clarifying terms to the following sections:

Section 100.04 Definitions, Section 100.10 Contract Administration, Section 100.12 Required Contract Provisions, Section 100.13 Announcement of Award, Section 100.14 Modifications to the Contract, Section 200.04 Prohibition on Solicitation or Acceptance of Gifts, Section 200.06 Public Access to Procurement Information, Section 200.11 Bid Protests, General, Section 200.12 Bid Protests, Remedies, Section 300.01 Available Methods of Procurement, Section 300.08 Professional Services and Special Consultants, Section 300.09 Exempt Items, Section 300.11 Emergency Procurements, Section 300.14 High Volume Low Dollar Purchases, Section 400.06 Amendment to Invitation for Bid (IFB), Section 400.08 Public Opening and Announcement, Section 400.14 Evaluation of Bids, Section 500.04 Format of Requests for Proposals, Section 500.06 Amendment to RFP, Section 500.08 Receipt and Handling of Proposals, Section 500.09 Evaluation of Proposals, Section 500.10 Discussions with Responsible Offerors, Section 500.11 Negotiations, Section 600.03 Prequalification, Section 600.08 Changes and Modifications to Construction Contracts, Section 600.14 Contract Management and Design Build Contracts, Section 700.03 Format for Requests for Proposals, Section 700.06 Award of Contract, and Section 1000.00 Public-Private Education Facilities and Infrastructure Act of 2002 or the Public-Private Transportation Act of 1995 (PPEA/PPTA); and

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WHEREAS, the most efficient way to bring the Prince William County Procurement Regulations consistent with the Section 2.2-4300 of the Code of Virginia, Virginia Public Procurement Act, as amended, is through major changes due to procedure or policy changes to the following sections:

Section 100.09 Legal Review of Documents, Section 300.14 High Volume Low Dollar Purchases, and Section 600.07 Award of Construction Contracts, Section 700.08 A/E Limitations;

NOW, THEREFORE, BE IT RESOLVED that the Prince William Board of County Supervisors hereby recodifies the Prince William County Procurement Regulations to be consistent with the Section 2.2-4300 of the Code of Virginia, Virginia Public Procurement, as amended;

BE IT FURTHER RESOLVED that the Prince William Board of County Supervisors authorizes that the amendments to the Prince William County Procurement Regulations shall take effect at 12:01 a.m. on January 1, 2020.

ATTACHMENT: Prince William County Procurement Regulations with Proposed Changes

Votes:

Ayes: Anderson, Angry, Candland, Lawson, Nohe, Principi, Stewart

Nays: None

Absent from Vote: None

Absent from Meeting: Caddigan

For Information:

Director of Finance
County Attorney

ATTEST: _____

Andrea P. Madden

Clerk to the Board

PRINCE WILLIAM COUNTY

PURCHASING-PROCUREMENT

REGULATIONS



Revised ~~October 18, 2016~~ November 26, 2019

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§100.00 GENERAL REGULATIONS

§100.01 ~~Purchasing-Procurement~~ Regulations

- (A) These regulations are promulgated by resolution of the Board of County Supervisors of Prince William County (Board), pursuant to Virginia Code § 2.2-4302, ~~of the Code of Virginia~~, Virginia Public Procurement Act, as amended, to effectuate the purposes of those statutes with regard to procurement of goods, services, insurance, and construction for the County and the disposition of surplus property. These regulations shall have the force and effect of law, and may be amended, altered or repealed by the Board, as it shall deem appropriate.
- (B) The original regulations became effective at 12:01 A.M., on January 1, 1981, and have been/will be amended when necessary or appropriate and in accordance with applicable law.
- (C) Subject to § 100.02 hereof, Application of these regulations to County Procurement, these regulations shall apply to any procurement for goods, services, insurance or construction entered into after their effective date, unless the parties agree to their application to a procurement or contract solicited or entered into prior to their effective date.

§100.02 Application of these Regulations to County Procurement

- (A) These regulations shall apply to every expenditure of funds appropriated by the Board of County Supervisors, by or on behalf of the Board or any Using Department ~~or Volunteer Fire/Rescue Company~~ pursuant to Sec. § 9.1-15(b)2 of the Prince William County Code, for the procurement of any goods, services, insurance, or construction, except as otherwise provided by law or these regulations.
- (B) The regulations shall apply to all dispositions of County surplus property, other than real property.
- (C) Nothing contained in these regulations shall prevent the Board or Using Department from complying with the terms and conditions of any grant, gift, or bequest.
- (D) Where a procurement of any goods, services, insurance, or construction involves the expenditure of Federal assistance or contract funds, the Director of Finance shall comply with ~~such all~~ Federal laws and ~~authorized~~ regulations ~~which are mandatory and~~ which may not be ~~presently~~ reflected in these regulations.

- (E) Notwithstanding any other provision of these regulations, nothing contained in these regulations shall be deemed to govern procurements, sales or other dispositions undertaken by the Prince William County School Board or its agents, or the regional health district.

§100.03 Special Provisions for Sanitary Districts, Authorities, and Constitutional Officers

When so provided by separate resolution, agreement, or other appropriate legal action by the Board of County Supervisors, these regulations shall apply to procurements and dispositions for any sanitary district, authority, or constitutional officer. In the absence of such separate resolution, agreement, or action, sanitary districts, authorities, and constitutional officers shall provide in all respects for their own procurement under such regulations as they may lawfully adopt.

§100.04 Definitions

- (A) For purposes of these regulations, the following terms have the meanings ascribed to them herein, except where the context clearly requires another meaning.

~~1. **Acceptance Agreement:** A written notice that summarizes the agreement between the County and the Contractor on the terms of the Contract.~~

~~1.2. **Addendum/Amendment:** A written notice or graphic depiction issued prior to the ~~opening of bids or receipt of proposals~~ response due date and time, to modify or clarify the ~~Invitation to Bid (IFB) or Request for Proposal (RFP) solicitation~~.~~

~~2.3. **Alternate Bid:** A bid submitted in addition to or in lieu of submitting a responsive bid. The alternate bid shall clearly reflect intentional substantive variations to the solicitation.~~

~~3. **Analysis, Cost:** To examine all of the separate cost elements that make up the total cost. Includes such elements as: direct/indirect labor, material and equipment cost, freight, and overhead and profit. A cost analysis is performed when competition does not exist (single bid or sole source), competition is limited, or cost appears excessive. A cost analysis also aids in determining cost estimates. *Performed mainly for services and construction procured.*~~

~~4. **Analysis, Price:** To examine the price by comparison (without examining the separate cost elements). Includes comparisons to: prices charged for similar~~

~~goods, prices paid by other consumers, and prices published by manufacturers and dealers. A price analysis is performed when competition does not exist (single bid or sole source) or competition is limited, or when price appears excessive. A price analysis also aids in determining cost estimates. Performed mainly for goods procured.~~

4. **Analysis, Value:** To examine the function of products and systems to determine the total cost and total savings. A value analysis is performed to compare value among products and systems being considered for procurement.
5. **Approving Authority:** The individual or entity with the authority to approve the selection of a Contractor.
6. **Best Value:** The overall combination of quality, price, and various elements of required goods ~~and/or~~ services that in total are optimal relative to ~~a public body's~~the County's need, as predetermined in the solicitation.
7. **Bid:** The response to an Invitation for Bid (IFB) submitted by a bidder ~~in anticipation of a contract award.~~
8. **Bidder:** A person or business who submits a response to an Invitation for Bid (IFB).
9. **Bond, Bid:** A form of security/financial protection issued by a third party (e.g., surety bond company) to guarantee that the principal (lowest responsive and responsible bidder) has the willingness and capability to enter into a contract. The bid bond guarantees compensation to the obligee (i.e., the County) in the event of default by the principal.
10. **Bond, Payment:** A form of security/financial protection issued by a third party (e.g., surety bond company) to guarantee that the principal (prime contractor) will promptly pay its financial obligations to its subcontractors, material suppliers, and other hires. The payment bond guarantees protection to the obligee (i.e., the County) from claims from the principal's subcontractors, material suppliers, and other hires, in the event of default by the principal.
11. **Bond, Performance:** A form of security/financial protection issued by a third party (e.g., surety bond company) to guarantee that the principal (prime contractor) will perform the work/complete the project as described in the

contract. The performance bond guarantees compensation to the obligee (i.e., the County) in the event of default by the principal.

12. **Brand Name or Equal Specification:** A descriptive form of specification where the good(s) ~~are~~ is described by a unique identifier(s) specific to a particular seller or manufacturer that distinguishes the good(s) from its competition.

~~13. **Business:** Any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.~~

~~14.~~

~~15.~~13. **Change Order:** A ~~written alteration issued by the County or its employee or the agent~~ type of modification, typically used for construction contracts, which directs a party, in writing, to make a change from an original ~~agreement~~ contract.

~~16.~~14. **Competitive Negotiation:** A formal procurement method which allows for contract award based on pre-established criteria described in a Request for Proposal (RFP), where the offeror's proposals and oral presentations, when requested, are evaluated and scored, and negotiations take place with the top ranked offeror(s) to arrive at a fair and reasonable contract award.

~~17.~~15. **Competitive Sealed Bidding:** A formal procurement method which allows for contract award based on the specifications or scope of work described in an Invitation for Bid (IFB), where the bids are evaluated to determine if the bids are responsive and the bidders are responsible, and to determine if prices are fair and reasonable. The contract award(s) is made to the lowest responsive and responsible bidder.

~~18.~~16. **Confidential and/or Proprietary Information:** Any public record(s) that is rightfully and properly marked as confidential ~~and/or~~ proprietary. Such information shall not be disclosed to the public, unless required by law, including, but not limited to ~~Code of Virginia-Virginia Code~~ § 2.2- 4342 and the Virginia Freedom of Information Act, ~~Code of Virginia-Virginia Code~~ § 2.2-3700 *et seq.*

~~19.~~17. **Constitutional Officer:** Specific government officials whose offices are created by Virginia Constitution - ~~the~~ Sheriff, Clerk of Circuit Court, ~~or~~ and Commonwealth's Attorney.

~~20.~~18. **Construction:** Building, altering, repairing, improving, or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading, or similar work upon real property.

~~21.~~19. **Construction Management Contract:** A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

~~22.~~20. **Contract:** A legally binding ~~promise~~ set of promises, ~~and/~~ or agreement between two ~~(2)~~ or more parties creating obligations that are enforceable or otherwise recognizable ~~at~~by law. ~~A recurring annual contract is a contract resulting from formal competition for the recurring procurement of similar goods or services during a twelve (12) month period.~~

~~23.~~21. **Contractor:** A ~~person or business n individual or entity~~ awarded a contract by ~~a public body~~the County.

~~24.~~22. **Cost, Direct:** Direct labor and direct materials specifically attributed to the creation of a final product.

~~25.~~23. **Cost, Indirect:** Indirect labor and indirect material that cannot be directly traced to the creation of a final product, but such labor and material is considered overhead/necessary operating expenses.

~~26.~~24. **County:** Prince William County, Virginia, a political subdivision of the Commonwealth of Virginia, governed by the Board of County Supervisors of Prince William County, Virginia, and consisting of all of the County's authorized Using Departments, divisions, branches, sections, agencies, offices, boards, districts, and entities.

~~27.~~25. **Contract Administration:** ~~Actions taken to assure full compliance of a contract. Activities include; becoming knowledgeable of the contract requirements, monitor performance and progress, preparing reports, conducting inspections and testing, ensuring quality assurance, receiving goods, payment processing, and contract close-out actions~~Enforcing the contract terms and conditions to ensure the stated goals of the contract are met.

~~28.~~26. **Contract Administrator:** A representative of the Using Department responsible for assuring full compliance of a contract.

27. **Debarment:** A sanction excluding a person or business from participation in contracting opportunities or conducting business with a public body for a period of three (3) years or less in order to protect the interest of the public body. Debarment actions are discretionary actions but are normally imposed for serious offenses.

29.~~28.~~ **Designee:** An individual with written authority to act on behalf of a County official.

30.~~29.~~ **Design-Build Contract:** A contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway, or other item specified in the contract.

30. **Director of Finance:** The Director of Finance of Prince William County. The Director of Finance shall be the Chief Procurement Officer for the County and shall be under the supervision and control of the County Executive for the faithful execution and performance of finance functions.

31. **Employee:** For purposes of these regulations, any individual who is legally employed by the County, Constitutional Officer, or any Volunteer Fire/Rescue Company member.

~~32. **Drug Free Workplace:** A location for the performance of work to be performed in connection with an awarded contract. The contractor's and subcontractors' employees are prohibited from engaging in the unlawful sale, manufacture, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the contract.~~

~~33. **Electronic Bids:** The submission of response to a Solicitation over the Internet, using a secure environment.~~

~~34. **Emergency:** When there is a breakdown in any County service, or at any time that goods and/or services are needed for immediate use in work, which may be essential to or may affect the public health, safety, or general welfare of the County and its inhabitants. An emergency may include work undertaken under a court order or in anticipation of a court order.~~

35.~~32.~~ **Employment Services Organization:** An organization that provides employment services to individuals with disabilities that is a Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Virginia Department for Aging and Rehabilitative Services.

~~36.~~33. **Exempt Purchase:** ~~Goods and/or service Purchases~~ designated by the Board of County Supervisors to be exempt from competition.

~~37.~~34. **Faith-Based Organization:** A religious organization that is, or applies to be, a contractor to provide goods ~~and/or~~ services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104- 193, as amended.

~~38.~~35. **Gift:** ~~Shall mean a~~Any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged

~~36.~~ **Goods:** All material, equipment, supplies, printing, ~~and automated data processing hardware, and software, and vehicles and craft.~~

~~39.~~37. **Head of Procurement Services:** An employee designated by the Director of Finance to be the manager of Procurement Services, authorized to exercise authority and perform duties as the Director of Finance may delegate, in accordance with these regulations.

~~40.~~38. **Immediate Family of Employee:** A spouse, child, parent, brother, sister, and any other person living in the same household as the County employee.

~~41.~~39. **In Writing or Written:** Any worded or numbered expression, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

~~42.~~40. **Informality:** A minor defect or variation of a bid or proposal from the exact requirements of the Invitation for Bid or the Request for Proposal, which does not affect the price, quality, quantity, or delivery schedule for the goods, services, insurance, or construction being procured.

~~43.~~41. **Invitation for Bid (IFB):** A formal ~~invitation documentsolicitation~~ that is released to the public requesting bids ~~for goods or services for defined goods and services needed by a public body, to be provided in accordance with provisions defined in the IFBto provide the requirements as stated in the solicitation.~~ This method of procurement is used when the requirements can be clearly defined, ~~negotiations are not necessary, price is the major determining factor for award~~

~~selection, and where required by law. An award is made to the responsible bidder submitting the lowest responsive bid.~~

~~44.42. **Kickback:** Any payment, loan, subscription, advance, deposit of money, gift, service, or anything of value, unless consideration of substantially equal or greater value is exchanged.~~

~~45.43. **Labor, Direct:** The wages of people that directly contribute in the creation of a specific product.~~

~~46.44. **Labor, Indirect:** The wages of people that do not directly contribute in the creation of a specific product, but such labor is considered overhead/necessary operating expenses.~~

~~47.45. **Life Cycle Costing:** A procurement evaluation which determines the total cost of ownership (cradle to grave). Elements reviewed consist of: acquisition cost, installation cost, operating cost, maintenance and repair cost, disposal and salvage cost, and any possible trade-in or buy-back value.~~

~~48.46. **Market Research:** Collecting and analyzing information about capabilities within the market place.~~

~~49. **Materials:** Tangible essential products and parts, direct raw materials, and direct finished/processed materials that enter directly into the end product; inputs to industry, production, assembly, manufacturing, maintenance, repairs, installations, replacements, upgrades, reconditioning, and the like.~~

~~50. **Material, Direct:** Raw materials and finished/processed materials that are used in the creation of and becomes part of a specific product.~~

~~51. **Material, Indirect:** Raw materials and finished/processed materials that cannot be directly traced in the creation of nor become part of a specific product, but such material is considered overhead/necessary operating expenses.~~

~~52.47. **Modification:** Any wWritten alteration of a contract. Bilateral modifications require accomplished by the mutual agreement of the parties to the contract. Unilateral modifications are generally for a minor or administrative purpose and are issued by the County.~~

~~53.~~48. **Multiphase Professional Services Contract:** A contract for providing professional services where the total scope of work of the second or subsequent phase(s) of the contract cannot be specified without the results of the first or prior phase of the contract.

~~54.~~49. **Negotiation:** Formal discussions where the goal is for the parties to reach a fair and reasonable agreement.

~~55.~~50. **Nonprofessional Services:** Any services not specifically identified as professional services in the definition of professional services under ~~Code of Virginia~~Virginia Code § 2.2-4301.

~~56.~~51. **Notice of Contract Award:** A written notice issued to bidders, offerors, or to the public, announcing the award of a contract.

~~57.~~52. **Notice of Contract Termination:** A written notice issued by the ~~Purchasing Manager~~head of Procurement Services to the contractor, announcing the termination of the contract.

~~58.~~53. **Offeror:** A person or business who submits a response to a Request for Proposal (RFP).

~~59.~~ **Parts:** ~~Components less than the whole; pieces, portions, or sections of a complete unit.~~

~~60.~~54. **Potential Bidder or Offeror:** A person or business who is engaged in the sale or lease of goods, or the sale of services, insurance, or construction, of the type to be procured, and who at such time is eligible and qualified in all respects to provide such goods or perform such services, 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.

~~61.~~55. **Procurement:** Buying, purchasing, renting, leasing, or otherwise acquiring goods, services, insurance, or construction. Procurement includes all functions that pertain to the acquisition, including preparing a description of requirements, preparing and issuing a solicitation, selection and solicitation of sources, receiving and evaluating bids and proposals, preparation and award of contracts, all phases of contract administration, and salvage and disposal operations.

~~62.56.~~ **Procurement Card:** A credit card ~~assigned to and utilized by selected employees issued to authorized users~~ of the ~~public body~~County to ~~make purchases~~ defined goods and/or services within established dollar thresholds.

~~57.~~ **Procurement File:** A secure file, either in ~~manual hard copy~~ or electronic form, which contains all related documents of a specific procurement and maintained with controlled access within ~~the Purchasing Office~~Procurement Services -or ~~the~~ Using Department.

~~63.58.~~ **Procurement Services:** The functional unit of the Finance Department responsible for the procurement operations of the County.

~~64.59.~~ **Professional Services:** 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 professions listed in the Virginia Public Procurement Act.~~

~~65.~~ **Prompt Payment:** "Payment date" means ~~either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty (30) days after receipt of a proper invoice, or (b) thirty (30) days after receipt of the goods or services, whichever is later.~~

~~66.60.~~ **Proposal:** A response to a Request for Proposal submitted by an offeror ~~in anticipation of a contract award.~~

~~67.61.~~ **Public Body:** Any legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty and empowered by law to undertake the activities described in these regulations.

~~68.62.~~ **Purchase Order:** A procurement document issued to purchase goods, services, insurance, or construction.

~~**Purchasing Manager:** An employee designated by the Director of Finance to be the manager of the Purchasing Office, authorized to exercise any/all authority, and to perform any/all duties which the Director of Finance may delegate, in accordance with these regulati~~

~~69.63.~~ **Real Property (Real Estate):** Land, including land improvements, structures, and appurtenances thereto (i.e., immovable property) ~~(excluding movable machinery and equipment).~~

~~70.64.~~ **Recycled Paper:** Paper containing one hundred percent (100%) post-consumer recovered fiber. If the post-consumer content is less than one hundred percent (100%), then the paper is identified as “recycled-content” paper, according to the Federal Trade Commission (FTC).

~~71.65.~~ **Request for Information (RFI):** A planning tool used to request and gather information primarily to assist in the development of a solicitation document.

~~72.66.~~ **Request for Qualifications:** All documents, whether attached or incorporated by reference, utilized for soliciting interested offerors for consideration for shortlist. The Request for Qualification is the first phase of a two-phase selection process for the purpose of inviting interested offerors to submit qualifications for a project.

~~73.67.~~ **Request for Quotation (RFQ):** An informal ~~invitation document that issolicitation~~ released to the public requesting quotations ~~for defined goods and/or services needed by a public body, to be provided in accordance with the provisions of the RFQ. An award is made to the responsible vendor submitting the lowest responsive quoteto provide the requirements as stated in the solicitation.~~

~~74.68.~~ **Request for Proposal (RFP):** A formal ~~invitation document that issolicitation~~ released to the public requesting proposals ~~for goods and/or services needed by a public body to be provided in accordance with the provisions of the RFP. This method of procurement is used when the requirements cannot be clearly defined, negotiations are necessary, price is not a major determining factor for award selection, and where required by lawto provide the requirements as stated in the solicitation.~~

~~75.69.~~ **Requisition:** A request document in a form prescribed by the Director of Finance, which shall constitute demand by the Using Department for the procurement of goods, services, insurance, or construction. It shall be initiated by the Using Department and processed by ~~the Purchasing Office~~Procurement Services ~~–in accordance with such procedures promulgated. The Purchasing Office~~Procurement Services ~~–shall not honor any requisition unless drawn on~~

funds which have been both budgeted and appropriated by the Board of County Supervisors.

~~76.~~70. **Responsible Bidder or Offeror:** A person or business who has the capability in all respects to fully perform the requirements specified in an Invitation for Bid or Request for Proposal and who has the moral and business integrity and reliability that will assure good faith performance of an awarded contract, and who has been prequalified, if prequalification was required.

~~77.~~71. **Responsive Bid:** A bid that conforms in all material respects to the Invitation for Bid.

~~78.~~ **Reverse Auctioning:** A method of procurement where bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the responsible bidder submitting the lowest responsive bid. During the bidding process, bidder's prices are revealed, and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for the reverse auction.

~~79.~~72. **Scope of Work (SOW):** A detailed description of work to be performed or services to be provided. Work requirements describing the type, level, and quality of work expected to be provided.

~~80.~~73. **Selection Committee:** A ~~team or~~ group ~~composed~~ of qualified persons convened to evaluate ~~and score~~ proposals ~~and presentations~~ by offerors in response to a Request for Proposal (RFP).

~~81.~~74. **Services:** Any work performed by an independent contractor where the service rendered does not consist primarily of the acquisition of goods. Services are intangible commodities, labor/time, performance of duties, tasks, skills, actions, acts, activities, assistance, and maintenance.

~~82.~~75. **Signature or Signed:** The discrete, verifiable name, symbol, or mark of an individual which, when affixed to a document with the knowledge and consent of the individual, indicates intention to authenticate the document, including in electronic form.

~~83.~~76. **Sole Source:** A source of supply for goods, services, insurance, or construction that can only be practicably provided by a sole person or sole business.

~~84.77.~~ **Solicitation:** A document that is used to announce an invitation to submit proposals or bids for goods, services, insurance, or construction. ~~Formal Solicitations are normally referred to as an Invitation for Bid (IFB) or a Request for Proposal (RFP). An informal solicitation is referred to as a Request for Quotation (RFQ).~~

~~85.78.~~ **Specification:** A precise statement of requirements ~~and workmanship. A specification that~~ describes characteristics, ~~and/or~~ capabilities, identifies a product, ~~and/or~~ describes a ~~method, process, or requirement. Plans, maps, photos, and samples may be utilized as a specification.~~

~~79.~~ **Statement of Qualifications:** The documents submitted by an offeror in response to a Request for Qualifications.

~~86.80.~~ **Subcontractor:** An individual or entity ~~person or business~~ that provides goods ~~and/or~~ services to ~~it~~the prime contractor.

~~87.81.~~ **Supplies (Consumables):** Tangible expendable items, indirect materials, disposable products which make the production of a product possible, efficient or safer; products consumed, destroyed, dissipated, wasted, or spent in industry, production, assembly, manufacturing, maintenance, repairs, installations, replacements, upgrades, reconditioning, and the like as "goods" are defined in Virginia Code § 8.2-105 ~~of the Code of Virginia.~~

~~88.82.~~ **Surplus Property:** Assigned Property which exceeds the requirements or needs of the Using Department ~~to which the property is assigned.~~

~~83.~~ **Technical Advisor:** Non-voting member of a Selection Committee who provides expertise in areas that require specialized knowledge.

~~84.~~ **Term Contract:** A contract for a specified time period, normally at least twelve (12) months, for recurring purchases of a similar type.

~~89.85.~~ **Tie Bid:** Two (2) or more responsive bids submitted by responsible bidders and such bids are identical in price, terms, and conditions.

~~90.86.~~ **Used Goods:** Goods which have been previously-owned and used by another person(s) or business(es); goods that cannot be sold by law as new goods.

91.87. **Using Department:** All County-authorized departments, divisions, branches, sections, agencies, offices, commissions, boards, districts, corporations, ~~or~~ entities, or Volunteer Fire/Rescue Companies that requisition goods, services, insurance, or construction with funds budgeted and appropriated by the Board of County Supervisors.

92.88. **Vendor (Supplier):** A person or business that provides goods, services, insurance, or construction in the open market.

§100.05 Powers and Duties of the Director of Finance

- (A) The Director of Finance shall be the Chief Procurement Officer for Prince William County, as provided in the County Executive form of Government. The Director of Finance shall make all procurements and dispositions for the County in such manner and with such exceptions as may be provided herein. The Director of Finance shall have authority to transfer or trade goods between Using Departments. The Director of Finance is hereby authorized to develop and implement suitable specifications or standards for any or all goods, services, insurance, and construction to be purchased by the County. The Director of Finance shall, except where otherwise provided, inspect or provide for the inspection of all goods and services to ensure their compliance with the specifications or scope of work so established.
- (B) Except as may be otherwise provided herein, the Director of Finance shall not process any procurement for any Using Department until a completed Requisition has been received for which there are sufficient funds budgeted and appropriated, ~~and appropriated and~~ must be encumbered to pay for the proposed procurement.
- (C) The Director of Finance shall interpret the meaning and application of these regulations and a decision on questions pertaining hereto shall be final. The Director of Finance may seek the assistance of the County Attorney's ~~Office~~ in rendering any decision or interpretation requested.
- (D) The Director of Finance shall maintain complete records pertaining to the procurement and disposition functions assigned by these regulations.

§100.06 Delegation of Authority of Director of Finance

- (A) The Director of Finance is hereby authorized to delegate all of the authority and duties set forth in these regulations not reserved specifically for the Director of Finance, to such other officers and employees of Prince William County, as deemed appropriate.

- (B) The Director of Finance may designate one person to be the Purchasing Manager head of Procurement Services for the County who shall be an employee of the Department of Finance, but such designation shall not be deemed to relieve the Director of Finance of responsibility for supervision and control of the purchasing procurement functions assigned.
- (C) The Purchasing Manager head of Procurement Services shall perform duties assigned by the Director of Finance consistent with these regulations and shall have responsibility for ~~the Purchasing Office~~ Procurement Services ~~function~~ for the County.
- (D) The Purchasing Manager head of Procurement Services may re-delegate certain procurement functions to County employees subject to approval of the Director of Finance.

§100.07 County Executive Authorized to Promulgate Additional Regulations

- (A) The County Executive is hereby authorized to promulgate, after consultation with the Director of Finance, additional regulations for the internal administration of ~~the Purchasing Office~~ Procurement Services and such other matters as may be provided herein, including the method and manner of administratively processing procurements and the disposition of surplus property. Such regulations shall be consistent with these regulations, with applicable laws, and shall have the force and effect of law.
- (B) Regulations, which may be promulgated by the County Executive in accordance with subsection (A) of this section, above, shall be in effect from the date on which they are promulgated and may be amended, altered or repealed as the County Executive deem appropriate; provided, however, that copies of all such actions by the County Executive with regard to these regulations shall be immediately forwarded to the Board of County Supervisors, which may overrule the County Executive. The Board additionally reserves to itself the authority to amend, alter or repeal any provision of the regulations so promulgated.

§100.08 Unauthorized Procurements and Dispositions

- (A) No person shall have the authority to bind the County or its Using Departments to any procurement, except as provided in these regulations.
- (B) Any procurement or disposition made by any person in the name of the County or any Using Department, which is not in compliance with these regulations, shall be deemed unauthorized.

- (C) Any person who makes an unauthorized procurement or disposition of surplus property may be personally liable to the vendor or the purchaser of the surplus property. Such procurements or dispositions of surplus property shall be voidable at the discretion of the Board of County Supervisors.
- (D) The Director of Finance and the employees of ~~the Purchasing Office~~Procurement Services shall not be liable and shall be held harmless for any unauthorized procurement or disposition of surplus property, which was not initiated or approved by them.
- (E) A determination whether any procurement or disposition was unauthorized shall be made in the first instance by the ~~Purchasing Manager~~head of Procurement Services, who shall report any findings to the Director of Finance. The Director of Finance shall consult with the County Attorney's ~~Office~~. If the Director of Finance determines that the procurement or disposition was unauthorized, the Director may invoice the person responsible for the amount of any damages sustained by the County. The person responsible shall have a right of appeal to the County Executive, and thereafter to the Board of County Supervisors, provided that appeal at each level is filed in writing within fourteen (14) calendar days of the submission of the invoice.
- (F) Should an appeal be denied, or not submitted in a timely fashion, and the invoice not paid, the County Attorney's ~~Office~~ may undertake legal proceedings to recover the money owed.
- (G) Any unauthorized procurement or disposition may be grounds for termination from County service of the responsible employee or employees or for the imposition of other adverse action, which may be provided for in the County Personnel ~~Regulations~~Policies.

§100.09 Legal Review of Documents

- (A) All ~~contracts-solicitations~~ valued at \$100,000 or more, ~~contracts-solicitations~~ for professional services valued at ~~\$5060,000~~ or more, and all contracts using non-County forms shall be reviewed by the County Attorney's ~~Office~~ prior to ~~execution~~release, except where the contract is a lawful renewal of an existing contract to which there has been no substantial material change. The resulting contract shall not require review by the County Attorney unless there are changes from the terms of the solicitation.
- ~~(B) Other contracts and purchase orders shall be reviewed by the County Attorney's Office at the request of the Purchasing Manager, Director of Finance, County Attorney, or Using Department.~~
- ~~(C)~~

~~(D)~~ — All Invitations for Bids (IFBs) for construction and all Request for Proposals (RFPs) with an estimated value of \$100,000 or more shall be reviewed by the County Attorney's Office prior to public notice.

~~(E)~~(B) The County Attorney's Office shall review and approve the standard purchase order form and content, and procurement terms and conditions.

§100.10 Contract Administration

(A) The Using Department shall inspect and accept or reject all deliveries of goods and services performed under County procurements. Discrepancies in deliveries or in the performance of services shall initially be brought to the attention of the contractor by the Using Department. Failure to satisfactorily resolve the identified deficiency shall be brought to the attention of the Purchasing Manager in writing. The Purchasing Manager shall institute a formal complaint with the contractor. If satisfaction is still not forthcoming, the Director of Finance shall contact the County Attorney's Office for further proceedings.

~~(A)~~(B) A minimum of one Contract Administrator per Using Department shall be assigned to each contract in use by Prince William County.

~~(B)~~(C) Notwithstanding any other provision of these regulations, the Board of County Supervisors may ~~specifically~~ provide for separate contract administration in construction contracts.

§100.11 Contracts to be in Writing Form

(A) Unless the Director of Finance establishes classifications of contracts to which this section shall not apply, all contracts to which the County is a party shall be in writing.

(B) All contracts shall be in a form prepared by the ~~County, and~~County and approved as to form by the County Attorney's ~~Office, or~~Office or shall be individually prepared for a specific procurement. ~~Nothing herein shall prevent the use of a contract prepared by a vendor if a standard contract was not prepared for the procurement, or if such use shall have been approved by the County Attorney's Office.~~

(C) ~~Notwithstanding the provisions of this section, t~~These regulations shall be deemed incorporated, ~~insofar as they may be~~ applicable, into any contract ~~to which a Using Department or the Board of County Supervisorsthe County~~ shall be a party, whether specifically referenced therein or not.

(D) All contracts shall be in the name of the Board of County Supervisors of Prince William County, Virginia.

- (E) Contracts entered into for any Using Department for which funds have been budgeted and appropriated ~~in accordance with these regulations~~, shall be executed by the head of the Using Department, and the ~~Purchasing Manager~~ head of Procurement Services.
- (F) Contracts ~~which are to be~~ entered into directly for the Board of County Supervisors may be signed by whomever the Board shall direct. ~~In the event that~~ if the Board of County Supervisors ~~shall fail~~ s to specifically authorize ~~anyone an individual(s)~~ to sign on its behalf, the Chairman of the Board and the ~~Purchasing Manager~~ head of Procurement Services may execute the contract on the Board's behalf.

§100.12 Required Contract Provisions

Every contract to which the County is a party shall expressly contain the following clauses: ~~where required by this section, in addition to such other terms and conditions as may be agreed to among the parties.~~

- (A) ~~Ethics in Public Contracting. Each contract to which the County is a party shall contain the following clause:~~

~~This Solicitation is subject to the provisions of the Virginia State and Local Government Conflict of Interests Act, Virginia Code § 2.2-3100 et seq. and subject to Virginia Code § 2.2-4367 through § 2.2-4377. No member of the Board of County Supervisors, any advisory or judicial body of Prince William County, or any other officer or employee of the County, or any member or employee of any agency, office, commission, board, district, corporation, entity, or Volunteer Fire/Rescue Company, or the spouse or any other relative who resides in the same household as any of the foregoing, may be a contractor or subcontractor in connection with any bid, or have a personal interest therein as defined by Virginia Code § 2.2-3101.~~

~~All Solicitation responses submitted shall be made without prior understanding, agreement, or connection with any corporation, partnership, firm, or person submitting a response for the same requirements, without collusion or fraud. Collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards.~~

~~By submitting a response, prospective contractors certify that their response is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder or offeror, supplier, manufacturer, or subcontractor in connection with their response, and that they have not conferred on any public employee having official responsibility for this 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 was exchanged.

No person who, for compensation, assisted in the preparation of a solicitation for the County shall (i) submit a response for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not publicly available. The contractor hereby certifies that it has familiarized itself with Article §6 of Title 2.2 of the Virginia Public Procurement Act, §2.2-4367 through §2.2-4377, of the Code of Virginia, and that all amounts received by it, pursuant to this procurement, are proper and in accordance therewith.

- (B) Examination of Records by the Director of Finance or Designee. Unless the County Attorney's Office shall authorize an exception to this provision, each contract ~~to which the County is a party~~ for more than \$5,000 shall contain the following clause:

The contractor agrees that the County, or any duly authorized representative, shall, until the expiration of three (3) years after final payment hereunder the period specified in the Library of Virginia Records Retention Schedule GS-02, Series 200106, 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 this contract.

The contractor ~~further~~ agrees to include in any subcontract for more than \$10,000 entered into as a result of this prime contract, a provision to the effect that the subcontractor agrees that the County or any duly authorized representative shall, until the expiration of the period specified in the Library of Virginia Records Retention Schedule GS-02, Series 200106 ~~three (3) years after final payment under the subcontract~~, have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of such contractor involved in transactions related to such subcontract, or this contract. The term "Subcontract" as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. The period of access provided herein for records, books, documents and papers that may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation, or claims ~~shall~~ have been finally dispositioned and disposed of.

(C) Claims/Disputes.

1. ~~In accordance with Virginia Code § 2.2-4363 of the Code of Virginia, the following clause shall be contained in each contract to which the County is a party to delineate procedures~~ this provision shall be followed for consideration and

handling of all claims by the contractor under this contract. ~~Section Virginia Code § 2.2-4365 of the Code of Virginia,~~ is not applicable to this contract, and under no circumstances is this paragraph to be construed as an administrative appeals procedure governed by ~~Virginia Code § 2.2-4365 of the Code of Virginia.~~ The clause shall be as follows:

2. Notice of the intent to submit a claim setting forth the ~~bases-basis~~ for any claim shall be submitted in writing within ten (10) business days after the occurrence of the event giving rise to the claim, or within ten (10) business days of discovering the condition giving rise to the claim, whichever is later. In no event, shall any claim arising out of this contract be filed after the submission of the request for final payment by the contractor.
3. Claims by the contractor with respect to this contract shall be submitted in writing in the first instance for consideration by the Contract Administrator. The decision of the Contract Administrator shall be rendered in writing within forty-five (45) calendar days from the receipt of the claim from the contractor. The decision of the Contract Administrator shall be final on behalf of the County unless the contractor submits the claim to the Director of Finance within thirty (30) calendar days of the Contract Administrator's decision.
4. If the contractor is not satisfied with the decision ~~or resolution~~ of the Contract Administrator, the contractor may file a formal dispute with regards to the claim with the Prince William County Director of Finance, which claim shall be received within thirty (30) calendar days of the date of decision of the Contract Administrator.
5. The Director of Finance shall provide a written decision on the claim to the contractor within forty-five (45) calendar days of the receipt of the claim from the contractor. The decision of the Director of Finance shall be final on behalf of Prince William County unless the contractor submits the claim to the County Executive within thirty (30) calendar days of the date of the Director of Finance's decision. The contractor may submit the claim to the County Executive by mailing or otherwise furnishing the Purchasing Managerhead of Procurement Services a copy of the claim and a request for the County Executive's determination.
6. The County Executive's decision on the claim shall be rendered in writing to the contractor within forty-five (45) calendar days of the Purchasing Managerhead of Procurement 'sServices' receipt of the request from the contractor, and shall be final and binding on behalf of Prince William County, unless the contractor

submits the claim for determination by the Board of County Supervisors by mailing or otherwise furnishing the Purchasing Manager/head of Procurement Services a copy of the claim, along with a request for determination by the Board within thirty (30) calendar days of the County Executive's decision. The Board shall consider the claim and render a decision on the claim in writing within forty-five (45) calendar days of the date on which the Board hears the claim in open meeting. The Board's procedure in considering claims under this contract shall be the same as that for other decisions of the Board on claims made under Virginia Code § 15.2-1245, *et seq.* ~~of the Code of Virginia~~. The decision of the Board shall be final.

7. Should any decision-maker designated under this procedure fail to make a decision on a claim within the time period specified, then the claim is deemed to have been denied by the decision maker.
8. Pending a final determination of a claim, the contractor shall proceed diligently with the performance of the work under the contract.
9. In accordance with the provisions of Virginia Code § 2.2-4363 ~~of the Code of Virginia~~, full compliance with this procedure set forth in the provision shall be a precondition to the filing of any lawsuit/legal action by the contractor against the County or its Board of County Supervisors ~~of Prince William County~~ arising out of or related to this contract.

~~(C)(D)~~ Termination for Non-Appropriation of Funds. ~~Each contract to which the County is a party, Contracts~~ which requires that the County make payments beyond the fiscal year in which such contract was made, shall contain the following clause for termination of the contract in the event that the Board of County Supervisors shall cease to appropriate funds for the purposes of the contract:

The County is bound under the Contract only to the extent of the funds that are available or may become available for the purpose of this Contract. Funding for this Contract in any succeeding fiscal year is subject to appropriation by the Board of County Supervisors. If funds are not appropriated for any succeeding fiscal year ~~subsequent to the one in which this contract is entered into, for the purposes of this contract, then~~ the County may terminate this contract upon thirty (30) calendar days prior written notice to the contractor. ~~Should termination be accomplished in accordance with this section, and~~ the County shall be liable only for payments due through the date of termination.

~~(D)~~(E) Termination for Default. ~~Each contract to which the County is a party shall contain the following clause:~~

Either party may terminate this contract, without further obligation, for the default of the other party or to agents or employees with respect to any agreement or clause contained herein. In case of a contractor's failure to deliver the goods or services in accordance with the contract, after due oral or written notice, the County may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the County may have.

~~(E)~~(F) Termination for Convenience of the County. ~~Each contract for more than \$10,000 to which the County is a party, shall contain the following clause:~~

~~The parties agree that t~~The County may terminate this contract, or any work or delivery required ~~hereunder, under this Contract,~~ from time-to-time, ~~either~~ in whole or in part, whenever the ~~County Executive of Prince William County~~Director of Finance shall determine that such termination is in the best interest of the County. Termination, in whole or in part, shall be ~~effected~~affected by delivery of a Notice of Termination, signed by the ~~County Executive~~Director of Finance or a designee, mailed or delivered to the contractor, and specifically ~~setting forth~~stating the effective date of termination.

Upon receipt of such Notice, the contractor shall:

1. Cease any further deliveries or work due under this contract, on the date, and to the extent, which may be specified in the Notice;
2. Place no further orders with any subcontractors except as may be necessary to perform that portion of this contract not subject to the Notice;
3. Terminate all subcontracts except those made with respect to contract performance not subject to the Notice;
4. Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the ~~Purchasing Manager~~head of Procurement Services of Prince William County; and
5. Use its best efforts to mitigate any ~~dy~~ damages, which may be sustained by it as a consequence of termination under this clause.

After complying with these foregoing provisions, the contractor shall submit a

termination claim, ~~in no event~~ later than six (6) months after the effective date of its termination, unless an extension is granted by the Purchasing Managerhead of Procurement Services grants an extension.

The ~~Purchasing Managerhead of Procurement Services, with the approval of the County's signatory to this contract,~~ shall ~~pay from the Using Department's budget~~ determine reasonable costs of termination, including a reasonable amount for profit on ~~goods, goods or services, insurance, or construction~~ delivered or ~~completedperformed~~. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination and further reduced by the price of the ~~goods, services, insurance, or construction~~goods or services not ~~provideddelivered or performed~~. This contract shall be ~~modified~~ amended accordingly, and the contractor shall be paid the agreed amount.

In the event ~~that~~ the parties cannot agree on the whole amount to be paid to the contractor by reason of termination under this clause, the ~~Purchasing Manager~~County shall pay to the contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause:

1. With respect to all contract performance prior to the effective date of the Notice of Termination the total of:
 - (a) Cost of ~~work goods delivered or services performedperformed, or goods delivered;~~
 - (b) The cost of settling and paying any reasonable claims as provided in subparagraph (E4), ~~above of this section;~~ and
 - (c) A sum as profit on subparagraph 1(a) ~~of this section~~ determined by the ~~Purchasing Manager head of Procurement Services~~ to be fair and reasonable.
2. The total sum to be paid under subparagraph 1(a) ~~above of this section~~ shall not exceed the contract price, as reduced by the amounts of payments otherwise made, and as further reduced by the contract price of ~~work or goods~~ goods or services not provided.

In the event that the contractor is not satisfied with any payments, ~~which that~~ the ~~Purchasing Manager head of Procurement Services~~ shall determine to be due under this clause, the contractor may appeal any claim ~~to the Board of County Supervisors~~ in accordance with the "Claims and Disputes" clause of this contract.

The contractor shall include ~~the same or a substantially~~ similar provision in any ~~subcontract, and subcontract and~~ shall specifically include a requirement that subcontractors make all reasonable efforts to mitigate damages that may be suffered. Failure to include such provisions shall bar the contractor from any recovery from the County whatsoever ~~of for~~ loss or damage sustained by a subcontractor as a consequence of termination for convenience.

~~(F)(G)~~ Employment Discrimination by Contractors Prohibited. In accordance with Virginia Code § 2.2-4311 ~~of the Code of Virginia~~, each contract over \$10,000 to which the County is party shall include the following clause:

Contractor shall comply with the provisions of the Federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act, Virginia Code § 2.2-4200 et seq., the Virginians With Disabilities Act, the Americans With Disabilities Act, as amended, and Virginia Code § 2.2-4311. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body.

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, 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.
- (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 subsection 1(a) of this section, in each subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

~~(G)(H)~~ Payments to Subcontractors. ~~Each contract to which the County is a party shall contain the following clause:~~

~~(a) In the event that the contractor utilizes a subcontractor for any portion of the work under this contract, the contractor hereby agrees to:~~

- ~~1. a. The contractor shall: take one (1) of the two (2) following actions within seven~~
 1. ~~(7) days after receipt of amounts paid to the contractor by the County for work performed by a subcontractor under the contract.~~
 - (a) Pay a subcontractor(s) within seven (7) calendar days of the contractor's receipt of payment from the County for the proportionate share of the total payment received for work performed by the subcontractor(s) from the County attributable to the work performed by that subcontractor under the contract; or
 - (b) Notify the agency Contract Administrator and the subcontractor(s), in writing, of its the contractor's intention to withhold all or part of the subcontractor's payment with and the reason for nonpayment.
2. The contractor ~~shall be~~ is obligated to pay the subcontractor(s) interest to a subcontractor at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all ~~monies amounts~~ amounts owed by the contractor that remain unpaid ~~after seven (7) (7) calendar days following receipt of payment from the County, by the contractor of payment from the County for work performed by a subcontractor under the contract,~~ except for amounts withheld under subsection ~~1(bb)~~ 1(b) of this section. The date of mailing of any payment by U.S. Mail deems payment to the addressee. These provisions apply to each subcontractor performing under the contract. The A contractor's obligation to pay an interest charge to a subcontractor pursuant to the provisions of this section shall not be construed to be an obligation by the County. A contract modification may not be made for the purpose of providing reimbursement for any such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge. The contractor is hereby required to include in each of its subcontracts a provision requiring each subcontractor to be subject to the payment and interest requirements with respect to each lower-tier subcontractor.

- ~~(a) Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent (1%) per month.~~
- ~~(b) The contractor is hereby required to include in each of its Subcontracts a provision requiring each subcontractor to otherwise be subject to the same payment and interest requirements set forth in subsection (a) 2. and (b) of this section with respect to each lower tier subcontractor.~~

~~(H)(I)~~ (I) Labeling of Hazardous Products/Substances. When applicable, a contract to which the County is party shall contain the following clause:

~~If the goods requested by this Solicitation are "Hazardous Substances" as defined by § 1261 of Title 15 of the United States Code (U.S.C.) or "Pesticides" as defined in § 136 of Title 7 of the U.S.C., then the prospective contractor, by submitting a response, certifies and warrants that the goods to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the goods the prospective contractor does not violate any of the prohibitions of 15 U.S.C. § 1263 or 7 U.S.C. § 136. Where applicable, the contractor shall comply with all of the requirements of the Occupational Safety and Health Administration Hazard Communication Standard (1910.1200) as amended. Specifically, the contractor shall ensure that all products purchased by Prince William County are properly labeled and that Material Safety Data Sheets (MSDS) are provided for those products classified as "hazardous" by the Occupational Safety and Health Administration.~~

~~(J)~~ (J) Drug-free Workplace, to be maintained by Contractor. In accordance with ~~§2.2-4312~~ of the Code of Virginia each contract over \$10,000 to which the County is a party shall contain the following clause:

During the performance of this contract, the contractor agrees to:

1. ~~(i)~~p Provide a drug- free workplace for the contractor's employees;
2. ~~(ii)~~p 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;
3. ~~(iii)~~s 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)~~
4. i Include the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor, contractor, or vendor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of this contract.

(K) ~~Immigration Reform and Control Act~~E-Verify Program.

Pursuant to Virginia Code § 2.2-4308.2, any employer with more than an average of 50 employees for the previous twelve (12) months entering into a contract in excess of \$50,000 with any agency of the County to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the County for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove their E-Verify enrollment.~~The contractor certifies that it does not and will not during the performance of this contract violate the provisions of the *Federal Immigration Reform and Control Act of 1986*, which prohibits employment of illegal aliens. The contractor agrees that its employment of any person without legal status may subject it to termination of this contract for default and agrees to include a similar provision in any subcontract.~~

(L) Authorized to Conduct Business in the Commonwealth of Virginia.

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 of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law or regulation. Any business entity described above that enters into a contract with the County shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so required under Title 13.1 or Title 50, or any other Virginia law or regulation, to be revoked or cancelled at any time during the term of the contract. The County may void any contract with a business entity if the business entity fails to remain in compliance with these provisions.

§100.13 ~~Posting of Contract~~Announcement of Award

~~All contract awards~~Awards of term contracts shall be posted in a public ~~place~~space.

§100.14 Modifications to the Contract

- (A) A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract, or \$50,000, whichever is greater, without the advance written approval by the Prince William County Board of County Supervisors.
- (B) The head of ~~the Using Department responsible for the contract may~~Procurement Services shall approve modifications to contracts~~modifications provided~~. The head of Procurement Services may delegate this authority in accordance with § 300.04 of these regulations.
- ~~1. No additional appropriations are required; and~~
- ~~2. Modifications to contracts shall have the approval of the Purchasing Manager prior to execution.~~
- (C) The ~~Purchasing Manager~~head of Procurement Services may extend the term of an existing contract ~~under such circumstances deemed necessary by the Purchasing Manager~~ to prevent disruption in County functions.
- ~~(D)~~ The Purchasing Manager head of Procurement Services shall ~~may~~ execute all modifications that exercise options for renewal periods upon approval by the head of the Using Department and ~~budget and~~ appropriation of necessary funds.
- ~~(D)~~(E) Unilateral modifications may be issued by the County for minor or administrative purposes.

§100.15 Insurance Requirements

- (A) Before ~~a contract can be finalized and~~ work can commence, the contractor shall provide evidence of the minimum coverage required by the ~~"Insurance Checklist"~~Minimum Insurance Requirements included in the solicitation.
- (B) These insurance requirements must include at a minimum:
1. Workers' Compensation and Employers' Liability insurance under the Virginia statutory requirements, to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors, including any and all liability or damage which may arise by virtue of any Virginia statute or law.

2. General Liability insurance in the amount prescribed by the County, to protect the contractor, its subcontractors, and the interest of the County, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form General Liability endorsement, in addition to coverage for explosion, collapse, and underground hazards, where required. Completed Operations Liability coverage shall continue in force for one (1) year after completion of work.
 3. Automobile liability insurance, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy or a Commercial General Liability policy.
- (C) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying liability policies for lesser limits with the remaining limits provided by an Excess of Umbrella Liability policy.
- (D) The contractor shall provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
- (E) The contractor will attach to each liability insurance policy, with the exception of Workers' Compensation, an endorsement to save and hold harmless the County from any liability or damages whatsoever arising out of the contracted work.

§100.16 Permits and Licenses

A contractor shall be solely responsible for complying with any applicable Federal, Sstate, and County laws, codes, ordinances, and regulations that may be required to provide goods, services, insurance, or construction under a County contract.

§100.17 Cooperative Procurements

- (A) The County may participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more public bodies for the purpose of combining requirements to increase efficiency, reduce the cost of goods and services, or to reduce County administrative costs.

- (B) In accordance with [Virginia Code § 2.2-4304](#) ~~of the Code of Virginia~~ and its exceptions, the County may purchase from another public body's contract even if it did not participate in the solicitation process, if the solicitation specified that the procurement was being conducted on behalf of other public bodies.
- (C) The County may issue its contract against another public body's solicitation, if the solicitation was conducted on behalf of other public bodies.

§100.18 Prompt Payment

"Payment date" shall mean either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty (30) [calendar](#) days after receipt of a proper invoice or (b) thirty (30) [calendar](#) days after receipt of the goods or services, whichever is later.

§200.00 ETHICS AND GENERAL BUSINESS PRACTICES

§200.01 General

- (A) All County procurements shall be in full compliance with the Virginia State and Local Government Conflict of Interests Act, § 2.2-3100 *et seq.*, and Article § 6 of Chapter 43 of Title 2.2 (Ethics in Public Contracting) of the ~~Code of Virginia~~ Virginia Code, § 2.2-4637 *et seq.*
- (B) Any person convicted of a willful violation of any provision of § 200.00 *et seq.* of these regulations shall be guilty of a Class 1 misdemeanor. Upon conviction, any County employee, in addition to any other fine or penalty provided by law, shall forfeit their employment.

§200.02 Proscribed Participation by County Employees in Procurement Process

No County employee having official responsibility in the procurement process shall participate in that process when:

- (A) The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement.
- (B) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror, contractor such as an officer, director, trustee, or partner, or is employed in a capacity involving personal and substantial participation in the procurement ~~process, or~~ process or owns or controls an interest of more than five percent (5%).
- (C) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement.
- (D) The employee, the employee's partner, or any member of the employee's family is negotiating, or has an arrangement concerning prospective employment with a bidder, offeror, or contractor.

§200.03 Disclosure of Subsequent Employment

No County employee or former County employee having an official responsibility in the procurement process shall accept employment with any bidder, offeror, or contractor with whom the employee or former employee dealt with in an official capacity concerning a procurement for a period of one (1) year from the cessation of employment by the County unless the employee or former employee provides written notification to the County Executive, prior to commencement of employment by that bidder, offeror, or contractor.

§200.04 Prohibition on Solicitation or Acceptance of Gifts

- (A) No County employee having official responsibility for a procurement shall solicit, demand, accept, or agree to accept a gift from a bidder, offeror, contractor or subcontractor.
- (B) No bidder, offeror, contractor, or subcontractor shall bestow a gift upon or accept a gift from any County employee having official responsibility for procurement.

§200.05 Misrepresentations by County Employees

No County employee having official responsibility for a procurement 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.

§200.06 Public Access to Procurement Information

- (A) Except as provided in these regulations, all proceedings, records, contracts, and other public records pertaining 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.
- (B) Cost estimates relating to a proposed 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 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 solicitation. Otherwise bid and proposal records shall be open to public inspection only after the award of the contract.
- (D) Any inspection of procurement 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 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 section prior to or upon submission of the data or other materials, and materials and must identify the data or other materials to be protected and state the reasons why protection is necessary. ~~The identification or classification of an entire bid or proposal document, line item prices, and/or total bid or proposal~~

~~prices as proprietary or trade secrets is not acceptable. 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. The determination of an improper designation shall be at the County's sole discretion.~~ If, after being given a reasonable time to revise the ~~unacceptable identification or classification~~improper designation, a bidder or offeror refuses to withdraw an entire classification designation, the bid will be considered nonresponsive or the proposal will be rejected.

§200.07 Prohibition on Disclosing Procurement Information Prior to Award

A County employee shall not, other than as provided by law, knowingly disclose bid and proposal information submitted by bidders and offerors or Selection Committee information prior to the award of the County contract to which the information relates without prior approval of the ~~Purchasing Manager~~head of Procurement Services.

§200.08 Competency of Vendor

No contract will be awarded to any vendor that is in arrears, or is in default to the County, upon any debt or contract, or has defaulted on a surety or upon any obligation to Prince William County. Upon request, the vendor must present within forty-eight (48) hours evidence satisfactory to the ~~Purchasing Manager~~head of Procurement Services of performance ability, and possession of necessary facilities, financial resources, and adequate insurance to comply with the terms of the contract.

§200.09 Subcontracting

The ~~Purchasing Manager~~head of Procurement Services shall determine if any portion of a contract shall be subcontracted or performed by a party other than the contractor. Such a restriction shall be included in the solicitation provisions.

§200.10 Authority to Suspend or Debar

- (A) The purpose of suspension or debarment of a person or business from contracting opportunities or from conducting business with a public body is to protect the County's interest and to protect the integrity of the County's procurement process from such person or business who has displayed improper, unethical, or illegal conduct while under a relationship with the County, based on sufficient documentation obtained that such conduct has occurred. See §200.10(G)(1) of these regulations regarding meaning of "under a relationship".

- (B) Suspension or debarment actions are discretionary actions. Suspension sanctions shall be imposed for less serious offenses while debarment sanctions shall be imposed for more serious offenses. The Purchasing Manager/head of Procurement Services in consultation with the Director of Finance and the County Attorney's Office shall determine the sanction and ~~the~~ time period of the sanction which shall be imposed against such person or business.
- (C) Debarment sanctions shall be in writing and shall describe the reasons for such action and the start date of the debarment. A written notice of pending action must be issued to such person or business, including information about the appeals process. Such notice shall be mailed certified/receipt requested or delivered in person and a receipt of the notice obtained from such person or business.
- (D) The County shall give such person or business that is accused of improper, unethical, or illegal conduct, an opportunity to appeal such sanctions to the County Executive within fourteen (14) calendar days after receipt of such notice. The County Executive's decision may be appealed within fourteen (14) calendar days of the date of the decision to the Board of County Supervisors. The Board of County Supervisors will determine, not later than the second regularly scheduled Board of County Supervisors meetings after delivery of the appeal, what action or process will be allowed for further appeal, if any. The Board of County Supervisors' decision whether to suspend or debar such person or business shall be final.
- (E) Based on the seriousness of the offense, the suspension period shall not exceed one (1) year and the debarment period shall not exceed three (3) years.
- (F) Suspension or debarment sanctions do not relieve the person or business of its responsibilities for any existing obligations to the County.
- (G) Causes for suspension or debarment sanctions ~~include, but~~include, but are not limited to the following.
1. Any conduct deemed improper or unethical by the Purchasing Manager/head of Procurement Services, or deemed illegal conduct by Law Enforcement, while under a relationship with the County. For purposes of this section "under a relationship" means a person or business responding to a County solicitation or who is under contract with the County.;
 2. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner when responding to a solicitation.;
 3. Misrepresentation(s) in a bid or proposal to appear responsive or responsible.;

4. Bribery or attempting to bribe a County employee(s) for procurement favors. Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future on a County employee(s) who has official responsibilities for public procurement.:
5. A bidder, offeror, or contractor, who displays abusive or obscene language or displays threatening actions toward any County employee(s), agent(s), or volunteer(s), or member(s) of the public, during any procurement process or while performing under a County contract.:
6. Refusal to fulfill a binding bid or proposal.:
7. Refusal to fulfill a contractual requirement(s), resulting in a breach of contract.:
8. Chronic documented unsatisfactory performance under a County contract, except where unsatisfactory performance was caused by acts beyond the contractor's control.:
9. Non-compliance with a critical requirement under a County contract. A suspension sanction may be imposed upon a contractor as a temporary, less severe action, to allow such contractor to come into compliance with the contract. This temporary action may be utilized when in the best interest of the County.:
10. Intentional invoicing for a good(s) and/or service(s) that was not provided.:
11. Intentional overcharging for a good(s) and/or service(s) when established County contract pricing exists.:
12. Demanding any kickback(s) from its suppliers, subcontractors, or competitors.:
13. Falsifying County procurement-related documents.:
14. County contract termination for default.:
15. Court judgment against any officer, director, owner, or partner finding a criminal offense involving a County procurement(s).:
16. Court judgment against any officer, director, owner, or partner finding fraud against the County.:

17. Court judgment against any officer, director, owner, or partner finding collusion involving a County procurement(s);
18. Court judgment against any officer, director, owner, or partner finding a violation of State or Federal antitrust law(s);
19. Conviction under State or Federal statutes of any officer, director, owner, or partner involving fraud, embezzlement, collusion, theft, forgery, bribery, falsification, destruction of public records, receiving stolen property, or other felonies; or;
20. Person or business that is under suspension sanction or debarment sanction from another public body. County sanctions will be imposed until such sanctions have expired or are lifted from such other public body.

§200.11 Bid Protests, General

- (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 Director of Finance within the times specified in this section.
- (B) ~~No-The County shall not consider any~~ protest ~~shall lie for any claim that the selected bidder or offeror is not a responsible party of the responsibility determination of the selected bidder or offeror,~~ nor shall any protest lie for any matter which the Director of Finance 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 three (3) working 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 of the contract to the successful bidder or offeror.
- (D) Any protest shall state in detail the basis for the protest, and ~~the specifics~~ specify the relief requested.
- (E) The Director of Finance shall inform the County Attorney's ~~Office~~ of the receipt of any protest.
- (F) The Director of Finance shall provide the County Attorney's ~~Office~~ with all relevant information and documentation involving the procurement. The Director of Finance shall consult with the County Attorney's ~~Office~~ as necessary ~~and~~/or appropriate.

- (G) The Director of Finance shall decide all protests within ten (10) calendar days of receipt of the protest. The Director of Finance ~~and~~ shall issue a written decision, including the reasons for the decision. The Director of Finance's decision shall be final.

§200.12 Bid Protests, Remedies

- (A) ~~In the event that~~Prior to the award of a contract, if the Director of Finance determines that a decision to award a contract is illegal, arbitrary or capricious, ~~prior to the award of a contract,~~ the Director may cancel the proposed award, or revise it to comply with the law.
- (B) ~~In the event that~~if the Director of Finance makes the determination required in subsection (A) ~~of this section~~ after a contract has been awarded, the sole remedy shall be a finding to that effect. 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~~if the Director of Finance determines that a protest filed is well founded, he or she may cancel the solicitation, or revise it to comply with the law.
- (D) The validity of any contract awarded in good faith in accordance with this section shall not be affected by ~~the fact that a any~~ protest or appeal ~~has been filed., and a~~ 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 ~~further action to~~ award shall be made unless the Director of Finance determines in writing that it is necessary to proceed to award without delay to protect the public interest, or unless the bid or offer would otherwise expire.
- (E) Where the County determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of ~~Virginia Code § 2.2-4367 of the Code of Virginia,~~ the County may enjoin the award of the contract to a particular bidder.

§200.13 Proceedings for Suit on Bids or Contracts

No suit at law or equity based on any County contract may be filed against the Board of County Supervisors by any person, unless and until all requirements and provisions of Article 4 of Chapter 12 of Title 15.2 of the ~~Code of Virginia,~~ Virginia Code § 15.2-1245 et seq. have been met.

§200.14 Vendor Registration Requirements

All vendors must register with the County prior to award.

§200.15 Sales Tax Exemption

Prince William County is exempt from the payment of any Federal excise or any Virginia sales tax. However, when under established trade practice any Federal excise tax is included in the list price, the vendor may quote the list price and shall show separately the amount of Federal tax, as in its ~~Bid-bid~~ or ~~Proposal-proposal~~ a flat sum, which shall be deducted by the County.

§200.16 Prohibition on Kickbacks

- (A) No contractor or subcontractor shall demand or receive kickbacks from any of its suppliers or subcontractors, as an inducement for the award of a subcontract or purchase order.
- (B) No subcontractor or supplier shall make, or offer to make, kickbacks.
- (C) No person shall demand or receive kickbacks in return for an agreement not to compete on a public contract.
- (D) If a subcontractor makes a kickback, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or purchase order and paid by the ~~County, and~~ County and shall be recoverable from both the maker and the recipient.

§200.17 Limitations on Submitting Bids after Participating in Bid Preparation

No person who, for compensation, assisted in the preparation of an Invitation for Bid (IFB) or Request for Proposal (RFP) for 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 publicly available.

§200.18 Printing Provisions

(A) Copyright.

No contractor may copyright any work produced for the County without the written consent of the ~~Purchasing Manager~~ head of Procurement Services.

(B) Printing: Ownership of Artwork, Negatives, etc.

All artwork, negatives, overlays, or similar materials used to print a job shall be the property of the ~~County, and~~ County and must be returned to the Using Department upon completion or upon request.

(C) Printing: Overruns, Underruns.

The County is not required to accept overruns ~~unless expressly~~~~expressly~~~~provided~~ "no overruns" is specified-stated in the solicitation. However, a Using Department may at its discretion accept up to a ten percent (10%) overrun. Prices for overruns shall not exceed the quoted base price per unit or the quoted price for additional copies run at the same time. A department may, at its discretion, accept underruns. The price for underruns will be calculated at the quoted base price per unit.

§200.19 Information Technology Provisions

(A) Offeror's Credentials to Support Third-Party Information Technology (IT).

This is a mandatory requirement. Any firm offering third-party IT products and services in response to this solicitation is required to be a "certified" reseller ~~and~~/or service provider trained in the installation and use of the product(s) proposed. The bidder or offeror shall be required to submit a letter(s) of certification or other documentation from the original vendor(s) with its bid or proposal certifying that the offeror is currently an "authorized reseller" ~~and~~/or "certified service provider" and is trained in the installation, configuration, and support of the product. Failure to provide the required documentation with the bid or proposal may disqualify the bidder or offeror from further consideration.

(B) Third-Party Product Representations.

This is a mandatory requirement. Offerors proposing third-party products in response to this solicitation shall certify as part of their bid or proposal that they have reviewed the products and shall identify which specific mandatory and optional requirements of the statement of work that they address. If modifications to the products are necessary to meet specifications, those modifications are to be clearly identified and a fixed cost included in the cost proposal to make the required modifications. Failure to provide the required documentation may disqualify the bidder or offeror from further consideration.

(C) License, Service, and Maintenance Agreements.

All license, service, and maintenance agreements required to be signed by the County as part of a contract shall be submitted as attachments to the offeror's initial bid or proposal. Review and negotiation by the County of terms contained in these documents shall be a condition of contract award.

(D) Agreement of Confidentiality.

The contractor shall sign an agreement of confidentiality to guarantee that any data structure, report, or application supported for the County shall not be reverse

engineered or supplied to any other customer or jurisdiction unless the contractor has copyright to do so.

§300.00 METHODS OF PROCUREMENT

§300.01 Available Methods of Procurement

- (A) All formal contracts to which the County is a party for the purchase or rental of goods, services, insurance, or construction, shall be awarded after competitive sealed bidding or competitive negotiation, as provided in these regulations, unless otherwise authorized by law.
- (B) Unless otherwise exempted within these regulations, competition is required for all goods, services, insurance, and construction, classified as similar commodity codes with a fiscal year cumulative cost of \$5,000 or more within a Using Department.
- (C) Goods and services required shall not be artificially divided or split among procurement transactions in order to avoid competition. To assist the Purchasing Manager—head of Procurement Services in evaluating utilization of proper procurement methods, Using Departments shall provide budget information and records of past expenditures upon request.
- (D) Competitive sealed bidding is the preferred procurement method for goods, services, insurance, or construction, ~~except where exceptions are allowed for in these regulations~~. This method shall be utilized when the requirements can be clearly defined, negotiations are not necessary, price is the major determining factor for award selection, and where required by law. ~~An award is made to the lowest responsive responsible bidder(s).~~
- (E) ~~Upon a determination by the Director of Finance and set forth in writing that if~~ competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, insurance, or construction may be procured by competitive negotiation. ~~The record shall include the basis for the determination and shall be placed in the procurement file.~~ This method shall be utilized when the requirements cannot be clearly defined, negotiations are necessary, price is ~~not~~ a major determining factor for award selection, and where required by law. ~~An award is made to the top ranked offeror(s) selected by a selection committee if negotiations are successful with such offeror(s).~~
- (F) Various forms of competitive bidding and competitive negotiation may be utilized for County procurements such as: One-Step Procurement, Multi-step/Two-step Procurement, Best Value, Job Order Contracting, Multiphase Contracting, Reverse Auctioning, Public Auction, and Cooperative Procurement, as permitted by the Virginia Public Procurement Act, Virginia Code § 2.2-4300 *et seq.*, and these regulations.

- (G) ~~Recurring annual~~Term contracts established by the County using the above methods are a required source when procuring the included goods ~~or~~ services.

§300.02 Procurements of \$100,000 or More

- (A) Procurements of goods and services estimated to cost \$100,000 or more shall be made directly by ~~the Purchasing Office~~Procurement Services by competitive sealed bidding (Invitation ~~For~~for Bid) or competitive negotiation (Request ~~For~~for Proposal) methods of procurement, except as otherwise provided in these regulations.
- (B) The Invitations for Bid (IFB) or the Request for Proposal (RFP) shall be available to the public at least ten (10) calendar days prior to the due date set for receipt of bids and proposals.
- (C) All public notices shall be designed to reach as many potential bidders reasonably able to meet the specifications/scope of work, but no procurement shall be subject to challenge solely on the ground that a qualified bidder was not solicited.
- (D) The Using Department shall submit a list of any known bidders/offerors to ~~the Purchasing Office~~Procurement Services in order to maximize competition.
- (E) Formal procurements shall be posted on the County's website.

§300.03 Procurements of \$30,000 or more and less than \$100,000

- (A) Procurements of goods and services estimated to cost \$30,000 or more and less than \$100,000 shall be made directly by ~~the Purchasing Office~~Procurement Services in the open market by written Request for Quotation (RFQ).
- (B) A minimum of four (4) likely sources shall be solicited. Procurements of \$30,000 or more shall be posted on the County's website.
- (C) A public record shall be kept of all sources solicited and all quotes received. The record shall indicate which quote was accepted.

§300.04 Procurements of \$5,000 or more and Less Than \$30,000 (Informal Procurement)

- (A) Procurements of goods and services estimated to cost \$5,000 or more and less than \$30,000 (for a single procurement or accumulative of similar commodities in a fiscal year) shall be made directly by the Using Department in the open market by written Request for Quotations (RFQ).
- (B) A minimum of three (3) likely sources shall be solicited by mail, ~~by telephone~~, electronically, or by other public notice. All sources solicited shall be provided the

same information, ~~and~~ specifications, ~~and/or~~ scope of work. Quotations received shall not be released until after ~~the~~ due date and time for receipt of quotations.

- (C) A public record shall be kept of all sources solicited and all quotes received. The record shall indicate which quote was accepted.

§300.05 Procurements of Less Than \$5,000

- (A) Procurements of goods and services estimated to cost less than \$5,000 (for a single procurement or accumulative of similar commodities in a fiscal year) shall be made directly by the Using Department in the open market. The vendor shall be paid via ~~Purchase procurement~~ ~~€~~card or direct payment.
- (B) The Director of Finance and the employees of ~~the Purchasing Office~~ ~~Procurement Services~~ shall not be liable and shall be held harmless for any error or omission in procurements under this section.

§300.06 Use of the Procurement Card

Procurement cards shall be utilized for purchases as provided in the *County's Procurement Card Policy*. Misuse of any procurement card is subject to the same action stated in ~~section~~ § 100.08 and § 200.00 *et seq.* of these regulations.

§300.07 Construction

- (A) The preferred method of procurement of construction by the Board or any Using Department shall be by competitive sealed bidding pursuant to § 600.00 *et seq.* of these regulations.
- (B) Construction may be procured by competitive negotiation in the following circumstance, upon a written determination made in advance by the Director of Finance that competitive sealed bidding is either not practicable or not fiscally advantageous to the public:
 - 1. For a fixed-price design-build or construction management contract;
 - 2. When the contract is not expected to cost more than \$500,000; ~~or~~
 - 3. For the construction of highways and any draining, dredging, excavation, grading, or similar work upon real property.
- (C) A record detailing the basis of the determination to use competitive negotiation shall be made and maintained in the procurement file.

§300.08 Professional Services and ~~Certain-Special~~ Consultants

- (A) The procurement of professional services and special consultants by the Board or any Using Department shall be by competitive negotiation pursuant to § 700.00 *et seq.* of these regulations, if the cost is \$60,000 or greater.
- (B) The procurement of professional services and special consultant services costing less than \$60,000 may be exempt from competition, provided such action is approved in writing and in advance by the County Executive.

§300.09 Exempt Items

- (A) Notwithstanding any other provision of these regulations, the items in this section are exempt from the competition requirements ~~of these regulations, but regulations,~~ but shall comply with the other provisions ~~of these regulations.~~ These items may be solicited and contracted for by the Director of Finance, as the Director deems appropriate. Funds shall be properly encumbered before the good or service is procured. The list of exempt items may be amended by the Board of County Supervisors whenever it deems it appropriate.
- (B) The exempt items and categories ~~of items~~ are as follows:
 - 1. Accreditation, testing, and evaluation services;
 - 2. Advertising/~~Media-media~~ purchases, excluding contracts with advertising agencies to prepare ad layouts;
 - 3. Books, manuscripts and pamphlets;
 - 4. Booth space at conferences, exhibits, fairs, and product shows;
 - 5. Care, search and housing of prisoners;
 - 6. Clothing and tool allowances;
 - 7. Commercial, off the shelf training;
 - 8. Conferences, seminars, and off-the-shelf training;
 - 9. Any payments made pursuant to court order, jury verdicts, or settlements;
 - 10. Dues, subscriptions (including electronic), publications, and Dunn & Bradstreet reports;
 - 11. Educational ~~f~~ilms;
 - 12. Freight/~~Mailing-mailing~~ charges;
 - 13. Honorarium;
 - 14. Self-insurance claims;
 - 15. Inspection fee and costs;
 - 16. Legal services, including, but not limited to, title examinations and the costs of litigation or regulatory proceedings, including, but not limited to, court

- costs, witness fees (lay and expert), transcripts, court reporters, exhibits, and process servers;
17. Perishable foodstuffs;
 18. Postage;
 19. Prescriptions/medicines;
 20. Public auction items;
 21. Purchase and rental of real property;
 22. Software maintenance contracts, licenses, and upgrades for software already purchased;
 23. Speakers, lecturers, musicians, and performing artists;
 24. Surplus property;
 25. Tuition;
 26. Used equipment and ~~Used~~ materials;
 27. Utility services - electric, water, sewer, local telephone service, cable television and internet services, and natural gas; and
 28. ~~Additional~~ items deemed exempt by the Commonwealth of Virginia which are not ~~specifically~~ listed under this subsection.
- (C) Contracts ~~entered into~~ for goods or personal services for direct use by recipients of human service programs shall be exempt from these regulations and may be negotiated as appropriate. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from these regulations.
- (D) Negotiation of financing agreements entered into in connection with any lease-purchase of goods, whether or not the goods themselves have been competitively acquired, shall be exempt from any requirement of competitive bidding. However, all lease purchase financing agreements shall be administered and approved by the Purchasing Manager/head of Procurement Services.
- (E) Services rendered in the performance of work that is original and creative in character in a recognized field of artistic endeavor are exempted.
- (F) Procurements by the General Registrar's Office for equipment, software, services, the printing of ballots, statement of results, or other materials essential to the conduct of an election are exempted pursuant to Virginia Code § 24.2-602 ~~of the Code of Virginia~~, but the provisions of Articles 4 (§ 2.2- 4347 *et seq.*) and Article 6 (§ 2.2-4367 *et seq.*) of Chapter 43, *Virginia Public Procurement Act*, of Title 2.2 shall apply to such contracts. See Virginia Code § 2.2-4346(A) ~~of the Code of Virginia~~.
- (G) Upon a written determination made in advance by the Director of Finance that the purchase of goods at a public auction sale is in the best interests of the public, such

items may be purchased at the public auction. The writing shall document the basis for this determination.

§300.10 Additional Exemptions from Competition

In addition to the exempt categories and items listed in §_300.09 of these regulations, the following are also exceptions to the requirement of competitive bidding:

- (A) Procurements of goods and services from the state penitentiary, or through State, Federal, Council of Governments, School Board, or other political jurisdiction bids, or any other source with which the County has entered or shall enter into a cooperative purchasing-procurement agreement.
- (B) Contracts with other Public Bodies, such as George Mason University and Federal and state State departments and agencies, where permitted or authorized.
- (C) Purchases for special police work. ~~W~~ when the Chief of Police certifies to the Director of Finance that items are needed for special police work, including undercover police operations, the Director of Finance may procure the needed items without competitive bidding.
- (D) Procurements of goods and services from Employment Services Organizations that provides employment services to individuals with disabilities that is a Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Virginia Department for Aging and Rehabilitative Services.

§300.11 Emergency Procurements

- (A) In case of emergency, a contract may be awarded without competition: however, such procurement shall be made with such competition as is practicable under the circumstances.
- (B) To qualify as an emergency, the situation must meet one of the following requirements:
 - 1. There is a breakdown in any County service;
 - 2. Goods and/or services are needed for immediate use in work, which may be essential to or may affect the public health, safety, or general welfare of the County and its inhabitants; or
 - 3. Work undertaken under a court order or in anticipation of a court order.

(C) ~~Determination of e~~Existence of an e~~Emergency.~~

The head of the Using Department shall initially determine whether an emergency exists which justifies the application of these provisions. If, upon subsequent review, the Director of Finance determines that no emergency actually existed, the Director shall proceed under the portion of these regulations pertaining to unauthorized procurements.

(D) Procedure during ~~regular-Regular~~ County ~~office-Office hours~~Hours.

If an emergency occurs during office hours, the Using Department, where practical, shall notify the ~~Purchasing Manager-head of Procurement Services~~ and the ~~Purchasing-head of Procurement Services~~Manager shall either procure goods or services directly, or authorize the Using Department to do so.

(E) Procedure ~~after-After~~ office-Office hours~~Hours~~.

If an emergency occurs after office hours, the Using Department shall procure the necessary goods or ~~services, and~~services and send notification to the ~~Purchasing Manager-head of Procurement Services~~ as soon as practicable. The Using Department shall submit an emergency-type Purchase Order to ~~the Purchasing Office~~Procurement Services no later than the first business day after the emergency situation, together with a written justification for the procurement.

~~Determination of existence of an emergency. The head of the Using Department shall initially determine whether an emergency exists which justifies the application of these provisions. If, upon subsequent review, the Director of Finance determines that no emergency actually existed, the Director shall proceed under the portion of these regulations pertaining to unauthorized procurements.~~

~~(B)~~(F) Prior authorization for emergency procurements shall be obtained from the Director of Finance whenever possible.

~~(C)~~(G) For emergency contracts over \$100,000, written notice of the procurement shall be documented in a public ~~place-space~~ including the items procured, the selected contractor, and the date the contract was awarded.

§300.12 Sole Source

(A) Sole source procurements shall be exempt from the competitive bidding requirements of these regulations.

- (B) Where services or goods are only practicably available from a single source, either because of legal requirements, specific patents or copyrights, peculiar qualifications and skills, technical specifications, or other reasons, the Purchasing Manager-head of Procurement Services may obtain such goods or ~~services or goods~~ from the sole source.
- (C) It shall be the responsibility of the Using Department to provide a written justification for a sole source procurement.
- (D) The Purchasing Manager-head of Procurement Services is authorized to enter into direct negotiations with the sole source supplier to obtain such terms and conditions as the Procurement Purchasing Manager may determine to be in the best interest of the County. The Procurement Purchasing Manager shall maintain a record of negotiations with the sole source supplier.
- (E) For sole source procurements over \$100,000, a written notice of the procurement shall be posted in a public place-space including the items procured, the contractor selected and the date that the contract was awarded.

§300.13 Pre-Qualification

- (A) The Procurement Purchasing Manager is authorized to pre-qualify prospective contractors prior to any solicitation, whether for goods, services, insurance, or construction, by requiring prospective contractors to submit such information as the Procurement Purchasing Manager shall deem appropriate, including samples, financial reports, and references; provided, however, that opportunity to pre-qualify shall be given to any prospective contractor who has not been suspended or debarred under these regulations.
- (B) The prequalification process shall be established in writing and sufficiently in advance of its implementation to allow prospective contractors a fair opportunity to complete the process.
- (C) The Procurement Purchasing Manager may refuse to pre-qualify any prospective contractor, provided that written reasons for refusing to pre-qualify are made a part of the record in each procurement. The decision of the Procurement Purchasing Manager shall be final.
- (D) In considering any request for pre-qualification, the Procurement Purchasing Manager shall determine whether there is reason to believe that the prospective contractor possesses the management, financial soundness, and history of performance which indicate apparent ability to successfully complete the plans and specifications of the Invitation for Bid (IFB). The Procurement Purchasing Manager

may employ standard forms designed to elicit necessary ~~information, or information~~ or may design other forms for the purpose.

- (E) Pre-qualification of a prospective contractor shall not constitute a conclusive determination that the prospective contractor is responsible, and such prospective contractor may be rejected as non-responsive on the basis of subsequently discovered information.
- (F) Failure of a prospective contractor to pre-qualify with respect to a given procurement shall not bar the prospective contractor from seeking pre-qualification as to future procurements, or from bidding on procurements that do not require pre-qualification.

§300.14 Recurring Annual Contracts High-Volume Low-Dollar Purchases

Under special circumstances, the head of Procurement Services may provide written Departmental exemption for orders placed outside of the County's financial management system.

~~(A) A recurring annual contract is a contract resulting from formal competition for the recurring procurement of similar goods or services during a twelve (12) month period.~~

~~(B) No recurring annual contract shall be of itself construed to constitute a contract with the vendor for the full estimated amount of the contract and a contractual obligation shall exist with any contractor only to the extent that orders shall have actually been made against such contract.~~

~~(C) It shall be the responsibility of the head of the Using Department to ensure that no unauthorized purchases are made against any recurring annual contract. The head of the Using Department shall report any unauthorized purchase to the Director of Finance, in accordance with these regulations.~~

§300.15 Public Auction Sale

- (A) Upon determination in writing, made in advance by the Procurement Purchasing Manager, goods may be purchased at a public auction sale.
- (B) A record shall be kept documenting the basis for the use of the public auction sale being in the best interest of the County.

§300.16 Cancellation of Solicitation

A solicitation ~~Invitation for Bids (IFBs), Request for Proposals (RFPs), or Request for Quotes (RFQs)~~ may be canceled when the Procurement Purchasing Manager determines that is in the best interest of the County to do so. The reasons for cancellation shall be part of the record and kept in the procurement file.

§400.00 COMPETITIVE SEALED BIDDING

§400.01 Applicability

Competitive sealed bidding is the preferred procurement method, except where exceptions are provided in these regulations.

§400.02 Preparation of Invitation for Bid (IFB)

- (A) ~~The Purchasing Office~~Procurement Services shall prepare an Invitation for Bid (IFB) after obtaining requirements and a requisition from the Using Department.
- (B) The IFB shall clearly, accurately, and completely state the provisions (terms and conditions) and technical and descriptive requirements of the procurement for the intended purpose.
- (C) Specifications/Scope of Work shall not be unreasonably restrictive and shall allow for alternatives within reasonable and acceptable tolerance levels and ranges. The procurement must satisfy competitive bidding requirements and maximize competition.

§400.03 Invitation for Bid (IFB) Format

- (A) The IFB shall include all pertinent documents, whether attached or incorporated by reference. An IFB shall generally be comprised of:
 - ~~1.~~ Instructions to Bidders (pertinent dates/times/locations)
 - 1.
 - ~~2.~~ Definitions;
 - ~~3.~~2.
 - ~~4.~~ Site Inspection and Pre-Bid Conference Information, when necessary;
 - ~~5.~~3.
 - ~~6.~~ Special Provisions;
 - ~~7.~~4.
 - ~~8.~~ General Provisions/Mandatory Provisions;
 - ~~9.~~5.
 - ~~10.~~ Qualifications of Bidders (Experience, Certifications, Licenses);
 - ~~11.~~6.
 - ~~12.~~ Evaluation/Award Criteria;
 - ~~13.~~7.
 - ~~14.~~ Securities (Insurance, Bonds, Liquidated Damages), when necessary;
 - ~~15.~~8.
 - ~~16.~~ Specifications/Scope of Work;

~~17.9.~~

~~18.~~ Pricing Schedule/Pricing Structure;

~~19.10.~~

~~20.~~ Forms/Signature Page; and

~~21.11.~~

~~22.~~ Other Pertinent Documents (Plans, Maps, Photos, Samples, etc.); ~~and~~

~~23.~~

~~24.12.~~ Sample Contract.

(B) Other information may be included as deemed appropriate and necessary by the Procurement Purchasing Manager.

~~(C) — Unless the County has provided for prequalification, the IFB shall include a statement of any requisite qualification of prospective bidders.~~

~~(D)~~(C) Evaluation and award factors described in the IFB may include special qualifications of potential contractors, life cycle costing, value analysis, or other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

§400.04 Brand Name Specification, or Equal

An IFB shall include the following provisions relating to equal brand products other than those that may be set forth by name or other clear identification in the specifications.

(A) Unless otherwise provided in the IFB, 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.

(B) Any other brand, make of material, device or equipment, which is recognized as an equal product, considering quality, workmanship, economy of operation, and is suitable for the purpose intended, shall be considered responsive to the specification at the County's sole discretion.

§400.05 Public Notice of IFB

The County shall provide public notice of the IFB at least ten (10) calendar days prior to the date set for receipt of bids by posting a notice in a designated public County Building-building and by publication on the County website. Vendors registered with the County under the pertinent commodity code for such procurement shall also be solicited electronically. The public notice may also be published in a newspaper of general circulation when the County knows or anticipates that there are a limited number of potential bidders.

§400.06 ~~Addendum Amendment~~ to Invitation for Bid (IFB)

If changes or clarifications to an IFB are necessary, a written ~~Addendum amendment~~ shall be issued. In addition, the County may, but is not required to, consider extending the due date for receipt of bids.

§400.07 Bid Submission

- (A) Written sealed bids shall be submitted to the ~~Procurement Purchasing~~ Manager. The bid due date and time and the physical location for receipt of bids must be specified in the IFB.
- (B) Bids shall be submitted in sealed package. The package shall be clearly labeled as a "Bid" and shall include the bidder's name, IFB/Project Name, bid due date and time, and the statement "This package shall not be opened prior to the bid due date and time."
- (C) If authorized by the County, bids may be submitted electronically, using approved secure techniques, if this method of submitting bids is permitted by the IFB; otherwise, written sealed bids must be submitted.
- (D) Packages received and opened by the County that are not identified as a ~~bid, but bid~~ ~~but~~ are ~~identified as~~ ~~identified as~~ a bid once opened, shall be resealed and properly marked with the IFB name and number and shall be reopened at the bid due date and time. The County is not responsible for opening a bid package prior to the bid due date and time which is not properly identified as a bid.

§400.08 Public Opening and Announcement

- (A) All bids, ~~either electronic or hard copy~~, received by the due date and time shall be opened, read aloud in a public ~~pl~~space, witnessed, and recorded. The reading shall consist of identifying each bidder, bidder's ~~pricing~~/cost, acknowledging receipt of any required addendums, bonds, or other required submittals.

~~(B) When electronic bids are allowed and submitted, such bids will be made available for public access over the Internet at the appropriate time.~~

~~(C)(B)~~ The recorded bids shall be posted on the County's website for ~~bidders to public~~ viewing. ~~No negotiations may be entered into with an apparently successful bidder with respect to any contractual term or condition that would constitute a material change in the specifications or the contract price~~

§400.09 Late Bids

Bids that are received after the designated bid due date and time shall not be opened nor considered for contract award.

§400.10 Alternate Bids

Any bidder may submit a bid that varies from the bid requirements. Such bid shall be clearly labeled as an ~~Alternate~~ alternate Bid, and may be provided in addition to, or in lieu of, a responsive bid. Such bid may be considered when the alternate bid is in substantial compliance with the bid requirements. When an Alternate Bid is received that substantially varies from the IFB requirements and the Using Department determines that it is in the County's best interest to consider those variances, then the IFB must be cancelled, requirements revised, and a new IFB issued reflecting the revised requirements.

§400.11 Rejection of Bids

The ~~Procurement Purchasing~~ Manager may reject any or all bids as deemed in the best interest of the County. A written record of the rejection, including the reason(s) for it, shall be kept in the procurement file.

§400.12 Waiver of Informalities

The ~~Procurement Purchasing~~ Manager may waive any informality in any bid, however, a late bid shall not be considered an informality.

§400.13 Only One Responsive and Responsible Bid

- (A) In the event that only one responsive and responsible bid is received, the IFB may be canceled and the goods, services, insurance, or construction rebid unless the ~~Procurement Purchasing~~ Manager determines that the price bid is reasonable and in the best interest of the County, on the basis of price comparison, value analysis, prior price history, an engineering estimate, or other method which establishes price reasonableness.
- (B) When the ~~Procurement Purchasing~~ Manager determines that the above methods of establishing price reasonableness are not feasible, the ~~Procurement Purchasing~~ Manager may enter into negotiations with the responsive and responsible bidder. Before negotiations begin, reasonable price/cost objectives shall be determined. Such negotiations may pertain to labor hours/labor rates, cost of goods, discounts, delivery/performance, overhead, and profit.

- (C) Any bidder who is a party to such negotiations shall be required to certify that its price proposal is complete, current, and accurate prior to the initiation of such negotiations.
- (D) A record of negotiations shall be prepared for the procurement file once this process is complete. The record shall reflect the significant elements and considerations of the negotiation which resulted in a mutually fair and reasonable contract award.

§400.14 Evaluation of Bids

- (A) Bids shall be evaluated on the basis of requirements ~~which are~~ set forth in the IFB, ~~and~~ which may include criteria to determine acceptability as to inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. ~~Such criteria shall be ranked in descending order of importance in the IFB.~~
- (B) Where the apparent low bidder submitted a substantially lower bid price ~~than~~ the other bidders, the apparent low bidder ~~must~~ may be asked to review the bid for mistakes. If no mistake(s) is identified, the bidder shall certify in writing that the bid submitted has been reviewed, no mistake(s) was made, and the bid stands as submitted. ~~(See also §400.16 "Withdrawal of Bids").~~
- (C) In determining the award of any contract for paper and paper products to be purchased for the County, ~~the Purchasing Office~~ Procurement Services shall use competitive sealed bidding and shall award to the lowest responsive 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 (10%) greater than the bid price of the low responsive and responsible bidder offering a product that does not meet the ~~the~~ United States Environmental Protection Agency (EPA) Recommended Content Standards as defined in 40 C.F.R. Part 247.
- (D) In the case of a tie bid where goods are being offered and existing price preferences have already been ~~taken into account~~ considered, preference then shall be given to the bidder whose goods contain the greatest amount of recycled content.

§400.15 Determination of Non-Responsibility

- (A) Notwithstanding the provisions of § 200.11 of these regulations any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract award shall be notified in writing by the Procurement Purchasing Manager. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) business days to the Director of Finance.

- (B) The Director of Finance shall decide appeals regarding non-responsibility determinations within five (5) business days of receipt thereof and shall notify the bidder in writing. The decision of the Director of Finance shall be final, unless appealed under these regulations and/or the [Virginia](#) Public Procurement Act, [Virginia Code](#) § 2.2-4300 et seq. ~~of the Code of Virginia~~.

§400.16 Withdrawal of Bids

- (A) Any bidder for goods, services, insurance, or construction, other than a contract for construction and 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.
- (B) If a bid contains both clerical and judgment mistakes, a bidder may withdraw its 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 or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents, and material used in the preparation of the bid sought to be withdrawn.
- (C) The Director of Finance shall require, and so state in the Invitation for Bid (IFB), the following procedure for withdrawal of a bid.
1. The bidder shall give notice in writing of its claim of right to withdraw its bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such claim.
 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. No bidder which is permitted to withdraw a bid shall for compensation, provide any goods or labor to or perform any subcontract or other work agreement for the person or business 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.

- (D) If a bid is withdrawn, the lowest remaining bid submitted by a responsible bidder shall be deemed to be the low bid.
- (E) If the County denies the withdrawal of a bid under this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the price, provided such bidder is a responsive and responsible bidder, and the County determines the award would be in the County's best interest. If the County determines that an award is not in the County's best interest, such determination shall be put in writing and shall be made part of the procurement file.

§400.17 Tie Bids

- (A) When two (2) or more responsible bidders submit bids, which are responsive and contain identical prices, preference shall be given to the bidder whose principal place of business is in Prince William County. In the event that there is no Prince William County bidder, or that this does not resolve the tie, preference shall be given to the bidder whose principal place of business is in the Commonwealth of Virginia. In the event that there is no Virginia bidder, or that this does not resolve the tie, preference shall be given to bidders that produce the goods or services in the Commonwealth of Virginia.
- (B) In the event that sub-section (A) of this section does not resolve the tie, the Procurement Purchasing Manager shall draw lots in the presence of two (2) or more witnesses, to select the bidder to whom award shall be made.
- (C) Detailed records of any proceeding connected with tie bids shall be kept in the procurement file.
- (D) The County's decision to award a contract to one or more such bidders under this section shall be final.

§400.18 Bids Exceeding Available Funds

- (A) Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except if the bid from the lowest responsible bidder exceeds available funds. The Procurement Purchasing Manager or designee may negotiate with the apparent low bidder to obtain a contract within available funds. Such negotiation may be undertaken in accordance with the procedures in subsection (B) of this section, which shall be specified in the IFB.

- (B) Negotiations may be directed to:
1. Reduction of goods, services, insurance, or construction procured;
 2. Substitution of materials; and/or
 3. Change in the period for project completion, if the procurement is a construction project.
- (C) ~~The Purchasing Office~~Procurement Services shall conduct the negotiations with the bidder. The County Attorney's ~~Office~~ may be requested to assist in or conduct such negotiations. If the negotiation does not result in a contract price within available funds, ~~the Purchasing Office~~Procurement Services shall seek an appropriation of additional funds from the Using Department prior to execution of a contract with the low responsive and responsible bidder; otherwise, the solicitation shall be canceled. A record of the cancellation shall be included in the procurement file.

§400.19 Award for All or Part of a Bid

The ~~Procurement Purchasing~~ Manager may award all or part of a bid to any bidder whose bid is determined to be the lowest responsive and responsible bid. Awards can be made by line item, by group, or by the overall lowest total cost. Furthermore, specific line items ~~goods and/or services~~ may be deleted from award consideration if in the County's best interest.

§400.20 Multiple Awards

Where provided for in the IFB, the ~~Procurement Purchasing~~ Manager may award multiple contracts for the same procurement which can include primary, secondary, and tertiary contract awards. Procedures for the utilization of multiple contractors shall be addressed in the IFB.

§400.21 Notice of Award

Contracts shall be awarded with reasonable promptness by written notice to the successful bidder(s). Nothing herein shall prevent the ~~Procurement Purchasing~~ Manager from giving a Notice of Intent to Award to the apparent successful bidder, but such notice shall not constitute an award.

§400.22 Contract Award

- (A) All procurements of goods, services, insurance, or construction which are subject to the competitive bidding requirements in these regulations shall be awarded to the lowest responsive responsible bidder based upon the lowest cost and/or other criteria specified in the IFB.

~~(D)~~(B) Whenever the lowest responsive responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered.

§500.00 COMPETITIVE NEGOTIATION

§500.01 Applicability

- (A) Competitive Negotiation is used when requirements cannot be clearly defined, negotiations are necessary, price is not a major determining factor for award selection, and as required by law. The Procurement Purchasing Manager or designee shall determine in writing prior to the use of a Request for Proposal, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.
- (B) In making a determination under this section, the Procurement Purchasing Manager shall consider whether:
1. Quality, availability, or capability is overriding in relation to price in procurements for research and development, technical goods, or special services;
 2. The initial installation needs to be evaluated together with subsequent maintenance and service capabilities, and what priority should be given these requirements in the County's best interest; 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, or specially-designed phone systems.

§500.02 Preparation of Request for Proposal

The Purchasing Office Procurement Services shall prepare a Request for Proposal (RFP) after the Using Department submits a requisition with requirements.

- (A) The RFP shall describe the County's requirements in general terms.
- (B) The RFP shall clearly describe the evaluation criteria to be used to evaluate proposals and award the contract(s).

§500.03 Public Notice of Request for Proposals

The County shall provide public notice of the RFP at least ten (10) calendar days prior to the date set for receipt of the proposals by posting a notice in a designated public area and by publication on the County's website. The public notice may also be published in a newspaper of general circulation. In addition, the County may solicit proposals directly from registered vendors.

§500.04 Format of Requests for Proposals

~~(C) — Each Request for Proposal (RFP) with an estimated value of \$100,000 or more shall be reviewed by the County Attorney's Office prior to distribution.~~

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

1. The required goods ~~and~~, services, ~~insurance, or construction~~;
2. A description of the work and work location;
3. An estimate of when and how long the services shall be required;
4. A date and time proposals shall be submitted;
5. A statement that all proposals shall be in writing;
6. A statement that information received will not be disclosed to other offerors during selection;
7. Except where the offerors have been pre-qualified, a statement of the minimum information that the proposal must contain, to include where appropriate:
 - (a) The offeror's name and the location of the offeror's principal place of business;
 - (b) 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 goods, services, insurance, or construction;
 - (d) A listing of other contracts under which goods, services, insurance, or construction similar in scope, size, or discipline to the RFP's requirements specified were delivered or performed within a previous specified period of time, and a list of current references, including telephone numbers, who may be contacted with respect to such contracts; and
 - (e) A plan, in as much detail as practical, explaining how the required goods, services, insurance, or construction shall be performed or provided or of what they shall consist; and
8. The RFP shall include ~~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 specified point value;~~ ~~such criteria may 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 goods to meet the identified needs.~~

§500.05 Selection Committee

- (A) Prior to issuing the RFP, the approving authority shall appoint a Selection Committee that shall review and evaluate proposals received in response to the RFP.
- (B) When the Board of County Supervisors is the approving authority, the County Executive shall appoint the Selection Committee.

§500.06 ~~Addendum Amendment~~ to RFP

A written ~~addendum amendment~~ shall be issued for necessary corrections or additions to the RFP.

§500.07 Late Proposals

Proposals that are received after the date and time designated in the RFP or subsequent ~~addendum amendments~~ shall be considered late and shall not be opened or considered.

§500.08 Receipt and Handling of Proposals

- (A) Proposals shall be received only by ~~the Purchasing Office~~ Procurement Services.
- (B) Proposals shall be ~~dated~~ dated, and the time of receipt shall be recorded on the proposal.
- (C) Proposals shall not be publicly opened or disclosed to any person that is not a member of the Selection Committee, non-voting Technical Advisors, or ~~the Purchasing Office~~ Procurement Services, except the County Executive, County Attorney, ~~and/or~~ Director of Finance, or their designees.
- (D) Nothing contained in any offer shall be open for public inspection until such time as an award has been made, except as may be required by the Virginia Freedom of Information Act, Virginia Code § 2.2- 3700 et seq. ~~of the Code of Virginia~~, and/or Virginia Code of Virginia § 2.2-4342.
- (E) Proprietary ~~and/or~~ confidential information from and properly identified by an offeror shall not be disclosed to the public ~~or to competitors~~ except as required by the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 et seq. ~~of the Code of Virginia~~, and/or Virginia Code of Virginia § 2.2-4342.
- (F) A register of proposals received shall be compiled by ~~the Purchasing Office~~ Procurement Services and kept in the procurement file.

§500.09 Evaluation of Proposals

- (A) The Selection Committee shall review and evaluate proposals and prepare a recommendation for the approving authority.
- (B) The evaluation criteria ~~that shall be used in the evaluation process~~ shall be set forth in ~~detail in~~ the RFP and shall be strictly adhered to in the selection process. ~~Criteria may include judgmental and objective factors relating to the procurement.~~

§500.10 Discussions ~~With~~with Responsible Offerors

- (A) ~~As shall be provided in the RFP and as may be further provided in these regulations,~~ Discussions may be conducted with responsible offerors who submit proposals determined by the Selection Committee to have a reasonable chance 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.~~
- (B) At the conclusion of the discussions ~~outlined in this section~~, the Selection Committee shall select in the order of preference two (2) or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors ~~involved stated~~ in the Request for Proposal, including price if so stated in the Request for Proposal. Should the Selection Committee 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.

§500.11 Negotiations

- (A) The Director of Finance or a designee shall negotiate a contract with the selected offeror(s) for the required goods, services, insurance, or construction at a compensation determined to be fair and reasonable. ~~The County Attorney's Office may be requested to assist in conducting negotiations.~~
- (B) Negotiations shall be conducted with the selected offeror(s). Price shall be ~~considered, but~~ considered but need not be the sole or primary determining factor. After negotiations have been conducted with the selected offeror(s), the Selection Committee shall select the offeror which, in its opinion, has made the best proposal and provides the best value at a fair and reasonable price, and shall award the contract to that offeror. When the terms and conditions of multiple awards are ~~so~~ provided in the Request for Proposal, awards may be made to more than one offeror.

~~(A) Negotiations shall be directed toward:~~

- ~~1. Making certain that the offeror has a clear understanding of the scope of the goods, services, insurance, or construction, specifically the essential requirements; and~~
- ~~2. Determining that the offeror shall provide the necessary personnel and facilities to perform under the contract, taking into account the estimated value of the requirements, and the scope, complexity, and nature of such requirements.~~

§500.12 Record of Negotiation

- (A) The County negotiator shall keep detailed records of any negotiations that were entered into in accordance with this section.
- (B) The record of these negotiations shall be kept in the procurement file.

§500.13 Contract Award

Award of a contract shall be made by the head of the Using Department to the responsible offeror whose proposal offers the best value to the County and with whom negotiations have been successfully completed. The County Attorney's Office ~~shall~~ may be consulted with respect to the form and content of the contract with the selected offeror.

§600.00 CONSTRUCTION

§600.01 Applicability

Construction contracts shall be governed generally by §_300.00 *et seq.* of these regulations, and by §_600.00 *et seq.* of these regulations. Where a provision of §_600.00 *et seq.* of these regulations is in conflict with any other provision of these regulations, the provisions of §_600.00 *et seq.* shall govern.

§600.02 Definitions

- (A) For the purpose of the procurement of construction, the following terms have the meanings ascribed to them in this section, except where the context clearly requires another meaning.
1. Addendum: Written or graphic instruments issued prior to the opening of bids that clarify, correct, or change the bidding documents.
 2. Bond, Bid: A form of security/financial protection issued by a third party submitted with a bid as a guarantee that the principal will enter a contract with the County, if selected for award.
 3. Bond, Payment: A form of security/financial protection issued by a third party (surety bond company) to guarantee that the principal (prime contractor) will promptly pay its financial obligations to its subcontractors, material suppliers, and other hires. The payment bond guarantees protection to the obligee (County) from claims from the principal's subcontractors, material suppliers, and other hires, in the event of default by the principal.
 4. Bond, Performance: A form of security/financial protection issued by a third party (surety bond company) to guarantee that the principal (prime contractor) will perform the work/complete the project as described in the contract. The performance bond guarantees compensation to the obligee (County) in the event of default by the principal.
 5. Construction: The term used to include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities, including draining, dredging, excavation, grading or similar work upon real property.

6. Construction Administration: Non-professional services provided under a contract with the Owner which generally includes inspection of the Work, coordinating testing services contracts procured by the Owner, reviewing change orders and schedule submittals from the contractor, and providing other construction period services for the benefit of the Owner. The Construction Administrator is the entity responsible to the Owner for providing these services to assure compliance with the contract Documents but is not responsible under the Construction Administration contract for providing the Work. The Owner may use an employee to perform construction administration services. This differs from the construction administration services required under the Architectural and Engineering (A&E) contract.
7. Construction Management: Services provided under contract with the Owner which generally includes coordinating and administering construction contracts for the benefit of the Owner, but may also include, if provided in the contract, furnishing construction services to the Owner. The Construction Manager has direct responsibility and liability to the Owner for performing the Work as described by the contract documents.
8. Design-Build: A contract between the County and another party in which the other party agrees to both design and build the structure, roadway, or other item specified in the contract.
9. Job Order Contracting: A multi-year fixed unit-price contract which provides for issuance of task orders to accomplish alterations, renovations, building repairs and parking improvements for County facility projects. New construction and the preparation of construction design or bid documents are specifically excluded from the scope of the Job Order contract. Job Order contracts are subject to the limitations outlined in the Virginia Public Procurement Act.
10. Owner: The Board of County Supervisors of Prince William County and its officers and employees.

§600.03 Prequalification

- (A) Pursuant to Virginia Code § 2.2-4317 ~~of the Code of Virginia~~, any prequalification of vendors for construction shall be pursuant to a written prequalification process adopted by the County.
- (B) The application form for prequalification shall set forth the criteria upon which ~~the qualification~~ the qualifications of vendors shall be evaluated. The application form

shall only request information as is appropriate for an objective evaluation of all vendors under such criteria. The form shall show the vendor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the vendor shall be considered a trade secret or proprietary information subject to the provisions of subsection D of Virginia Code § 2.2-4342.

- (C) Advance notice shall be given of the need for submission of the prequalification application and shall be sufficiently in advance of the date set for the submission of bids so as to allow the established prequalification process to be accomplished.
- (D) Within thirty (30) calendar days, ~~T~~he County shall notify, in writing, each vendor who has submitted a prequalification application, whether the vendor has been pre-qualified. In the event that a vendor is denied prequalification, the written notice to the vendor shall state the reasons for denying the vendor's pre-qualification and the factual basis of such reasons. The County's decision denying prequalification shall be final.
- (E) The County may deny prequalification if it finds one of the following.
 - 1. The vendor does not have sufficient financial ability to perform the contract that would result from the procurement. If a bond is required to ensure performance of a contract, evidence that the vendor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the vendor to perform the contract resulting from such procurement.
 - 2. The vendor does not have appropriate experience to perform the construction project in question.
 - 3. The vendor or any officer, director, or owner thereof has had judgments entered against them within the past ten years for breach of contracts for construction, including, but not limited to, design-build or construction management.
 - 4. The vendor has been in substantial noncompliance with the terms and conditions of prior construction contracts for the County or other Public public Bodies bodies without good cause.
 - 5. The vendor or any officer, director, owner, project manager, procurement manager or chief financial officer thereof has been convicted, within the last ten years, of a crime related to construction or contracting.

6. The vendor or any officer, director, or owner thereof is currently debarred from bidding by the County, the state, or an agency of the Federal government.
7. The vendor failed to provide any information relevant to subsections 1 through 6 of this section requested by the County in a timely manner.

§600.04 Prohibition of Certain Purchases from Architects and Engineers

- (A) No building goods for any building or structure constructed by 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 ~~Code of Virginia~~ Virginia Code § 2.2-3101.
- (B) No building goods for any building or structure constructed by or for the County shall be sold by or purchased from any person who has provided, or is currently providing, design services specifying a sole source for such goods to be used in building a structure to such independent contractor employed by the County to furnish architectural or engineering services in which such person has a personal interest as defined in ~~Code of Virginia~~ Virginia Code § 2.2-3101.

§600.05 Bid Bonds

- (A) The Director of Finance ~~is authorized to~~ shall require that each bidder on a competitively bid procurement for construction estimated in excess of \$100,000 submit, with its bid, a certified check or a cashier's check payable to the County of Prince William, for a sum not to exceed five percent (5%) of the bid total for construction contracts, as a guarantee that the bidder will enter into a contract for the goods or services sought should it be awarded the contract.
- (B) Provided, however, that in lieu of a certified check it shall be sufficient that the bidder provide a 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 or cash escrow in the face amount required for the bond with a lending institution insured by the FDIC. The conditions of such bond shall be established by the Director of Finance, unless otherwise established by law. Noncompliance with this section shall require the rejection of the bid.
- (C) Annual bid bonds may be accepted.
- (D) No forfeiture under a bid bond for a construction contract 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.

§600.06 Requirements for IFB

- (A) Bids for construction shall be solicited by the ~~Procurement Purchasing~~ Manager by means of a formal Invitation for Bid (IFB).
- (B) Instructions to bidders, plans, and specifications for the project, and proposed contracts for the work, shall be prepared by the ~~Procurement Purchasing~~ Manager in consultation with appropriate persons including architects, engineers, and other consultants who may be contracted by, or employed by the County for the purposes of any project or projects.
- (C) Prior to distribution, all IFBs for construction shall be reviewed by the County Attorney's ~~Office~~.
- (D) The IFB may be distributed by architects and engineers designated by the County in the IFB as responsible for the project.
- (E) Construction bids shall require the successful contractor to carry all appropriate insurance as designated in the IFB.
- (F) A person or firm which has been engaged as an architect or engineer for a construction project under a separate contract shall not be eligible to bid or submit a proposal for the construction of the same project.

§600.07 Award or Rejection of Bids

~~(A)~~ (A) Contracts for construction with a value ~~in excess of \$250,000~~ of more than \$20 million shall be awarded by the Board of County Supervisors, in accordance with the regulations governing the award of bids generally. ~~In addition, the Board may award a single Job Order Construction contract which provides for multiple task orders to accomplish alterations, renovations, building repair and parking improvements for County facilities projects up to \$500,000 per project.~~ The Board may reject any or all bids without giving reason therefore.

~~(G)~~ —

~~(B)~~ (B) Construction contracts for less than ~~\$250,000~~ \$20 million may be awarded by the County Executive, in accordance with the regulations governing the award or rejection of bids generally and County policy. The ~~head of Procurement Services Purchasing Manager~~ may reject any or all bids without giving reason therefore.

~~(H)~~ —

~~(H)(C)~~ If the Board of County Supervisors is awarding the contract, it may direct that the authority in this section may be exercised by a County employee other than the County Executive or the Purchasing Manager. In addition, the Board may award a single Job Order Construction contract which provides for multiple task orders to accomplish alterations, renovations, building repair and parking improvements for County facilities projects up to \$500,000 per project.

§600.08 Changes and Modifications to Construction Contracts

- (A) A construction contract may include provisions for modification of the contract by issuance of change order during performance, but no contract may be increased by more than twenty-five percent (25%) of the original amount of the contract award, or \$50,000, whichever is greater, without the advance written approval by the Board of County Supervisors.
- (B) The head of the Using Department responsible for the contract may approve change orders provided:
1. No additional appropriations are required; and
 2. Modifications or change order to contracts shall ~~have the approval of the~~ approved by the Procurement Purchasing Manager in writing prior to ~~execution~~ commencement of work.
- ~~(C)~~ The head of the Using Department with the concurrence of the Procurement Purchasing Manager, may authorize under written change order extension of time for completion of the work.
- ~~(E)(D)~~ Unilateral modifications may be issued by the County for minor or administrative purposes.

§600.09 Payment and Performance Bonds

- (A) The ~~Procurement Purchasing~~ Manager shall require any bidder for a construction contract in excess of \$100,000, and may require any bidder, 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, specification, and conditions for same.

- (B) The ~~Procurement Purchasing~~ Manager shall require any successful bidder for a construction contract in excess of \$100,000, and may require any bidder, 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 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.
- (C) Any performance or payment bond required under these regulations shall be in the form of a certified check, cashier's check, a bond executed by a surety company authorized to do business as a surety in Virginia, or cash escrow in the face amount required for the bond by an institution insured by the Federal Deposit Insurance Corporation (FDIC).

§600.10 Restrictions on Asbestos Projects

The County shall not award a contract in connection with an asbestos project to a vendor which does not hold an asbestos contractor; roofing, flooring, or siding (RFS) contractor; inspector; management planner; or project designer license at the time the bid is submitted unless the General Contractor to whom the contract is awarded shall be contractually committed to have all asbestos related work performed by its own subcontractors who are appropriately licensed as asbestos contractors; RFS contractors; inspectors; management planners; or project designers.

§600.11 Applicability of State and Federal Law

Contracts for construction of any building or for an addition to or improvement of an existing building for which State funds of \$50,000 or more, either by appropriation, grant-in-aid or loan, are used or to be used or all or part of the cost of construction shall be procured pursuant to Virginia Code § 2.2-4305 ~~of the Code of Virginia~~. Other construction contracts which are subject to State and ~~f~~Federal law, shall be governed by these regulations where they do not conflict with such State and f~~Federal and state~~ law.

§600.12 Retainage

In any contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the County shall pay the contractor at least ninety-five percent (95%) of the earned sum when payment is due. The County may retain up to five percent (5%) of the earned sum to assure faithful performance of the contract by the contractor. All amounts withheld by the County shall be included in the final payment to the contractor.

§600.13 Deposit of Funds Retained in an Escrow Account

- (A) Contracts in excess of \$200,000 for the 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 by the County, shall include in the ~~Bid bid Proposal proposal~~ an option for the contractor to use an escrow account procedure for funds retained by the County pursuant to § 600.12 of these regulations.
- (B) Any bidder who elects to use the escrow account procedure shall indicate this in its response to the IFB or RFP. Within fifteen (15) calendar days of notification by the ~~Procurement Purchasing~~ Manager that it has been awarded the contract, the contractor shall submit to the ~~Procurement Purchasing~~ Manager the executed Escrow Agreement that was included in the bid or proposal. The contractor shall forfeit its rights to use the escrow account procedure if the Escrow Agreement is not submitted to the ~~Procurement Purchasing~~ Manager within the fifteen (15) calendar day period.
- (C) In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute the Escrow Agreement form. The contractor's escrow agent shall be a trust company, bank, or savings institution acceptable to the County with its principal office located in the Commonwealth of Virginia. The Escrow Agreement form shall contain the complete address of the escrow agent and surety, and the executed Escrow Agreement will be the authority for the County to make payment of retained funds to the escrow agent.
- (D) After approving the Escrow Agreement, the County shall pay to the escrow agent the funds retained as provided herein except that funds retained for lack of progress or other deficiencies on the part of the contractor will not be paid to the escrow agent. The escrow agent may, in accordance with the stipulation contained in the Escrow Agreement, invest the funds paid into the escrow account and pay earnings on such investments at time of final payment to the contractor or release the funds to the contractor provided such funds are fully secured by securities approved by the Director of Finance.
- (E) Retained funds invested and securities held as collateral for retainage may be released only as authorized and directed by the Director of Finance. When the final progress payment is made to the contractor, the Director of Finance shall direct the escrow agent to settle the escrow account by paying the contractor or the County monies due them as determined by the Director of Finance. The Director of Finance

reserves the right to recall retained funds and to release them to the surety upon receipt of written request from the contractor or in the event of default.

- (F) This section shall not apply to construction contracts for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation of 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.
- (G) Any such construction contract, which includes payment of interest on retained funds, may include 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.
- (H) Any subcontract for the construction of projects set out in subsection (A) of this section which provides for similar progress payments shall be subject the provisions set forth in subsection (A) through (G) of this section.

§600.14 Contract Management and Design Build Contracts

(A) Special Definitions.

As used in this section, unless the context requires a different meaning:

"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 management contract" 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.

"Design-build contract" means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

- (B) While competitive sealed bidding remains the preferred method of construction contracting, the Board of County Supervisors may utilize competitive negotiation to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis, provided the contract it complies with the

~~requirements of this section and~~ has implemented procedures consistent with ~~the procedures those~~ adopted by the Secretary of Administration for utilizing design-build or construction management contracts, pursuant to Virginia Code § 2.2-4306 4382 of the Code of Virginia.

~~(j)~~ Construction by the design-build method shall be a two-step competitive negotiation process. In the first step, vendors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information the County may obtain, no more than five offerors deemed most suitable for the project shall be selected by the County and requested to submit proposals.

(C) Prior to ~~making a~~ determination as to the use of design-build or construction management for a specific construction project, the County shall have under contract, or ~~in its~~ employ, a licensed architect or engineer with professional competence appropriate to the project who shall advise the County regarding the use of design-build or construction management for that project and who will assist the County with the preparation of the RFP and the evaluation of proposals.

~~(K)~~(D) A written determination shall be made in advance that competitive sealed bidding is not practicable or fiscally advantageous and there is a benefit to the County in using design-build or construction management contract for the construction project. The determination shall be in writing and included in the Request for Qualifications and maintained in the procurement file.

~~(L)~~(E) Procedures adopted by the County for construction management pursuant to this section include the following requirements:

1. Construction management contracts may be utilized for projects where the project cost is expected to exceed \$10 million;
2. Construction management may be utilized on projects where the project cost is expected to be less than \$10 million, provided that (i) the project is a complex project and (ii) the project procurement method is approved by the County. Written approval of the County shall be maintained in the procurement file;
3. Public notice of Request for Qualifications is posted on the County's procurement website at least 30 calendar days prior to the date set for receipt of Statements of Qualifications;
4. The construction management contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;
5. Prior construction management or design-build experience or previous experience with the Virginia Department of General Services Bureau of Capital Outlay Management shall not be required as prerequisite for award of a contract.

However, the County may consider the experience of each contractor on comparable projects:

6. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable;
7. The procedures allow for a two-step competitive negotiation process; and
8. Price is a critical basis for award of the contract.

Procedures adopted by the County for design-build construction projects shall include a two- step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Virginia Department of General Services for public bodies.

- ~~(F)~~ — Prior to issuing aan RFP for any design-build or construction management contract ~~for a specific construction project~~ the County shall: ~~h~~ incorporate procedures governing the selection, evaluation, and award of design-build and construction management contracts as outlined in this section and those developed for competitive negotiation in ~~section~~ § 500.00 *et seq.* of these regulations; and

(G)(F)

- ~~1. Document in writing that there is benefit to the County in using a design-build or construction management contract for the construction project.~~

- (G) The Procurement Purchasing Manager shall issue a written RFP by posting on a public bulletin board and advertising in a newspaper of general circulation in the County at least ten (10) calendar days preceding the date set for the receipt of proposals.

The RFP shall:

1. define the pre-design, design phase, bid phase and ~~for~~ construction phase services to be performed by the design-builder or construction manager;
2. include and define the requirements of the specific construction project in areas such as site plans, floor plans, exterior elevations, basic building envelope materials, fire protection information plans, structural, mechanical (HVAC), and electrical systems, and special telecommunications;
3. specify the criteria which will be used in evaluating the proposals;

4. contain or incorporate by reference the applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of offerors; and
 5. include such other requirements as the County Executive or Procurement Purchasing Manager deems appropriate for the construction project.
- (H) The RFP shall request of offerors only such information as is appropriate for an objective evaluation of all offerors pursuant to the specified RFP criteria.
- (I) The Procurement Purchasing Manager shall receive and consider comments concerning specifications or other provisions in the RFP, prior to the time set for receipt of proposals.
- (J) Each offeror shall submit a cost proposal and a technical proposal. Cost proposals shall be sealed separately from technical proposals. Cost proposals shall include a lump sum or guaranteed maximum price for all requested services. Upon receipt of an offeror's technical and cost proposals, the offeror's cost proposal shall be secured by the Procurement Purchasing Manager and kept sealed until evaluation of all technical proposals is completed.
- (K) The Selection Committee appointed by the County Executive shall evaluate each technical proposal and select two (2) or more offerors deemed to be fully qualified and best suited among those submitting proposals based on the criteria set forth in the RFP for further consideration. The Selection Committee shall hold discussions with each of the selected offerors exercising care to discuss the same owner information with each offeror. In addition, the Selection Committee shall not disclose any trade secret or proprietary information for which the offeror has properly invoked protection pursuant to Virginia Code § 2.2-4342(F) ~~of the Code of Virginia~~.
- (L) Upon completion of the discussions, the Selection Committee shall determine whether any changes to the proposals should be requested to correct errors or omissions or to clarify ambiguities, or to incorporate project improvements or additional details identified by the Selection Committee during its review. Offerors may submit revised technical proposals, as well as sealed modifications to their cost proposals. The Selection Committee will complete its evaluations of the revised technical proposals. Following opening of the cost proposals, the Selection Committee shall make its recommendation to the Procurement Purchasing Manager based upon the criteria included in the RFP. Award shall be made to the fully qualified offeror determined to offer the best value in response to the RFP.

- (M) Should the ~~Procurement Purchasing~~ Manager determine in writing that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the other offerors under consideration, a contract may be negotiated and awarded to that offeror.
- (N) Trade secrets or proprietary information provided by an offeror in response to a request for qualifications or a request for proposals shall not be disclosed to the public or to competitors, provided the offeror has invoked protection pursuant to Virginia Code § 2.2-4342(F) of the Code of Virginia.

~~The County shall submit information for post-project evaluation when requested by the Review Board. The County shall provide a report each year to the Director of the Virginia Department of General Services in accordance with Virginia Code § 2.2-4383(B).~~

(O) _____

- ~~(P)~~ (P) The County Executive may promulgate such additional procedures, not inconsistent with the provisions of this section or the rules and regulations of the Virginia Review Board Department of General Services Bureau of Capital Outlay Management, and consistent with the procedures for the procurement of nonprofessional services through competitive negotiation, as deemed necessary and appropriate to ~~effect~~ affect the selection and evaluation of offerors and the award of design-build and construction management contracts.

§700.00 PROFESSIONAL SERVICES

§700.01 Applicability

Professional services shall be procured by competitive negotiation as described in §_500.00 *et seq.* of these regulations and by the §_700.00 *et seq.* of these regulations. Where regulations set forth in §_700.00 *et seq.* of these regulations conflict with any other provision of these regulations, the provisions of §_700.00 *et seq.* of these regulations shall govern.

§700.02 Use of Request for Proposal

A Request for Proposal (RFP) shall be used to solicit professional services for the County.

§700.03 Format for Requests for Proposals

- (A) Written RFPs shall ~~be prepared in the same format provided in section §500.00 *et seq.* of these regulations governing competitive negotiation and shall indicate in general terms the professional service which is sought to be procured, specifying~~ specify the factors which 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 which will be required of the prospective contractor.~~
- (B) Estimates of cost or man-hours shall not be solicited prior to the discussion stage for professional services.

§700.04 Discussions and Interviews

- (A) The Selection Committee shall engage in individual discussions with two (2) or more offerors, deemed fully qualified, responsible and suitable on the basis of initial responses with emphasis on professional competence, to provide the required services. Such 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. At the discussion stage, the Selection Committee may discuss non-binding estimates of costs and man-hours. Repetitive informal interviews are permissible.
- (B) No information may be conveyed to any offeror that was submitted by any other offeror in the conduct of such discussions and interviews.
- (C) Proposals may be modified or withdrawn at any time prior to the conclusion of the discussions entered into.

§700.05 Selection of Best Qualified Offerors

- (A) Following discussions as provided in §_700.04 of these regulations, on the basis of evaluation factors published in the RFP and all information developed in the selection process to this point, the Selection Committee shall rank, in the order of its preference, offerors whose professional qualifications and proposed services are deemed adequate to meet contract requirements as stated in the RFP.
- (B) The ~~Procurement Purchasing~~ Manager shall solicit a formal cost proposal from the offeror ranked first.
- (C) Negotiations shall then be conducted with this offeror.
- (D) Should the Selection Committee determine in writing and 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.

§700.06 Award of Contract

- (A) If ~~a satisfactory and advantageous contract can be agreed upon negotiations~~ with the best qualified offeror ~~at a price considered fair and reasonable pursuant to negotiations provided for under §700.00 et seq. of these regulations are successful,~~ the contract should be awarded to that offeror.
- (B) Professional services estimated to cost or have a value of \$60,000 or more shall be contracted for only with the approval of the Board of County Supervisors, notwithstanding that funds may have been budgeted and appropriated, unless the Board ~~of County Supervisors~~ specifically delegates this authority by resolution.

§700.07 Negotiations with Additional Offerors

- (A) If a contract cannot be agreed upon between the County and the first ranked offeror, negotiations with the offeror ranked first shall be formally terminated, a written record stating the reasons therefore shall be placed in the file, and the ~~Procurement Purchasing~~ Manager 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 second ranked offeror as determined by the Selection Committee's recommendation to the approving authority. If negotiations with such offeror again fail, the negotiator shall terminate the negotiations, and commence negotiations with the next ranked offeror.

- (C) If all negotiations fail to produce a contract with any of the ranked offerors, the Selection Committee may make additional recommendations to the approving authority.

§700.08 Architectural and Professional Engineering Term Contracting Limitations Multiple Awards

~~A contract for architectural or professional engineering services relating to construction projects may be negotiated by the County for multiple projects in accordance with the Virginia Public Procurement Act (VPPA), Virginia Code § 2.2-4303. A contract for architectural or professional engineering services relating to construction projects may be negotiated for multiple projects provided (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 base year and may be renewable for no more than four additional one-year terms. Except for contracts awarded for environmental, location, design and inspection work regarding highways and bridges, the sum of all projects performed in a twelve (12) month contract year shall not exceed \$2 million, or \$500,000 per project.~~

~~Contracts awarded for environmental, location, design and inspection work regarding highways and bridges: The initial contract term shall be limited to two years or when the cumulative total project fees reach \$5 million, whichever occurs first. Such contracts may be renewable for two additional one-year terms at the option of the County, and the sum of all projects in each one-year contract term shall not exceed \$5 million. Competitive negotiations for such contracts may result in awards to more than one offeror provided (i) the Request for Proposal so states, and (ii) a procedure for distribution of multiple projects among the selected contractors during the contracts term is established.~~

§800.00 EQUAL OPPORTUNITY, SMALL BUSINESS AND SUPPLIER DIVERSITY

§800.01 Equal Opportunity and Non-Discrimination

The County shall not discriminate against any person on the basis of race, religion, color, sex, national origin, age, disability, status as a service-disabled veteran, political affiliation, or other basis prohibited by state law.

§800.02 Small Business and Supplier Diversity

Within the limits of the funds appropriated, and as required by [Virginia Code § 2.2-4310](#) ~~of the Code of Virginia~~ and the other applicable ~~F~~federal or ~~S~~state law, the Director of Finance shall cooperate with the Department of Small Business and Supplier Diversity in promoting the purposes of that Department.

§800.03 Nonprofit Sheltered Workshops and Nonprofit Organizations

Pursuant to [Virginia Code § 2.2-4344\(A\)\(1\)](#) ~~of the Code of Virginia~~, as amended, the Director of Finance may waive application of these regulations when acquiring goods and services (i) which are performed or produced by persons or in schools or workshops, under the supervision of the Virginia Department for the Blind and Visually Impaired; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving individuals with disabilities under the supervision of the Virginia Department of Employment Services and Special Programs and the United States Department of Labor, as evidenced by possession of a National Accreditation Certificate issued by the Commission on Accreditation of Rehabilitation Facilities.

§800.04 Faith-Based Organizations

The County shall not discriminate against faith-based organizations.

§900.00 DISPOSAL OF SURPLUS PROPERTY

§900.01 General

- (A) Surplus property is defined as personal property including, but not limited to, goods or seized property, where legal claim is established, and recyclable items, that no longer contribute to a Using Department's core business and to the County's desired outcomes. In accordance with the Virginia Department of General Services Agency Purchasing and Surplus Property Manual (APSPM) (Chapter 12), trade-ins are not considered as surplus property. Refer to ~~Prince William County~~the County's Asset Disposal Procedure ~~20-FRC-XXX-5~~ for applicable authorization thresholds related to disposal of surplus property. Hazardous Waste must follow the Department of Environmental Quality Regulations per APSPM Chapter 12.8.
- (B) The Using Department (including Internal Service Agencies when applicable) shall identify surplus property and request authorization to dispose of surplus property from the Director of Finance or ~~Designee~~designee prior to disposal, with the exception of the Internal Service Agency related assets (Refer to the County's Asset Disposal Procedure ~~20-FRC-XXX-5~~). Justification for declaring property to be Surplus Property includes a determination that such property is non-repairable, unsalvageable, obsolete, requires excessive storage costs, or no longer meets the Using Department's core business needs or the County's desired outcomes.
- (C) As defined in § 100.05 of these regulations, the Director of Finance is authorized to sell, trade, transfer or otherwise dispose of any surplus property which is the property of the Board of County Supervisors, whether donated or acquired in whole or in part using County funds in accordance with Virginia Code § 2.2-1124 of the Code of Virginia, and Federal and State laws, regulations, and/or grant guidelines. For the purpose of this section, the Director of Finance may authorize a designee to approve the disposal of surplus property. The Director of Finance authorizes the Procurement Purchasing Manager to review all disposals to ensure all disposals are in compliance with Virginia laws and regulations.
- (D) Upon receipt of written authorization from the Director of Finance or ~~Designee~~designee, the head of the Using Department is responsible for storage, maintenance, and safekeeping of all surplus property in its charge, and for the transportation of surplus property (if needed) within the County for disposal.

§900.02 Sales and Other Disposal of Property

- (A) The ~~Financial Reporting and Control Division~~County's Asset Disposal Procedure approved by the Director of Finance addresses a cost-efficient manner of disposing

surplus property. Any deviation from that procedure requires submission of a business justification and approval by the Director of Finance or ~~Designee~~designee.

- (B) Whenever any organization/individual acquires property that has been disposed of by the County and is required to remove such property from premises, the acquirer of such property shall execute a written agreement to indemnify and hold the County (including any ~~Departments~~departments, officials, personnel, volunteers, etc.) harmless and defend from any and all liability which may be incurred during the removal of the property. The ~~Procurement Purchasing~~ Manager shall be provided with evidence of an existing liability insurance policy covering the risks potentially involved, a worker's compensation insurance policy or any other applicable insurance policy as deemed appropriate by the County.
- (C) The Using Department shall maintain documentation per the Library of Virginia, Record Retention and Disposition Schedule (General Schedule No. 16).

§900.03 Methods for Disposal of Surplus Property

The Code of Virginia provides multiple methods of disposal of surplus property. Refer to the ~~County's Financial Reporting and Control~~ Asset Disposal Procedure for methods of disposal of surplus property.

§1000.00 PROJECTS PROPOSED PURSUANT TO THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002 OR THE PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995

§1000.01 Introduction

- (A) The Public-Private Education Facilities and Infrastructure Act of 2002, ~~Code of Virginia~~Virginia Code §_56-575.1 et seq. (the "PPEA") and the Public-Private Transportation Act of 1995, ~~Code of Virginia~~Virginia Code §_33.2-1800 et seq. (the "PPTA") (together, the "Acts") grant the County, a responsible public entity as defined in the Acts, the authority to create public-private partnerships for the development of a wide range of projects for public use if the County determines there is a public need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Individually negotiated comprehensive agreements between an operator, as defined in the Acts, and the County will define the respective rights and obligations of the County and the private operator. Although guidance with regard to the application of the PPEA and PPTA is provided here, it will be incumbent upon the County and all private entities to comply with the provisions of the PPEA or PPTA as applicable.
- (B) In order for a project to come under the PPEA or the PPTA, it must meet the definition of a "qualifying project" as defined in the applicable Act.
- (C) The Acts establish requirements that the County must adhere to when reviewing and approving proposals received pursuant to the PPEA or the PPTA. In addition, the Acts specify the criteria that must be used to select a proposal and the contents of the comprehensive agreement detailing the relationship between the County and the private entity. Any proposal received or solicited by the County pursuant to either the PPEA or the PPTA will be reviewed in accordance with the applicable Act and these regulations as they may apply.
- (D) The Board of County Supervisors adopted these regulations effective July 1, 2003, to implement the PPEA and the PPTA. Therefore, in accordance with Board directive, the County Executive will follow this policy to receive and evaluate any proposal submitted to the County under the provisions of the PPEA or the PPTA. The Board must adopt any amendments to these regulations.
- (E) The County Executive is authorized to designate a working group to be responsible for evaluating proposals and negotiating the comprehensive agreement.

- (F) The individual designated by the County Executive to serve as the point of contact for implementation of procedures, to receive proposals submitted under the PPEA or the PPTA and to respond to inquiries regarding the PPEA or the PPTA or this policy shall be the Director of Finance.

§1000.02 General Provisions

- (A) Proposal Submission.

1. A proposal under either Act may be either solicited by the County or delivered by a private entity on an unsolicited basis. Proposers may be required to follow a two-part proposal submission process consisting of a conceptual phase and a detailed phase, as described herein.

~~2. The Acts allow private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations. Proposals may include, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001⁺ for the development of education facilities using public-private partnerships.~~

2. bonds.

3. Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the County. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project. The County may, at any time, require the proposer to provide additional information and clarification to the submission.

- (B) Affected Local Jurisdictions.

~~⁺ Public Law 107-16; Section 142(k)(5) of the Internal Revenue Code of 1986, as amended.~~

The term "affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying project or qualifying transportation facility is located or with respect to the PTA, any other public entity directly affected by a qualifying transportation facility. Any private entity requesting approval from or submitting a conceptual or detailed proposal to the County must provide any other affected jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery or hand delivery within five (5) business days of submission of the proposal to the County. Evidence of the delivery of the proposal to any other affected local jurisdiction shall be provided to the County within five (5) business days of such delivery. Any affected jurisdiction shall have sixty (60) calendar days from the receipt of the request or proposal to submit written comments to the County and to indicate whether the proposed qualifying project is compatible with the (i) jurisdiction's comprehensive plan, (ii) jurisdiction's infrastructure development plans, and (iii) capital improvements budget or other government spending plan. Comments received within the sixty (60) day period shall be given consideration by the County, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The County may begin or continue its evaluation of any such proposal during the sixty (60) day period for the receipt of comments from other affected local jurisdictions. In providing the request or proposal to the affected local jurisdictions, the private entity may withhold information that the Agency has deemed to be confidential and not subject to release under the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 et seq. ~~of the Code of Virginia.~~ Virginia.

(C) Proposal Review Fee.

No fee will be charged to process, review, or evaluate any solicited proposal submitted.

A review fee will be charged a private entity submitting an Unsolicited Proposal to the County, to cover the County's costs of processing, reviewing, and evaluating the proposal. Such cost includes but are not limited to County staff time, the cost of any materials or supplies expended, and the cost of any outside advisor or consultants, including but not limited to attorneys, consultants, financial technical advisors, used by the County in its sole discretion to assist in processing, reviewing, or evaluating the proposal.

For unsolicited proposals and competing proposals, review fees shall be imposed on the reasonably anticipated costs to the County in accordance with the following schedule: 1) Initial fee. Payment of an initial fee shall be submitted with the initial proposal or competing proposal. The initial fee shall be two and one-half percent (2.5%) of the reasonably anticipated cost of processing the proposal but shall be no

~~less than \$5,000 nor more than \$50,000, regardless of the anticipated cost. The County may accept the \$5,000 minimum fee with the balance due and payable prior to proceeding beyond the initial review stage. 2) Reimbursement of excess fees paid. In the event the total fees paid by the private entity exceed the County's total costs incurred in processing, reviewing, and evaluating the proposal, the County shall reimburse the difference. Otherwise, the County shall retain all fees paid. If during the initial review, the County decides not to proceed to the conceptual stage review of an unsolicited proposal, the proposal fee, less any direct cost of the initial review shall be refunded. For unsolicited proposals and unsolicited competing proposals, the County will require an initial processing fee of \$5,000 and the maximum fee shall be \$50,000. For purposes of initial processing of the proposal, the County may accept the \$5,000 minimum fee with the balance to be due and payable prior to proceeding beyond the initial review phase. The initial processing fee shall be submitted with the initial proposal or competing proposal. The County will refund any portion of fees paid in excess of its direct costs which include, but are not limited to, all staff costs, and outside consultants, financial advisors, engineers and attorney's fees, associated with evaluating the proposal. In the event either the initial processing fee of \$5,000 or the additional proposal fee is insufficient to cover all of the direct costs incurred by the County, the proposer shall pay such additional direct costs incurred by the County in reviewing the proposal, and the maximum fee shall be \$50,000. For purposes of initial processing of the proposal, the County may accept the \$5,000 minimum fee with the balance to be due and payable prior to proceeding beyond the initial review phase.~~

(D) Freedom of Information Act.

1. Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act ([FOIA](#)), [Virginia Code § 2.2-3700 et seq.](#) ~~of the Code of Virginia (FOIA)~~². [Virginia Code § 2.2-3705.6\(11\)](#) ~~of the Code of Virginia~~, exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and the County may elect to release some or all documents except to the extent the documents are:
 - (a) Trade secrets of the private entity as defined in the Uniform Trade Secrets Act [Virginia Code § 59.1- 336 et seq.](#);

² ~~Code of Virginia § 2.2-3700 et seq.~~

- (b) Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or
- (c) Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the County must comply with the order.

2. Subsection 56-575.4 (G) of the PPEA and subsection 33.2-1803 (H) of the PPTA imposes an obligation on the County and any affected jurisdiction to protect confidential proprietary information submitted by a private entity or operator pursuant to Virginia Code § 2.2-3705.6 (11). When a private entity requests that the County not disclose information, the private entity must (i) invoke the exclusion when the data or materials are submitted to the County or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the County as to the anticipated scope of protection prior to submitting the proposal. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein. Protection from mandatory disclosure for certain documents submitted by a private entity.

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the responsible public entity at the time the documents are submitted designating with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one (1) or more of three classes of records listed in Subsection (D-1) of this section.

3. Upon the receipt of a written request for protection of documents, the County shall determine whether the documents contain (i) trade secrets, (ii) financial

records, or (iii) other information that would adversely affect the financial interest or bargaining position of the County or private entity in accordance with subsection ~~(D)~~1 of this section. The County shall make a written determination of the nature and scope of the protection to be afforded by the County under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity should be accorded an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in subsection ~~(D)~~1 of this section.

Once a written determination has been made by the responsible public entity, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of the County or any affected local jurisdiction.

Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

4. Protection from mandatory disclosure for certain documents produced by the responsible public entity.

Memoranda, staff evaluations, or other records prepared by or for the responsible public entity, its staff, outside advisors or consultants, exclusively for the evaluation and negotiation of proposals may be withheld from disclosure if the disclosure of such records required by the PPEA or PPTA would adversely affect the financial interest or bargaining position of the responsible public entity or private entity, and the basis for the determination of ~~adverse affect~~adverse effect is documented in writing by the responsible public entity.

Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

5. If a private entity fails to designate, or fails to properly designate, confidential or proprietary information, records or documents for protection from disclosure, such information, records, or documents shall be subject to disclosure under FOIA.

6. A responsible public entity may not withhold from public access:
- (a) procurement records other than those subject to the written determination of the responsible public entity;
 - (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind executed by the responsible public entity and the private entity;
 - (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or
 - (d) information concerning the performance of any private entity developing or operating a qualifying project.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then the responsible public entity must comply with such order.

(E) Use of Public Funds.

Virginia constitutional and statutory requirements and County ordinances and policies as they apply to appropriation and expenditure of public funds apply to any comprehensive agreement entered into under the Acts. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA or PPTA project or project(s).

(F) Proposals submitted in accordance with the requirements herein shall be posted by the County within ten (10) business days after acceptance such proposals by the Board. Posting shall be on the County's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed with a summary of the proposal(s) and the location where copies of the proposal(s) are available for inspection. The County may also publish the notice in a newspaper of general circulation in the area in which the contract is to be performed A copy of the proposal shall also be made available for public inspection by Procurement Services.

~~(F)~~(G) Applicability of Other Laws.

Nothing in the PPEA or PPTA shall affect the duty of the County to comply with all other applicable laws not in conflict with the PPEA or the PPTA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA and the PPTA.

§1000.03 Solicited Proposals

- (A) The County may invite bids or proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate qualifying projects or a qualifying transportation facility. The County may use a two-part process consisting of an initial conceptual phase and a detailed phase. The County will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the applicable Act.
- (B) The solicitation will specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The solicitation will be posted in such public areas as are normally used for posting of the County's notices, including the County's website. The solicitation will also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the County.

§1000.04 Unsolicited Proposals

- (A) The PPEA and the PPTA permit the County to receive and evaluate unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project or a qualifying transportation facility.
- (B) The County may publicize its needs and may encourage or notify interested parties to submit proposals subject to the terms and conditions of the PPEA or PPTA. When such proposals are received without issuance of a solicitation, the proposal shall be treated as an unsolicited proposal.
- (C) Decision to Accept and Consider Unsolicited Proposal.
 - 1. The County reserves the right to reject any and all proposals at any time.
 - 2. Upon receipt of any unsolicited proposal or group of proposals and payment of the required fee by the proposer or proposers, the County will determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration. If the County determines not to accept the proposal and not proceed to publication and conceptual-phase consideration, it ~~should~~ shall return

the proposal, together with all fees and accompanying documentation, to the proposer.

3. If the County chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall post a notice within ten (10) business days on its website or in a public area regularly used by the County for posting of public notices for a period of not less than forty-five (45) calendar days. The County shall also publish the same notice in one or more newspapers or periodicals of general circulation in the County to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have forty-five (45) calendar days from the date the notice is published to submit competing unsolicited proposals. The notice shall state that the County (i) has received and accepted an unsolicited proposal under the PPEA or PPTA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the procedures adopted by the County and the PPEA or PPTA. The notice will summarize the proposed qualifying project or projects, and projects or qualifying transportation facility and identify their proposed locations.

(D) Initial Review at the Conceptual Stage.

1. Only proposals complying with the requirements of the PPEA or PPTA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the County for further review at the conceptual stage.
2. The County will determine at this initial stage of review whether it will proceed using:
 - (a) Standard "procurement procedures consistent with the VPPA; or
 - ~~(b)~~—Procedures developed by the County that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in Virginia Code
 - ~~(c)~~—§2.2-4301 ~~of the Code of Virginia~~. The County may proceed using competitive
 - ~~(d)~~(b) negotiation procedures only if it makes a written determination that doing so is likely to be advantageous to the County and the public based upon

either (i) the probable scope, complexity, or urgency of need, or (ii) the risk sharing, added value, increase in funding, or economic benefit from the project would otherwise not be available.

3. After reviewing the original proposal and any competing unsolicited proposals submitted during the notice period, the County may determine:
 - (a) ~~Not~~ to proceed further with any proposal;
 - (b) ~~To~~ proceed to the detailed phase of review with the original proposal;
 - (c) ~~To~~ proceed to the detailed phase with a competing proposal; or
 - (d) ~~To~~ proceed to the detailed phase with multiple proposals.

§1000.05 Unsolicited Proposal Preparation and Submission

- (A) Format for Submissions at the Conceptual Stage.

The County shall require that unsolicited proposals at the conceptual stage contain the following information in the following format plus such other information as the County may reasonably request to complete its review or to comply with the requirements of the PPEA or PPTA:

1. Qualifications and Experience.
 - (a) Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team. All members of the offeror's team, including major subcontractors known to the proposer, proposer must be identified at the time a proposal is submitted for the conceptual stage.
 - (b) Describe the experience of the firm or consortium of firms making the proposal, the key principals and project managers involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the length of time in business, business experience, public sector experience, and other engagements of the firm or

consortium of firms. Include the identity of any firms that will provide design, construction, and completion guarantees and warranties, and a description of such guarantees and warranties.

- (c) Provide the names, prior experience, addresses, telephone numbers and e-mail addresses of persons within the firm or consortium of firms who will be directly involved in the project or who may be contacted for further information.
 - (d) Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent (20%) or greater.
 - (e) Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interests Act, Virginia Code § 2.2-3100 *et seq.* ~~of the Code of Virginia.~~
 - (f) Identify the proposed plan for obtaining a sufficient number of qualified workers in all trades or crafts required for the project.
 - (g) For each firm or major subcontractor that will perform construction and/or design activities, provide a sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any ~~federal~~Federal, ~~state~~State, or ~~l~~Local governmental entity.
2. Project Characteristics.
- (a) Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
 - (b) Identify and fully describe any work to be performed by the County or any other public entity.

- (c) Include a list of all ~~F~~ederal, ~~s~~State, and County permits and approvals required for the project and a schedule for obtaining such permits and approvals.
 - (d) Identify any anticipated adverse social, economic, environmental, and transportation impacts of the project measured against the County's comprehensive plan, and applicable County ordinances, design and construction standards, and policies. Specify the strategies or actions to mitigate known impacts of the project.
 - (e) Identify the projected positive social, economic, environmental, and transportation impacts of the project measured against the County's comprehensive land use plan and applicable County ordinances, design and construction standards, and policies.
 - (f) Identify the proposed schedule for the work on the project, including sufficient time for the County's review, any State department or agency review, and the estimated time for completion.
 - (g) Propose allocation of risk and liability, and assurances for timely completion of the project.
 - (h) ~~Clearly s~~State all assumptions related to ownership, legal liability, law enforcement, and operation of the project, and the existence of any restrictions on the County's use of the project.
 - (i) Provide information relative to any phased opening(s) of the proposed project.
 - (j) List any other assumption(s) relied on for the project to be successful.
 - (k) List any contingency(ies) that must occur for the project to be successful.
3. Project Financing.
- (a) Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
 - (b) Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds,

including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs based upon the County's adopted operational standards.

- (c) Include a list and discussion of any assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach.
 - (d) Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.
 - (e) Identify any County, State, or Federal resources, including, but not limited to, financial resources, that the proposer contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.
 - (f) Identify the need, if any, for the County to provide either its general obligation or moral obligation backing. The underlying assumptions should address this need ~~and/or~~ state that the credit would be via a "Service Agreement," for example. Any debt issuance should be expected to receive an investment grade rating from a nationally-recognized statistical rating agency. If the natural rating is not investment grade, the County may require the use of credit enhancements.
 - (g) Outline what impact, if any, a drop in interest rates would have on the ultimate annual project cost. Indicate if there is a method to refinance for cost savings or does the firm only receive benefit of this potential?
 - (h) Provide a breakout/breakdown of the fees to be paid to any underwriting firm(s) and the type of obligation the firm(s) is using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc.
4. Project Benefit and Compatibility.
- (a) Identify who will benefit from the project, how they will benefit, and how the project will benefit the County and the overall community. Describe any anticipated significant benefits to the community and the County, including anticipated benefits to the economic, social, environmental, transportation,

etc., condition of the County and whether the project is critical to attracting or maintaining competitive industries and businesses to the County.

- (b) Identify any anticipated public support or opposition, as well as any anticipated Federal, State, and/or Local government support or opposition (including that in any affected jurisdiction), for the project.
- (c) Explain the strategy and plans, including the anticipated timeline that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- (d) Compatibility with the County's and/or affected jurisdiction's local comprehensive plan (including applicable environmental, land use, and facility standards ordinances), infrastructure development plans, transportation plans, the capital improvements plan, and capital budget or other government spending plan.

5. Any additional information as the County may request.

(B) Format for Submissions at the Detailed Stage.

If the County decides to proceed to the detailed phase of review with one or more proposals, the following information should be provided by the private entity unless waived by the County in writing:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings.
3. A statement and strategy setting out the plans for securing all necessary property and/or easements. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the County or affected jurisdiction to condemn.
4. A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction, and completion guarantees and

warranties, and a brief, thorough description of such guarantees and warranties along with a record of any prior defaults for performance.

5. A total life-cycle cost, including maintenance, specifying methodology, and assumptions of the project or projects including major building systems (e.g., electrical, mechanical, etc.), and the proposed project start date. The life-cycle cost includes the anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses using County adopted service levels and standards.
6. A detailed discussion of assumptions about user fees or rates, lease payments, and other service payments, and the methodology and circumstances for changes, and usage of the projects over the useful life of the projects.
7. Identification of any known Federal, State, or Local government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
8. Demonstration of consistency with appropriate County and/or affected jurisdiction comprehensive plans (including applicable environmental, land use and facility standards ordinances), infrastructure development plans, transportation plans, the capital improvement plan, and capital budget, or indication of the steps required for acceptance into such plans.
9. Explanation of how the proposed project would impact the County's or affected jurisdiction's development plans.
10. Identification of any known conflicts of interest or other factors that may impact the County's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interests Act, [Virginia Code § 2.2-3100 et seq.](#) ~~of the Code of Virginia.~~
11. Additional material and information as the County may in its sole discretion request.

§1000.06 Proposal Evaluation and Selection Criteria

In evaluating any request or proposal, the County may rely upon internal staff reports or the advice of outside advisors or consultants. Some or all of the following items, along with the specified information required under §_1000.05 (A) and (B) of these regulations, shall be considered in the evaluation and selection of PPEA and PPTA proposals. The County, however, reserves and retains the right to reject any request or proposal at any time for any reason whatsoever. The County shall solicit public comment and/or hold a public hearing as required by the applicable Act. Prior to entering into an interim or comprehensive agreement a public hearing must be held on the proposals.

(A) Qualifications and Experience.

Factors to be considered in either phase of the County's review to determine whether the proposer possesses the requisite qualifications and experience may include, but are not limited to:

1. Experience, training, and preparation with similar projects;
2. Demonstration of the ability to perform work;
3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control, project safety, responding and addressing client concerns in a timely manner, and ability to work successfully and professionally with other project partners;
4. Demonstrated conformance with applicable ~~F~~federal, ~~s~~State, and ~~l~~Local laws, codes, ordinances, standards, regulations, requirements, policies, and contracts/agreements on past projects;
5. Leadership structure;
6. Project manager's experience and the experience of other key project personnel;
7. Management approach;
8. Financial condition; and
- ~~9.~~—Project ownership.
- 9.

(B) Project Characteristics.

Factors to be considered in determining the project characteristics may include, along with the specified information required under § 1000.05 (A) and (B) of these regulations, but are not necessarily limited to, the following:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to Federal, State, County or affected jurisdiction laws, codes, ordinances, regulations, requirements, policies, and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

(C) Project Financing.

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include:

1. Cost and cost benefit to the County;
2. Financing and the impact on the debt or debt burden of the County;
3. Financial plan including overall feasibility and reliability of plan;
4. Estimated cost; including debt source, operating costs, etc.;
5. Life-cycle cost analysis;
6. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable; and
7. Such other items as the County deems appropriate.

(D) Project Benefit and Compatibility.

Factors to be considered in determining the proposed project's compatibility with the County's, affected jurisdictions or regional comprehensive or development plans may include,

1. Community benefits;
2. Community support or opposition, or both;
3. Public involvement and information strategy;
4. Compatibility with existing and planned facilities;
5. Compatibility with County, regional, and state economic development efforts; and
6. Compatibility with County's and affected jurisdiction's comprehensive plan.

(E) Other Factors.

Other factors that may be considered in the evaluation and selection of proposals include, but may not be limited to:

1. The proposed cost of the qualifying project;
2. The proposed design of the qualifying project;
3. Local citizen and government comments;
4. Public benefit(s); including whether the project will lead to productivity or efficiency improvements in the County's processes or delivery of services to the public; and
5. Other criteria that the County deems appropriate.

§1000.07 ~~Contract~~Interim and Comprehensive Agreements

(A) The County shall not be obligated in any manner for any part or phase of a project prior to entering into a properly executed interim or comprehensive agreement. All interim and comprehensive agreements are subject to Board of County Supervisors' approval. Any changes to the terms of an executed agreement shall be in the form of a written amendment.

(B) Interim Agreement Terms.

Interim agreements may be used when it is necessary or advisable to segment a project into phases to produce distinct and clear deliverables to keep the project moving forward to the development of a comprehensive agreement. An interim agreement may not be used to have the County assume risks that should be assumed by the proposer or to pay costs attributable to the private entity's efforts in making the proposal.

Development of an interim agreement is in the sole discretion of the County and in no way limits the rights reserved by the County to terminate the evaluation of any or all proposals at any time.

The terms of the interim agreement may:

1. Permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying project or qualifying transportation facility, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, surveying, and ascertaining the availability of financing for the proposed facility or facilities;
2. Establish the process and timing of the negotiation of the comprehensive agreement; and
3. Contain any other provision relating to any aspect of the development or operation of a qualifying project that the parties deem appropriate.

~~(F)(C)~~ Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the qualifying project, the selected proposer shall enter into a written contract with the County. Each contract shall define the rights and obligations of the County and the selected proposer with regard to the project.

~~(G)(D)~~ The terms of the contract shall be tailored to address the specifics of the project and shall include but not be limited to:

1. The delivery of maintenance, performance, and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;

2. The review and approval of plans and specifications for the qualifying project by the County and any Ffederal or Sstate department or agency;
3. The rights of the County to inspect the qualifying project to ensure compliance with the contract and any development plans and specifications and the rights of the County to any third-party inspection, including any reports;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the operator by the County to ensure proper maintenance, safety, use, and management of the qualifying project;
6. The terms under which the operator will reimburse the County for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the County and the operator in the event that the contract is terminated or there is a material default by the operator including the conditions governing assumption of the duties and responsibilities of the operator by the County and the transfer or purchase of property or other interests of the operator by the County;
8. The terms under which the operator will file appropriate financial statements on a periodic basis;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project or qualifying transportation facility;
 - (a) A copy of any service contract shall be filed with the County.
 - (b) A schedule of the current user fees or lease payments shall be made available by the operator to any member of the public upon request.

- (c) Classifications according to reasonable categories for assessment of user fees may be made.
10. The terms and conditions under which the County will contribute financial resources, if any, for the qualifying project;
 11. Other requirements of the PPEA or PPTA or provisions that the County determines serve the public purpose of the PPEA or PPTA;
 12. A periodic reporting procedure that incorporates a description of the impact of the project on the County; and
 13. Such other terms and conditions as the County may deem appropriate or the Board of County Supervisors determines are necessary to secure and promote the health, safety, and general welfare of the County and its citizens.

Parties submitting proposals understand that representations, information, and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the County. Accordingly, as part of the Contract, the proposer shall certify that all material representations, information, and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information, or data provided for a proposal, the proposer shall immediately notify the County. Any violation of this section of the Contract shall give the County the right to terminate the contract, withhold payment or other consideration due, and seek any other remedy available under the law.

(E) The contract and any amendments thereto shall be approved by and entered into in writing by the Board of County Supervisors.

(F) Notice and Posting Requirements.

In addition to the posting/notice requirements in this article, the County shall hold a public hearing on the proposals during the proposal review process, but not later than thirty (30) calendar days prior to entering into an interim or comprehensive agreement.

A finding of Public Interest must be prepared in accordance with in accordance with Virginia Code § 33.2-1803.1.

1. Once the negotiation phase for the development of an interim or comprehensive agreement is complete and a decision to award has been made by the County, the County shall publicly post the proposed agreement.
2. Once the interim or comprehensive agreement has been executed, the County shall make the procurement records for the transaction available for public inspection in accordance with the Virginia Public Procurement Act.
 - a. The procurement records shall include documents initially protected from disclosure on the basis that the release of such documents would adversely affect the financial interest or bargaining position of the County.
 - b. Trade secrets or financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise shall not be released.

(G) Governing Provisions.

In the event of a conflict between these guidelines and procedures and the PPEA or PPTA, the terms of the PPEA or PPTA, as applicable, shall control.

PRINCE WILLIAM COUNTY

PROCUREMENT REGULATIONS



Revised November 26, 2019

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§100.00 GENERAL REGULATIONS

§100.01 Procurement Regulations

- (A) These regulations are promulgated by resolution of the Board of County Supervisors of Prince William County (Board), pursuant to Virginia Code § 2.2-4302, , Virginia Public Procurement Act, as amended, to effectuate the purposes of those statutes with regard to procurement of goods, services, insurance, and construction for the County and the disposition of surplus property. These regulations shall have the force and effect of law, and may be amended, altered or repealed by the Board, as it shall deem appropriate.
- (B) The original regulations became effective at 12:01 A.M., on January 1, 1981, and have been/will be amended when necessary or appropriate and in accordance with applicable law.
- (C) Subject to § 100.02 hereof, Application of these regulations to County Procurement, these regulations shall apply to any procurement for goods, services, insurance or construction entered into after their effective date, unless the parties agree to their application to a procurement or contract solicited or entered into prior to their effective date.

§100.02 Application of these Regulations to County Procurement

- (A) These regulations shall apply to every expenditure of funds appropriated by the Board of County Supervisors, by or on behalf of the Board or any Using Department pursuant to § 9.2 of the Prince William County Code, for the procurement of any goods, services, insurance, or construction, except as otherwise provided by law or these regulations.
- (B) The regulations shall apply to all dispositions of County surplus property, other than real property.
- (C) Nothing contained in these regulations shall prevent the Board or Using Department from complying with the terms and conditions of any grant, gift, or bequest.
- (D) Where a procurement of any goods, services, insurance, or construction involves the expenditure of Federal assistance or contract funds, the Director of Finance shall comply with all Federal laws and regulations which may not be reflected in these regulations.

- (E) Notwithstanding any other provision of these regulations, nothing contained in these regulations shall be deemed to govern procurements, sales or other dispositions undertaken by the Prince William County School Board or its agents, or the regional health district.

§100.03 Special Provisions for Sanitary Districts, Authorities, and Constitutional Officers

When so provided by separate resolution, agreement, or other appropriate legal action by the Board of County Supervisors, these regulations shall apply to procurements and dispositions for any sanitary district, authority, or constitutional officer. In the absence of such separate resolution, agreement, or action, sanitary districts, authorities, and constitutional officers shall provide in all respects for their own procurement under such regulations as they may lawfully adopt.

§100.04 Definitions

- (A) For purposes of these regulations, the following terms have the meanings ascribed to them herein, except where the context clearly requires another meaning.
1. **Acceptance Agreement:** A written notice that summarizes the agreement between the County and the Contractor on the terms of the Contract.
 2. **Addendum/Amendment:** A written notice or graphic depiction issued prior to the response due date and time, to modify or clarify the solicitation.
 3. **Alternate Bid:** A bid submitted in addition to or in lieu of submitting a responsive bid. The alternate bid shall clearly reflect intentional substantive variations to the solicitation.
 4. **Analysis, Value:** To examine the function of products and systems to determine the total cost and total savings. A value analysis is performed to compare value among products and systems being considered for procurement.
 5. **Approving Authority:** The individual or entity with the authority to approve the selection of a Contractor.
 6. **Best Value:** The overall combination of quality, price, and various elements of required goods or services that in total are optimal relative to the County's need, as predetermined in the solicitation.
 7. **Bid:** The response to an Invitation for Bid (IFB) submitted by a bidder.

8. **Bidder:** A person or business who submits a response to an Invitation for Bid (IFB).
9. **Bond, Bid:** A form of security/financial protection issued by a third party (e.g., surety bond company) to guarantee that the principal (lowest responsive and responsible bidder) has the willingness and capability to enter into a contract. The bid bond guarantees compensation to the obligee (i.e., the County) in the event of default by the principal.
10. **Bond, Payment:** A form of security/financial protection issued by a third party (e.g., surety bond company) to guarantee that the principal (prime contractor) will promptly pay its financial obligations to its subcontractors, material suppliers, and other hires. The payment bond guarantees protection to the obligee (i.e., the County) from claims from the principal's subcontractors, material suppliers, and other hires, in the event of default by the principal.
11. **Bond, Performance:** A form of security/financial protection issued by a third party (e.g., surety bond company) to guarantee that the principal (prime contractor) will perform the work/complete the project as described in the contract. The performance bond guarantees compensation to the obligee (i.e., the County) in the event of default by the principal.
12. **Brand Name or Equal Specification:** A descriptive form of specification where the good is described by a unique identifier specific to a particular seller or manufacturer that distinguishes the good from its competition.
13. **Change Order:** A type of modification, typically used for construction contracts, which directs a party, in writing, to make a change from an original contract.
14. **Competitive Negotiation:** A formal procurement method which allows for contract award based on pre-established criteria described in a Request for Proposal (RFP), where the offeror's proposals and oral presentations, when requested, are evaluated and scored, and negotiations take place with the top ranked offeror(s) to arrive at a fair and reasonable contract award.
15. **Competitive Sealed Bidding:** A formal procurement method which allows for contract award based on the specifications or scope of work described in an Invitation for Bid (IFB), where the bids are evaluated to determine if the bids are responsive and the bidders are responsible, and to determine if prices are fair

and reasonable. The contract award(s) is made to the lowest responsive and responsible bidder.

16. **Confidential or Proprietary Information:** Any public record(s) that is rightfully and properly marked as confidential or proprietary. Such information shall not be disclosed to the public, unless required by law, including, but not limited to Virginia Code § 2.2- 4342 and the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.*
17. **Constitutional Officer:** Specific government officials whose offices are created by Virginia Constitution - the Sheriff, Clerk of Circuit Court, and Commonwealth Attorney.
18. **Construction:** Building, altering, repairing, improving, or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading, or similar work upon real property.
19. **Construction Management Contract:** A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.
20. **Contract:** A legally binding set of promises, or agreement between two (2) or more parties creating obligations that are enforceable or otherwise recognizable by law.
21. **Contractor:** An individual or entity awarded a contract by the County.
22. **Cost, Direct:** Direct labor and direct materials specifically attributed to the creation of a final product.
23. **Cost, Indirect:** Indirect labor and indirect material that cannot be directly traced to the creation of a final product, but such labor and material is considered overhead/necessary operating expenses.
24. **County:** Prince William County, Virginia, a political subdivision of the Commonwealth of Virginia, governed by the Board of County Supervisors of Prince William County, Virginia, and consisting of all of the County's authorized Using Departments, divisions, branches, sections, agencies, offices, boards, districts, and entities.

25. **Contract Administration:** Enforcing the contract terms and conditions to ensure the stated goals of the contract are met.
26. **Contract Administrator:** A representative of the Using Department responsible for assuring full compliance of a contract.
27. **Debarment:** A sanction excluding a person or business from participation in contracting opportunities or conducting business with a public body for a period of three (3) years or less in order to protect the interest of the public body. Debarment actions are discretionary actions but are normally imposed for serious offenses.
28. **Designee:** An individual with written authority to act on behalf of a County official.
29. **Design-Build Contract:** A contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway, or other item specified in the contract.
30. **Director of Finance:** The Director of Finance of Prince William County. The Director of Finance shall be the Chief Procurement Officer for the County and shall be under the supervision and control of the County Executive for the faithful execution and performance of finance functions.
31. **Employee:** For purposes of these regulations, any individual who is legally employed by the County, Constitutional Officer, or any Volunteer Fire/Rescue Company member.
32. **Employment Services Organization:** An organization that provides employment services to individuals with disabilities that is a Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Virginia Department for Aging and Rehabilitative Services.
33. **Exempt Purchase:** Purchases designated by the Board of County Supervisors to be exempt from competition.
34. **Faith-Based Organization:** A religious organization that is, or applies to be, a contractor to provide goods or services for programs funded by the block grant

provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104- 193, as amended.

35. **Gift:** Any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged
36. **Goods:** All material, equipment, supplies, printing, hardware, software, and vehicles.
37. **Head of Procurement Services:** An employee designated by the Director of Finance to be the manager of Procurement Services, authorized to exercise authority and perform duties as the Director of Finance may delegate, in accordance with these regulations.
38. **Immediate Family of Employee:** A spouse, child, parent, brother, sister, and any other person living in the same household as the County employee.
39. **In Writing or Written:** Any worded or numbered expression, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
40. **Informality:** A minor defect or variation of a bid or proposal from the exact requirements of the Invitation for Bid or the Request for Proposal, which does not affect the price, quality, quantity, or delivery schedule for the goods, services, insurance, or construction being procured.
41. **Invitation for Bid (IFB):** A formal solicitation that is released to the public requesting bids for goods or services to provide the requirements as stated in the solicitation.
42. **Kickback:** Any payment, loan, subscription, advance, deposit of money, gift, service, or anything of value, unless consideration of substantially equal or greater value is exchanged.
43. **Labor, Direct:** The wages of people that directly contribute in the creation of a specific product.

44. **Labor, Indirect:** The wages of people that do not directly contribute in the creation of a specific product, but such labor is considered overhead/necessary operating expenses.
45. **Life Cycle Costing:** A procurement evaluation which determines the total cost of ownership (cradle to grave). Elements reviewed consist of: acquisition cost, installation cost, operating cost, maintenance and repair cost, disposal and salvage cost, and any possible trade-in or buy-back value.
46. **Market Research:** Collecting and analyzing information about capabilities within the market place.
47. **Modification:** Written alteration of a contract. Bilateral modifications require the mutual agreement of the parties to the contract. Unilateral modifications are generally for a minor or administrative purpose and are issued by the County.
48. **Multiphase Professional Services Contract:** A contract for providing professional services where the total scope of work of the second or subsequent phase(s) of the contract cannot be specified without the results of the first or prior phase of the contract.
49. **Negotiation:** Formal discussions where the goal is for the parties to reach a fair and reasonable agreement.
50. **Nonprofessional Services:** Any services not specifically identified as professional services in the definition of professional services under Virginia Code § 2.2-4301.
51. **Notice of Contract Award:** A written notice issued to bidders, offerors, or to the public, announcing the award of a contract.
52. **Notice of Contract Termination:** A written notice issued by the head of Procurement Services to the contractor, announcing the termination of the contract.
53. **Offeror:** A person or business who submits a response to a Request for Proposal (RFP).
54. **Potential Bidder or Offeror:** A person or business who is engaged in the sale or lease of goods, or the sale of services, insurance, or construction, of the type to be procured, and who at such time is eligible and qualified in all respects to

provide such goods or perform such services, 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.

55. **Procurement:** Buying, purchasing, renting, leasing, or otherwise acquiring goods, services, insurance, or construction. Procurement includes all functions that pertain to the acquisition, including preparing a description of requirements, preparing and issuing a solicitation, selection and solicitation of sources, receiving and evaluating bids and proposals, preparation and award of contracts, all phases of contract administration, and salvage and disposal operations.
56. **Procurement Card:** A credit card issued to authorized users of the County to make purchases within established dollar thresholds.
57. **Procurement File:** A secure file, either in hard copy or electronic form, which contains all related documents of a specific procurement and maintained with controlled access within Procurement Services or the Using Department.
58. **Procurement Services:** The functional unit of the Finance Department responsible for the procurement operations of the County.
59. **Professional Services:** Work performed by a contractor within the scope of the professions listed in the Virginia Public Procurement Act.
60. **Proposal:** A response to a Request for Proposal submitted by an offeror.
61. **Public Body:** Any legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty and empowered by law to undertake the activities described in these regulations.
62. **Purchase Order:** A procurement document issued to purchase goods, services, insurance, or construction.
63. **Real Property (Real Estate):** Land, including land improvements, structures, and appurtenances thereto (i.e., immovable property).
64. **Recycled Paper:** Paper containing one hundred percent (100%) post-consumer recovered fiber. If the post-consumer content is less than one hundred percent

(100%), then the paper is identified as “recycled-content” paper, according to the Federal Trade Commission (FTC).

65. **Request for Information (RFI):** A planning tool used to request and gather information primarily to assist in the development of a solicitation document.
66. **Request for Qualifications:** All documents, whether attached or incorporated by reference, utilized for soliciting interested offerors for consideration for shortlist. The Request for Qualification is the first phase of a two-phase selection process for the purpose of inviting interested offerors to submit qualifications for a project.
67. **Request for Quotation (RFQ):** An informal solicitation released to the public requesting quotations to provide the requirements as stated in the solicitation.
68. **Request for Proposal (RFP):** A formal solicitation released to the public requesting proposals to provide the requirements as stated in the solicitation.
69. **Requisition:** A request document in a form prescribed by the Director of Finance, which shall constitute demand by the Using Department for the procurement of goods, services, insurance, or construction. It shall be initiated by the Using Department and processed by Procurement Services in accordance with such procedures promulgated. Procurement Services shall not honor any requisition unless drawn on funds which have been both budgeted and appropriated by the Board of County Supervisors.
70. **Responsible Bidder or Offeror:** A person or business who has the capability in all respects to fully perform the requirements specified in an Invitation for Bid or Request for Proposal and who has the moral and business integrity and reliability that will assure good faith performance of an awarded contract, and who has been prequalified, if prequalification was required.
71. **Responsive Bid:** A bid that conforms in all material respects to the Invitation for Bid.
72. **Scope of Work (SOW):** A detailed description of work to be performed or services to be provided. Work requirements describing the type, level, and quality of work expected to be provided.

73. **Selection Committee:** A group of qualified persons convened to evaluate proposals by offerors in response to a Request for Proposal (RFP).
74. **Services:** Any work performed by an independent contractor where the service rendered does not consist primarily of the acquisition of goods. Services are intangible commodities, labor/time, performance of duties, tasks, skills, actions, acts, activities, assistance, and maintenance.
75. **Signature or Signed:** The discrete, verifiable name, symbol, or mark of an individual which, when affixed to a document with the knowledge and consent of the individual, indicates intention to authenticate the document, including in electronic form.
76. **Sole Source:** A source of supply for goods, services, insurance, or construction that can only be practicably provided by a sole person or sole business.
77. **Solicitation:** A document that is used to announce an invitation to submit proposals or bids for goods, services, insurance, or construction.
78. **Specification:** A precise statement of requirements that describes characteristics, capabilities, identifies a product, or describes a process.
79. **Statement of Qualifications:** The documents submitted by an offeror in response to a Request for Qualifications.
80. **Subcontractor:** An individual or entity that provides goods or services to the prime contractor.
81. **Supplies (Consumables):** Tangible expendable items, indirect materials, disposable products which make the production of a product possible, efficient or safer; products consumed, destroyed, dissipated, wasted, or spent in-industry, production, assembly, manufacturing, maintenance, repairs, installations, replacements, upgrades, reconditioning, and the like as "goods" are defined in Virginia Code § 8.2-105.
82. **Surplus Property:** Assigned property which exceeds the requirements or needs of the Using Department.
83. **Technical Advisor:** Non-voting member of a Selection Committee who provides expertise in areas that require specialized knowledge.

84. **Term Contract:** A contract for a specified time period, normally at least twelve (12) months, for recurring purchases of a similar type.
85. **Tie Bid:** Two (2) or more responsive bids submitted by responsible bidders and such bids are identical in price, terms, and conditions.
86. **Used Goods:** Goods which have been previously-owned and used by another person(s) or business(es); goods that cannot be sold by law as new goods.
87. **Using Department:** All County-authorized departments, divisions, branches, sections, agencies, offices, commissions, boards, districts, corporations, entities, or Volunteer Fire/Rescue Companies that requisition goods, services, insurance, or construction with funds budgeted and appropriated by the Board of County Supervisors.
88. **Vendor (Supplier):** A person or business that provides goods, services, insurance, or construction in the open market.

§100.05 Powers and Duties of the Director of Finance

- (A) The Director of Finance shall be the Chief Procurement Officer for Prince William County, as provided in the County Executive form of Government. The Director of Finance shall make all procurements and dispositions for the County in such manner and with such exceptions as may be provided herein. The Director of Finance shall have authority to transfer or trade goods between Using Departments. The Director of Finance is hereby authorized to develop and implement suitable specifications or standards for any or all goods, services, insurance, and construction to be purchased by the County. The Director of Finance shall, except where otherwise provided, inspect or provide for the inspection of all goods and services to ensure their compliance with the specifications or scope of work so established.
- (B) Except as may be otherwise provided herein, the Director of Finance shall not process any procurement for any Using Department until a completed Requisition has been received for which there are sufficient funds budgeted and appropriated and must be encumbered to pay for the proposed procurement.
- (C) The Director of Finance shall interpret the meaning and application of these regulations and a decision on questions pertaining hereto shall be final. The Director of Finance may seek the assistance of the County Attorney in rendering any decision or interpretation requested.

- (D) The Director of Finance shall maintain complete records pertaining to the procurement and disposition functions assigned by these regulations.

§100.06 Delegation of Authority of Director of Finance

- (A) The Director of Finance is hereby authorized to delegate all of the authority and duties set forth in these regulations not reserved specifically for the Director of Finance, to such other officers and employees of Prince William County, as deemed appropriate.
- (B) The Director of Finance may designate one person to be the head of Procurement Services for the County who shall be an employee of the Department of Finance, but such designation shall not be deemed to relieve the Director of Finance of responsibility for supervision and control of the procurement functions assigned.
- (C) The head of Procurement Services shall perform duties assigned by the Director of Finance consistent with these regulations and shall have responsibility for Procurement Services function for the County.
- (D) The head of Procurement Services may re-delegate certain procurement functions to County employees subject to approval of the Director of Finance.

§100.07 County Executive Authorized to Promulgate Additional Regulations

- (A) The County Executive is hereby authorized to promulgate, after consultation with the Director of Finance, additional regulations for the internal administration of Procurement Services and such other matters as may be provided herein, including the method and manner of administratively processing procurements and the disposition of surplus property. Such regulations shall be consistent with these regulations, with applicable laws, and shall have the force and effect of law.
- (B) Regulations, which may be promulgated by the County Executive in accordance with subsection (A) of this section, shall be in effect from the date on which they are promulgated and may be amended, altered or repealed as the County Executive deem appropriate; provided, however, that copies of all such actions by the County Executive with regard to these regulations shall be immediately forwarded to the Board of County Supervisors, which may overrule the County Executive. The Board additionally reserves to itself the authority to amend, alter or repeal any provision of the regulations so promulgated.

§100.08 Unauthorized Procurements and Dispositions

- (A) No person shall have the authority to bind the County or its Using Departments to any procurement, except as provided in these regulations.
- (B) Any procurement or disposition made by any person in the name of the County or any Using Department, which is not in compliance with these regulations, shall be deemed unauthorized.
- (C) Any person who makes an unauthorized procurement or disposition of surplus property may be personally liable to the vendor or the purchaser of the surplus property. Such procurements or dispositions of surplus property shall be voidable at the discretion of the Board of County Supervisors.
- (D) The Director of Finance and the employees of Procurement Services shall not be liable and shall be held harmless for any unauthorized procurement or disposition of surplus property, which was not initiated or approved by them.
- (E) A determination whether any procurement or disposition was unauthorized shall be made in the first instance by the head of Procurement Services, who shall report any findings to the Director of Finance. The Director of Finance shall consult with the County Attorney. If the Director of Finance determines that the procurement or disposition was unauthorized, the Director may invoice the person responsible for the amount of any damages sustained by the County. The person responsible shall have a right of appeal to the County Executive, and thereafter to the Board of County Supervisors, provided that appeal at each level is filed in writing within fourteen (14) calendar days of the submission of the invoice.
- (F) Should an appeal be denied, or not submitted in a timely fashion, and the invoice not paid, the County Attorney may undertake legal proceedings to recover the money owed.
- (G) Any unauthorized procurement or disposition may be grounds for termination from County service of the responsible employee or employees or for the imposition of other adverse action, which may be provided for in the County Personnel Policies.

§100.09 Legal Review of Documents

- (A) All solicitations valued at \$100,000 or more, solicitations for professional services valued at \$60,000 or more, and all contracts using non-County forms shall be reviewed by the County Attorney prior to release. The resulting contract shall not require review by the County Attorney unless there are changes from the terms of the solicitation.

- (B) The County Attorney shall review and approve the standard purchase order form and content, and procurement terms and conditions.

§100.10 Contract Administration

- (A) The Using Department shall inspect and accept or reject all deliveries of goods and services performed under County procurements. Discrepancies in deliveries or in the performance of services shall initially be brought to the attention of the contractor by the Using Department. Failure to satisfactorily resolve the identified deficiency shall be brought to the attention of the Purchasing Manager in writing. The Purchasing Manager shall institute a formal complaint with the contractor. If satisfaction is still not forthcoming, the Director of Finance shall contact the County Attorney's Office for further proceedings.
- (B) A minimum of one Contract Administrator per Using Department shall be assigned to each contract in use by Prince William County.
- (C) Notwithstanding any other provision of these regulations, the Board of County Supervisors may provide for separate contract administration in construction contracts.

§100.11 Contract Form

- (A) Unless the Director of Finance establishes classifications of contracts to which this section shall not apply, all contracts 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 as to form by the County Attorney or shall be individually prepared for a specific procurement.
- (C) These regulations shall be deemed incorporated, as applicable, into any contract the County shall be a party, whether specifically referenced therein or not.
- (D) All contracts shall be in the name of the Board of County Supervisors of Prince William County, Virginia.
- (E) Contracts entered into for any Using Department for which funds have been budgeted and appropriated, shall be executed by the head of the Using Department, and the head of Procurement Services.
- (F) Contracts entered into directly for the Board of County Supervisors may be signed by whomever the Board shall direct. If the Board of County Supervisors fails to specifically authorize an individual(s) to sign on its behalf, the Chairman of the Board

and the head of Procurement Services may execute the contract on the Board's behalf.

§100.12 Required Contract Provisions

Every contract to which the County is a party shall expressly contain the following clauses:

(A) Ethics.

This Solicitation is subject to the provisions of the Virginia State and Local Government Conflict of Interests Act, Virginia Code § 2.2-3100 *et seq.* and subject to Virginia Code § 2.2-4367 through § 2.2-4377. No member of the Board of County Supervisors, any advisory or judicial body of Prince William County, or any other officer or employee of the County, or any member or employee of any agency, office, commission, board, district, corporation, entity, or Volunteer Fire/Rescue Company, or the spouse or any other relative who resides in the same household as any of the foregoing, may be a contractor or subcontractor in connection with any bid, or have a personal interest therein as defined by Virginia Code § 2.2-3101.

All Solicitation responses submitted shall be made without prior understanding, agreement, or connection with any corporation, partnership, firm, or person submitting a response for the same requirements, without collusion or fraud. Collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards.

By submitting a response, prospective contractors certify that their response is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder or offeror, supplier, manufacturer, or subcontractor in connection with their response, and that they have not conferred on any public employee having official responsibility for this 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 was exchanged.

No person who, for compensation, assisted in the preparation of a solicitation for the County shall (i) submit a response for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not publicly available.

(B) Examination of Records by the Director of Finance or Designee. Unless the County Attorney authorizes an exception to this provision, each contract for more than \$5,000 shall contain the following clause:

The contractor agrees that the County, or any duly authorized representative, shall, until the expiration of the period specified in the Library of Virginia Records Retention Schedule GS-02, Series 200106, 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 this contract.

The contractor agrees to include in any subcontract for more than \$10,000 entered into as a result of the prime contract, a provision to the effect that the subcontractor agrees that the County or any duly authorized representative shall, until the expiration of the period specified in the Library of Virginia Records Retention Schedule GS-02, Series 200106, have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of such contractor involved in transactions related to such subcontract, or this contract. The term "Subcontract" as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. The period of access provided herein for records, books, documents and papers that may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation, or claims have been finally dispositioned and disposed of.

(C) Claims/Disputes.

1. In accordance with Virginia Code § 2.2-4363, this provision shall be followed for consideration and handling of all claims by the contractor under this contract. Virginia Code § 2.2-4365 is not applicable to this contract, and under no circumstances is this paragraph to be construed as an administrative appeals procedure governed by Virginia Code § 2.2-4365.
2. Notice of the intent to submit a claim setting forth the basis for any claim shall be submitted in writing within ten (10) business days after the occurrence of the event giving rise to the claim, or within ten (10) business days of discovering the condition giving rise to the claim, whichever is later. In no event, shall any claim arising out of this contract be filed after the submission of the request for final payment by the contractor.
3. Claims by the contractor with respect to this contract shall be submitted in writing in the first instance for consideration by the Contract Administrator. The decision of the Contract Administrator shall be rendered in writing within forty-five (45) calendar days from the receipt of the claim from the contractor. The decision of the Contract Administrator shall be final on behalf of the County unless the

contractor submits the claim to the Director of Finance within thirty (30) calendar days of the Contract Administrator's decision.

4. If the contractor is not satisfied with the decision of the Contract Administrator, the contractor may file a formal dispute with regards to the claim with the Prince William County Director of Finance, which claim shall be received within thirty (30) calendar days of the date of decision of the Contract Administrator.
5. The Director of Finance shall provide a written decision on the claim to the contractor within forty-five (45) calendar days of the receipt of the claim from the contractor. The decision of the Director of Finance shall be final on behalf of Prince William County unless the contractor submits the claim to the County Executive within thirty (30) calendar days of the date of the Director of Finance's decision. The contractor may submit the claim to the County Executive by mailing or otherwise furnishing the head of Procurement Services a copy of the claim and a request for the County Executive's determination.
6. The County Executive's decision on the claim shall be rendered in writing to the contractor within forty-five (45) calendar days of the head of Procurement Services' receipt of the request from the contractor, and shall be final and binding on behalf of Prince William County, unless the contractor submits the claim for determination by the Board of County Supervisors by mailing or otherwise furnishing the head of Procurement Services a copy of the claim, along with a request for determination by the Board within thirty (30) calendar days of the County Executive's decision. The Board shall consider the claim and render a decision on the claim in writing within forty-five (45) calendar days of the date on which the Board hears the claim in open meeting. The Board's procedure in considering claims under this contract shall be the same as that for other decisions of the Board on claims made under Virginia Code § 15.2-1245, *et seq.* The decision of the Board shall be final.
7. Should any decision-maker designated under this procedure fail to make a decision on a claim within the time period specified, then the claim is deemed to have been denied by the decision maker.
8. Pending a final determination of a claim, the contractor shall proceed diligently with the performance of the work under the contract.
9. In accordance with the provisions of Virginia Code § 2.2-4363, full compliance with this procedure set forth in the provision shall be a precondition to the filing of any

legal action by the contractor against the County or its Board of County Supervisors arising out of or related to this contract.

- (D) Termination for Non-Appropriation of Funds. Contracts which require that the County make payments beyond the fiscal year in which such contract was made, shall contain the following clause for termination of the contract in the event that the Board of County Supervisors shall cease to appropriate funds for the purposes of the contract:

The County is bound under the Contract only to the extent of the funds that are available or may become available for the purpose of this Contract. Funding for this Contract in any succeeding fiscal year is subject to appropriation by the Board of County Supervisors. If funds are not appropriated for any succeeding fiscal year, the County may terminate this contract upon thirty (30) calendar days prior written notice to the contractor and the County shall be liable only for payments due through the date of termination.

- (E) Termination for Default.

Either party may terminate this contract, without further obligation, for the default of the other party or to agents or employees with respect to any agreement or clause contained herein. In case of a contractor's failure to deliver the goods or services in accordance with the contract, after due oral or written notice, the County may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the County may have.

- (F) Termination for Convenience of the County.

The County may terminate this contract, or any work or delivery required under this Contract, from time-to-time, in whole or in part, whenever the Director of Finance shall determine that such termination is in the best interest of the County. Termination, in whole or in part, shall be affected by delivery of a Notice of Termination, signed by the Director of Finance or a designee, mailed or delivered to the contractor, and specifically stating the effective date of termination.

Upon receipt of such Notice, the contractor shall:

1. Cease any further deliveries or work due under this contract, on the date, and to the extent, which may be specified in the Notice;
2. Place no further orders with any subcontractors except as may be necessary to perform that portion of this contract not subject to the Notice;

3. Terminate all subcontracts except those made with respect to contract performance not subject to the Notice;
4. Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the head of Procurement Services; and
5. Use its best efforts to mitigate any damages, which may be sustained by it as a consequence of termination under this clause.

After complying with the foregoing provisions, the contractor shall submit a termination claim, no later than six (6) months after the effective date of its termination, unless an extension is granted by the head of Procurement Services.

The head of Procurement Services shall determine reasonable costs of termination, including a reasonable amount for profit on goods or services delivered or performed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination and further reduced by the price of the goods or services not delivered or performed. This contract shall be amended accordingly, and the contractor shall be paid the agreed amount.

In the event the parties cannot agree on the whole amount to be paid to the contractor by reason of termination under this clause, the County shall pay to the contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause:

1. With respect to all contract performance prior to the effective date of the Notice of Termination the total of:
 - (a) Cost of goods delivered or services performed;
 - (b) The cost of settling and paying any reasonable claims as provided in subparagraph (F), of this section; and
 - (c) A sum as profit on subparagraph 1(a) of this section determined by the head of Procurement Services to be fair and reasonable.
2. The total sum to be paid under subparagraph 1(a) of this section shall not exceed the contract price, as reduced by the amounts of payments otherwise made, and as further reduced by the contract price of goods or services not provided.

In the event that the contractor is not satisfied with any payments, that the head of Procurement Services shall determine to be due under this clause, the contractor may appeal any claim in accordance with the "Claims and Disputes" clause of this contract.

The contractor shall include similar provision in any subcontract and shall specifically include a requirement that subcontractors make all reasonable efforts to mitigate damages that may be suffered. Failure to include such provisions shall bar the contractor from any recovery from the County whatsoever for loss or damage sustained by a subcontractor as a consequence of termination for convenience.

- (G) Employment Discrimination by Contractors Prohibited. In accordance with Virginia Code § 2.2-4311, each contract over \$10,000 to which the County is party shall include the following clause:

Contractor shall comply with the provisions of the Federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act, Virginia Code § 2.2-4200 *et seq.*, the Virginians With Disabilities Act, the Americans With Disabilities Act, as amended, and Virginia Code § 2.2-4311. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body.

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, 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.
 - (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 subsection 1(a) of this section, in each subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(H) Payments to Subcontractors.

1. The contractor shall:

(a) Pay a subcontractor(s) within seven (7) calendar days of the contractor's receipt of payment from the County for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

(b) Notify the Contract Administrator and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason for nonpayment.

2. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) calendar days following receipt of payment from the County, except for amounts withheld under subsection 1(b) of this section. The date of mailing of any payment by U.S. Mail deems payment to the addressee. These provisions apply to each subcontractor performing under the contract. A contractor's obligation to pay an interest charge to a subcontractor shall not be construed to be an obligation by the County. The contractor is hereby required to include in each of its subcontracts a provision requiring each subcontractor to be subject to the payment and interest requirements with respect to each lower-tier subcontractor.

(I) Labeling of Hazardous Substances.

If the goods requested by this Solicitation are "Hazardous Substances" as defined by § 1261 of Title 15 of the United States Code (U.S.C.) or "Pesticides" as defined in § 136 of Title 7 of the U.S.C., then the prospective contractor, by submitting a response, certifies and warrants that the goods to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the goods the prospective contractor does not violate any of the prohibitions of 15 U.S.C. § 1263 or 7 U.S.C. § 136.

(J) Drug-free Workplace.

During the performance of this contract, the contractor agrees to:

1. Provide a drug- free workplace for the contractor's employees;
2. 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;
3. 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
4. Include the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor, contractor, or vendor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of this contract.

(K) E-Verify Program.

Pursuant to Virginia Code § 2.2-4308.2, any employer with more than an average of 50 employees for the previous twelve (12) months entering into a contract in excess of \$50,000 with any agency of the County to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions shall be debarred from contracting with any agency of the County for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove their E-Verify enrollment.

(L) Authorized to Conduct Business in the Commonwealth of Virginia.

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 of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law or regulation. Any business entity

described above that enters into a contract with the County shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so required under Title 13.1 or Title 50, or any other Virginia law or regulation, to be revoked or cancelled at any time during the term of the contract. The County may void any contract with a business entity if the business entity fails to remain in compliance with these provisions.

§100.13 Announcement of Award

Awards of term contracts shall be posted in a public space.

§100.14 Modifications to the Contract

- (A) A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract, or \$50,000, whichever is greater, without the advance written approval by the Prince William County Board of County Supervisors.
- (B) The head of Procurement Services shall approve modifications to contracts. The head of Procurement Services may delegate this authority in accordance with § 300.04 of these regulations.
- (C) The head of Procurement Services may extend the term of an existing contract to prevent disruption in County functions.
- (D) The head of Procurement Services may execute modifications that exercise renewal periods upon approval by the head of the Using Department and appropriation of funds.
- (E) Unilateral modifications may be issued by the County for minor or administrative purposes.

§100.15 Insurance Requirements

- (A) Before work can commence, the contractor shall provide evidence of the minimum coverage required by the Minimum Insurance Requirements included in the solicitation.
- (B) These insurance requirements must include at a minimum:
 - 1. Workers' Compensation and Employers' Liability insurance under the Virginia statutory requirements, to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees,

volunteers, or subcontractors, including any and all liability or damage which may arise by virtue of any Virginia statute or law.

2. General Liability insurance in the amount prescribed by the County, to protect the contractor, its subcontractors, and the interest of the County, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form General Liability endorsement, in addition to coverage for explosion, collapse, and underground hazards, where required. Completed Operations Liability coverage shall continue in force for one (1) year after completion of work.
 3. Automobile liability insurance, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy or a Commercial General Liability policy.
- (C) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying liability policies for lesser limits with the remaining limits provided by an Excess of Umbrella Liability policy.
- (D) The contractor shall provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
- (E) The contractor will attach to each liability insurance policy, with the exception of Workers' Compensation, an endorsement to save and hold harmless the County from any liability or damages whatsoever arising out of the contracted work.

§100.16 Permits and Licenses

A contractor shall be solely responsible for complying with any applicable Federal, State, and County laws, codes, ordinances, and regulations that may be required to provide goods, services, insurance, or construction under a County contract.

§100.17 Cooperative Procurements

- (A) The County may participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more public bodies for the purpose of

combining requirements to increase efficiency, reduce the cost of goods and services, or to reduce County administrative costs.

- (B) In accordance with Virginia Code § 2.2-4304 and its exceptions, the County may purchase from another public body's contract even if it did not participate in the solicitation process, if the solicitation specified that the procurement was being conducted on behalf of other public bodies.
- (C) The County may issue its contract against another public body's solicitation, if the solicitation was conducted on behalf of other public bodies.

§100.18 Prompt Payment

"Payment date" shall mean either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty (30) calendar days after receipt of a proper invoice or (b) thirty (30) calendar days after receipt of the goods or services, whichever is later.

§200.00 ETHICS AND GENERAL BUSINESS PRACTICES

§200.01 General

- (A) All County procurements shall be in full compliance with the Virginia State and Local Government Conflict of Interests Act, § 2.2-3100 *et seq.*, and Article § 6 of Chapter 43 of Title 2.2 (Ethics in Public Contracting) of the Virginia Code, § 2.2-4637 *et seq.*
- (B) Any person convicted of a willful violation of any provision of § 200.00 *et seq.* of these regulations shall be guilty of a Class 1 misdemeanor. Upon conviction, any County employee, in addition to any other fine or penalty provided by law, shall forfeit their employment.

§200.02 Proscribed Participation by County Employees in Procurement Process

No County employee having official responsibility in the procurement process shall participate in that process when:

- (A) The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement.
- (B) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror, contractor such as an officer, director, trustee, or partner, or is employed in a capacity involving personal and substantial participation in the procurement process or owns or controls an interest of more than five percent (5%).
- (C) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement.
- (D) The employee, the employee's partner, or any member of the employee's family is negotiating, or has an arrangement concerning prospective employment with a bidder, offeror, or contractor.

§200.03 Disclosure of Subsequent Employment

No County employee or former County employee having an official responsibility in the procurement process shall accept employment with any bidder, offeror, or contractor with whom the employee or former employee dealt with in an official capacity concerning a procurement for a period of one (1) year from the cessation of employment by the County unless the employee or former employee provides written notification to the County Executive, prior to commencement of employment by that bidder, offeror, or contractor.

§200.04 Prohibition on Solicitation or Acceptance of Gifts

- (A) No County employee having official responsibility for a procurement shall solicit, demand, accept, or agree to accept a gift from a bidder, offeror, contractor or subcontractor.
- (B) No bidder, offeror, contractor, or subcontractor shall bestow a gift upon or accept a gift from any County employee having official responsibility for procurement.

§200.05 Misrepresentations by County Employees

No County employee having official responsibility for a procurement 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.

§200.06 Public Access to Procurement Information

- (A) Except as provided in these regulations, all proceedings, records, contracts, and other public records pertaining 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.
- (B) Cost estimates relating to a proposed 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 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 solicitation. Otherwise bid and proposal records shall be open to public inspection only after the award of the contract.
- (D) Any inspection of procurement 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 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 section prior to or upon submission of the data or other materials and identify the data or other materials to be protected and state the reasons why protection is necessary. 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. The determination of an improper designation shall be at the County's sole discretion. If, after being given a reasonable time to revise the improper designation, a bidder or offeror refuses to withdraw an entire classification designation, the bid will be considered nonresponsive or the proposal will be rejected.

§200.07 Prohibition on Disclosing Procurement Information Prior to Award

A County employee shall not, other than as provided by law, knowingly disclose bid and proposal information submitted by bidders and offerors or Selection Committee information prior to the award of the County contract to which the information relates without prior approval of the head of Procurement Services.

§200.08 Competency of Vendor

No contract will be awarded to any vendor that is in arrears, or is in default to the County, upon any debt or contract, or has defaulted on a surety or upon any obligation to Prince William County. Upon request, the vendor must present within forty-eight (48) hours evidence satisfactory to the head of Procurement Services of performance ability, and possession of necessary facilities, financial resources, and adequate insurance to comply with the terms of the contract.

§200.09 Subcontracting

The head of Procurement Services shall determine if any portion of a contract shall be subcontracted or performed by a party other than the contractor. Such a restriction shall be included in the solicitation provisions.

§200.10 Authority to Suspend or Debar

- (A) The purpose of suspension or debarment of a person or business from contracting opportunities or from conducting business with a public body is to protect the County's interest and to protect the integrity of the County's procurement process from such person or business who has displayed improper, unethical, or illegal conduct while under a relationship with the County, based on sufficient documentation obtained that such conduct has occurred. See § 200.10(G)(1) of these regulations regarding meaning of "under a relationship".
- (B) Suspension or debarment actions are discretionary actions. Suspension sanctions shall be imposed for less serious offenses while debarment sanctions shall be imposed for more serious offenses. The head of Procurement Services in consultation with the Director of Finance and the County Attorney shall determine

the sanction and time period of the sanction which shall be imposed against such person or business.

- (C) Debarment sanctions shall be in writing and shall describe the reasons for such action and the start date of the debarment. A written notice of pending action must be issued to such person or business, including information about the appeals process. Such notice shall be mailed certified/receipt requested or delivered in person and a receipt of the notice obtained from such person or business.
- (D) The County shall give such person or business that is accused of improper, unethical, or illegal conduct, an opportunity to appeal such sanctions to the County Executive within fourteen (14) calendar days after receipt of such notice. The County Executive's decision may be appealed within fourteen (14) calendar days of the date of the decision to the Board of County Supervisors. The Board of County Supervisors will determine, not later than the second regularly scheduled Board of County Supervisors meetings after delivery of the appeal, what action or process will be allowed for further appeal, if any. The Board of County Supervisors' decision whether to suspend or debar such person or business shall be final.
- (E) Based on the seriousness of the offense, the suspension period shall not exceed one (1) year and the debarment period shall not exceed three (3) years.
- (F) Suspension or debarment sanctions do not relieve the person or business of its responsibilities for any existing obligations to the County.
- (G) Causes for suspension or debarment sanctions include, but are not limited to, the following.
 - 1. Any conduct deemed improper or unethical by the head of Procurement Services, or deemed illegal conduct by Law Enforcement, while under a relationship with the County. For purposes of this section "under a relationship" means a person or business responding to a County solicitation or who is under contract with the County;
 - 2. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner when responding to a solicitation;
 - 3. Misrepresentation(s) in a bid or proposal to appear responsive or responsible;
 - 4. Bribery or attempting to bribe a County employee(s) for procurement favors. Conferring or offering to confer any gift, gratuity, favor, or advantage, present or

future on a County employee(s) who has official responsibilities for public procurement;

5. A bidder, offeror, or contractor, who displays abusive or obscene language or displays threatening actions toward any County employee(s), agent(s), or volunteer(s), or member(s) of the public, during any procurement process or while performing under a County contract;
6. Refusal to fulfill a binding bid or proposal;
7. Refusal to fulfill a contractual requirement(s), resulting in a breach of contract;
8. Chronic documented unsatisfactory performance under a County contract, except where unsatisfactory performance was caused by acts beyond the contractor's control;
9. Non-compliance with a critical requirement under a County contract. A suspension sanction may be imposed upon a contractor as a temporary, less severe action, to allow such contractor to come into compliance with the contract. This temporary action may be utilized when in the best interest of the County;
10. Intentional invoicing for a good(s) or service(s) that was not provided;
11. Intentional overcharging for a good(s) or service(s) when established County contract pricing exists;
12. Demanding any kickback(s) from its suppliers, subcontractors, or competitors;
13. Falsifying County procurement-related documents;
14. County contract termination for default;
15. Court judgment against any officer, director, owner, or partner finding a criminal offense involving a County procurement(s);
16. Court judgment against any officer, director, owner, or partner finding fraud against the County;
17. Court judgment against any officer, director, owner, or partner finding collusion involving a County procurement(s);

18. Court judgment against any officer, director, owner, or partner finding a violation of State or Federal antitrust law(s);
19. Conviction under State or Federal statutes of any officer, director, owner, or partner involving fraud, embezzlement, collusion, theft, forgery, bribery, falsification, destruction of public records, receiving stolen property, or other felonies; or
20. Person or business that is under suspension sanction or debarment sanction from another public body. County sanctions will be imposed until such sanctions have expired or are lifted from such other public body.

§200.11 Bid Protests, General

- (A) Any bidder or offeror may protest the award of, or the decision to award, a contract by submitting a written protest to the Director of Finance within the times specified in this section.
- (B) The County shall not consider any protest of the responsibility determination of the selected bidder or offeror, nor shall any protest lie for any matter which the Director of Finance 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 three (3) 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 of the contract to the successful bidder or offeror.
- (D) Any protest shall state in detail the basis for the protest, and specify the relief requested.
- (E) The Director of Finance shall inform the County Attorney of the receipt of any protest.
- (F) The Director of Finance shall provide the County Attorney with all relevant information and documentation involving the procurement. The Director of Finance shall consult with the County Attorney as necessary or appropriate.
- (G) The Director of Finance shall decide all protests within ten (10) calendar days of receipt of the protest. The Director of Finance shall issue a written decision, including the reasons for the decision. The Director of Finance's decision shall be final.

§200.12 Bid Protests, Remedies

- (A) Prior to the award of a contract, if the Director of Finance determines that a decision to award a contract is illegal, arbitrary or capricious, the Director may cancel the proposed award, or revise it to comply with the law.
- (B) If the Director of Finance makes the determination required in subsection (A) after a contract has been awarded, the sole remedy shall be a finding to that effect. 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) If the Director of Finance determines that a protest filed is well founded, he or she may cancel the solicitation, or revise it to comply with the law.
- (D) The validity of any contract awarded in good faith in accordance with this section shall not be affected by the fact that a protest or appeal has been filed. 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 further action to award shall be made unless the Director of Finance determines in writing that it is necessary to proceed to award without delay to protect the public interest, or unless the bid or offer would otherwise expire.
- (E) Where the County determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Virginia Code § 2.2-4367, the County may enjoin the award of the contract to a particular bidder.

§200.13 Proceedings for Suit on Bids or Contracts

No suit at law or equity based on any County contract may be filed against the Board of County Supervisors by any person, unless and until all requirements and provisions of Article 4 of Chapter 12 of Title 15.2 of the Virginia Code § 15.2-1245 *et seq.* have been met.

§200.14 Vendor Registration Requirements

All vendors must register with the County prior to award.

§200.15 Sales Tax Exemption

Prince William County is exempt from the payment of any Federal excise or any Virginia sales tax. However, when under established trade practice any Federal excise tax is included in the list price, the vendor may quote the list price and shall show separately the amount of Federal tax, as in its bid or proposal a flat sum, which shall be deducted by the County.

§200.16 Prohibition on Kickbacks

- (A) No contractor or subcontractor shall demand or receive kickbacks from any of its suppliers or subcontractors, as an inducement for the award of a subcontract or purchase order.
- (B) No subcontractor or supplier shall make, or offer to make, kickbacks.
- (C) No person shall demand or receive kickbacks in return for an agreement not to compete on a public contract.
- (D) If a subcontractor makes a kickback, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or purchase order and paid by the County and shall be recoverable from both the maker and the recipient.

§200.17 Limitations on Submitting Bids after Participating in Bid Preparation

No person who, for compensation, assisted in the preparation of an Invitation for Bid (IFB) or Request for Proposal (RFP) for 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 publicly available.

§200.18 Printing Provisions

- (A) Copyright.

No contractor may copyright any work produced for the County without the written consent of the head of Procurement Services.

- (B) Printing: Ownership of Artwork, Negatives, etc.

All artwork, negatives, overlays, or similar materials used to print a job shall be the property of the County and must be returned to the Using Department upon completion or upon request.

- (C) Printing: Overruns, Underruns.

The County is not required to accept overruns provided “no overruns” is specified in the solicitation. However, a Using Department may at its discretion accept up to a ten percent (10%) overrun. Prices for overruns shall not exceed the quoted base price per unit or the quoted price for additional copies run at the same time. A department may, at its discretion, accept underruns. The price for underruns will be calculated at the quoted base price per unit.

§200.19 Information Technology Provisions

(A) Offeror's Credentials to Support Third-Party Information Technology (IT).

This is a mandatory requirement. Any firm offering third-party IT products and services in response to this solicitation is required to be a "certified" reseller or service provider trained in the installation and use of the product(s) proposed. The bidder or offeror shall be required to submit a letter(s) of certification or other documentation from the original vendor(s) with its bid or proposal certifying that the offeror is currently an "authorized reseller" or "certified service provider" and is trained in the installation, configuration, and support of the product. Failure to provide the required documentation with the bid or proposal may disqualify the bidder or offeror from further consideration.

(B) Third-Party Product Representations.

This is a mandatory requirement. Offerors proposing third-party products in response to this solicitation shall certify as part of their bid or proposal that they have reviewed the products and shall identify which specific mandatory and optional requirements of the statement of work that they address. If modifications to the products are necessary to meet specifications, those modifications are to be clearly identified and a fixed cost included in the cost proposal to make the required modifications. Failure to provide the required documentation may disqualify the bidder or offeror from further consideration.

(C) License, Service, and Maintenance Agreements.

All license, service, and maintenance agreements required to be signed by the County as part of a contract shall be submitted as attachments to the offeror's initial bid or proposal. Review and negotiation by the County of terms contained in these documents shall be a condition of contract award.

(D) Agreement of Confidentiality.

The contractor shall sign an agreement of confidentiality to guarantee that any data structure, report, or application supported for the County shall not be reverse engineered or supplied to any other customer or jurisdiction unless the contractor has copyright to do so.

§300.00 METHODS OF PROCUREMENT

§300.01 Available Methods of Procurement

- (A) All formal contracts to which the County is a party for the purchase or rental of goods, services, insurance, or construction, shall be awarded after competitive sealed bidding or competitive negotiation, as provided in these regulations, unless otherwise authorized by law.
- (B) Unless otherwise exempted within these regulations, competition is required for all goods, services, insurance, and construction, classified as similar commodity codes with a fiscal year cumulative cost of \$5,000 or more within a Using Department.
- (C) Goods and services required shall not be artificially divided or split among procurement transactions in order to avoid competition. To assist the head of Procurement Services in evaluating utilization of proper procurement methods, Using Departments shall provide budget information and records of past expenditures upon request.
- (D) Competitive sealed bidding is the preferred procurement method for goods, services, insurance, or construction. This method shall be utilized when the requirements can be clearly defined, negotiations are not necessary, price is the major determining factor for award selection, and where required by law.
- (E) If competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, insurance, or construction may be procured by competitive negotiation. This method shall be utilized when the requirements cannot be clearly defined, negotiations are necessary, price is not a major determining factor for award selection, and where required by law.
- (F) Various forms of competitive bidding and competitive negotiation may be utilized for County procurements such as: One-Step Procurement, Multi-step/Two-step Procurement, Best Value, Job Order Contracting, Multiphase Contracting, Reverse Auctioning, Public Auction, and Cooperative Procurement, as permitted by the Virginia Public Procurement Act, Virginia Code § 2.2-4300 *et seq.*, and these regulations.
- (G) Term contracts established by the County using the above methods are a required source when procuring the included goods or services.

§300.02 Procurements of \$100,000 or More

- (A) Procurements of goods and services estimated to cost \$100,000 or more shall be made directly by Procurement Services by competitive sealed bidding (Invitation for Bid) or competitive negotiation (Request for Proposal) methods of procurement, except as otherwise provided in these regulations.
- (B) The Invitations for Bid (IFB) or the Request for Proposal (RFP) shall be available to the public at least ten (10) calendar days prior to the due date set for receipt of bids and proposals.
- (C) All public notices shall be designed to reach as many potential bidders reasonably able to meet the specifications/scope of work, but no procurement shall be subject to challenge solely on the ground that a qualified bidder was not solicited.
- (D) The Using Department shall submit a list of any known bidders/offerors to Procurement Services in order to maximize competition.
- (E) Formal procurements shall be posted on the County's website.

§300.03 Procurements of \$30,000 or more and less than \$100,000

- (A) Procurements of goods and services estimated to cost \$30,000 or more and less than \$100,000 shall be made directly by Procurement Services in the open market by written Request for Quotation (RFQ).
- (B) A minimum of four (4) likely sources shall be solicited. Procurements of \$30,000 or more shall be posted on the County's website.
- (C) A public record shall be kept of all sources solicited and all quotes received. The record shall indicate which quote was accepted.

§300.04 Procurements of \$5,000 or more and Less Than \$30,000 (Informal Procurement)

- (A) Procurements of goods and services estimated to cost \$5,000 or more and less than \$30,000 (for a single procurement or accumulative of similar commodities in a fiscal year) shall be made directly by the Using Department in the open market by written Request for Quotations (RFQ).
- (B) A minimum of three (3) likely sources shall be solicited by mail, electronically, or by other public notice. All sources solicited shall be provided the same information and specifications or scope of work. Quotations received shall not be released until after due date and time for receipt of quotations.

- (C) A public record shall be kept of all sources solicited and all quotes received. The record shall indicate which quote was accepted.

§300.05 Procurements of Less Than \$5,000

- (A) Procurements of goods and services estimated to cost less than \$5,000 (for a single procurement or accumulative of similar commodities in a fiscal year) shall be made directly by the Using Department in the open market. The vendor shall be paid via procurement card or direct payment.
- (B) The Director of Finance and the employees of Procurement Services shall not be liable and shall be held harmless for any error or omission in procurements under this section.

§300.06 Use of the Procurement Card

Procurement cards shall be utilized for purchases as provided in the *County's Procurement Card Policy*. Misuse of any procurement card is subject to the same action stated in § 100.08 and § 200.00 *et seq.* of these regulations.

§300.07 Construction

- (A) The preferred method of procurement of construction by the Board or any Using Department shall be by competitive sealed bidding pursuant to § 600.00 *et seq.* of these regulations.
- (B) Construction may be procured by competitive negotiation in the following circumstance, upon a written determination made in advance by the Director of Finance that competitive sealed bidding is either not practicable or not fiscally advantageous to the public:
 - 1. For a fixed-price design-build or construction management contract;
 - 2. When the contract is not expected to cost more than \$500,000; or
 - 3. For the construction of highways and any draining, dredging, excavation, grading, or similar work upon real property.
- (C) A record detailing the basis of the determination to use competitive negotiation shall be made and maintained in the procurement file.

§300.08 Professional Services and Special Consultants

- (A) The procurement of professional services and special consultants by the Board or any Using Department shall be by competitive negotiation pursuant to § 700.00 *et seq.* of these regulations, if the cost is \$60,000 or greater.
- (B) The procurement of professional services and special consultant services costing less than \$60,000 may be exempt from competition, provided such action is approved in writing and in advance by the County Executive.

§300.09 Exempt Items

- (A) Notwithstanding any other provision of these regulations, the items in this section are exempt from the competition requirements, but shall comply with the other provisions. These items may be solicited and contracted for by the Director of Finance, as the Director deems appropriate. Funds shall be properly encumbered before the good or service is procured. The list of exempt items may be amended by the Board of County Supervisors whenever it deems it appropriate.
- (B) The exempt items and categories are as follows:
 - 1. Accreditation, testing, and evaluation services;
 - 2. Advertising/media, excluding contracts with advertising agencies to prepare ad layouts;
 - 3. Books, manuscripts and pamphlets;
 - 4. Booth space at conferences, exhibits, fairs, and product shows;
 - 5. Care, search and housing of prisoners;
 - 6. Clothing and tool allowances;
 - 7. Commercial, off the shelf training;
 - 8. Conferences, seminars, and off-the-shelf training;
 - 9. Any payments made pursuant to court order, jury verdicts, or settlements;
 - 10. Dues, subscriptions (including electronic), publications, and Dunn & Bradstreet reports;
 - 11. Educational films;
 - 12. Freight/mailing charges;
 - 13. Honorarium;
 - 14. Self-insurance claims;
 - 15. Inspection fee and costs;
 - 16. Legal services, including, but not limited to, title examinations and the costs of litigation or regulatory proceedings, including, but not limited to, court

- costs, witness fees (lay and expert), transcripts, court reporters, exhibits, and process servers;
17. Perishable foodstuffs;
 18. Postage;
 19. Prescriptions/medicines;
 20. Public auction items;
 21. Purchase and rental of real property;
 22. Software maintenance contracts, licenses, and upgrades for software already purchased;
 23. Speakers, lecturers, musicians, and performing artists;
 24. Surplus property;
 25. Tuition;
 26. Used equipment and materials;
 27. Utility services - electric, water, sewer, local telephone service, cable television and internet services, and natural gas; and
 28. Additional items deemed exempt by the Commonwealth of Virginia which are not listed under this subsection.
- (C) Contracts for goods or personal services for direct use by recipients of human service programs shall be exempt from these regulations and may be negotiated as appropriate. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from these regulations.
- (D) Negotiation of financing agreements entered into in connection with any lease-purchase of goods, whether or not the goods themselves have been competitively acquired, shall be exempt from any requirement of competitive bidding. However, all lease purchase financing agreements shall be administered and approved by the head of Procurement Services.
- (E) Services rendered in the performance of work that is original and creative in character in a recognized field of artistic endeavor are exempted.
- (F) Procurements by the General Registrar's Office for equipment, software, services, the printing of ballots, statement of results, or other materials essential to the conduct of an election are exempted pursuant to Virginia Code § 24.2-602, but the provisions of Article 4 (§ 2.2- 4347 *et seq.*) and Article 6 (§ 2.2-4367 *et seq.*) of Chapter 43, *Virginia Public Procurement Act*, of Title 2.2 shall apply to such contracts. See Virginia Code § 2.2-4346(A).
- (G) Upon a written determination made in advance by the Director of Finance that the purchase of goods at a public auction sale is in the best interests of the public, such

items may be purchased at the public auction. The writing shall document the basis for this determination.

§300.10 Additional Exemptions from Competition

In addition to the exempt categories and items listed in § 300.09 of these regulations, the following are also exceptions to the requirement of competitive bidding:

- (A) Procurements of goods and services from the state penitentiary, or through State, Federal, Council of Governments, School Board, or other political jurisdiction bids, or any other source with which the County has entered or shall enter into a cooperative procurement agreement.
- (B) Contracts with other Public Bodies, such as George Mason University and Federal and State departments and agencies, where permitted or authorized.
- (C) Purchases for special police work when the Chief of Police certifies to the Director of Finance that items are needed for special police work, including undercover police operations, the Director of Finance may procure the needed items without competitive bidding.
- (D) Procurements of goods and services from Employment Services Organizations that provides employment services to individuals with disabilities that is a Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Virginia Department for Aging and Rehabilitative Services.

§300.11 Emergency Procurements

- (A) In case of emergency, a contract may be awarded without competition: however, such procurement shall be made with such competition as is practicable under the circumstances.
- (B) To qualify as an emergency, the situation must meet one of the following requirements:
 - 1. There is a breakdown in any County service;
 - 2. Goods and/or services are needed for immediate use in work, which may be essential to or may affect the public health, safety, or general welfare of the County and its inhabitants; or
 - 3. Work undertaken under a court order or in anticipation of a court order.

(C) Determination of Existence of an Emergency.

The head of the Using Department shall initially determine whether an emergency exists which justifies the application of these provisions. If, upon subsequent review, the Director of Finance determines that no emergency actually existed, the Director shall proceed under the portion of these regulations pertaining to unauthorized procurements.

(D) Procedure during Regular County Office Hours.

If an emergency occurs during office hours, the Using Department, where practical, shall notify the head of Procurement Services and the head of Procurement Services shall either procure goods or services directly, or authorize the Using Department to do so.

(E) Procedure After Office Hours.

If an emergency occurs after office hours, the Using Department shall procure the necessary goods or services and send notification to the head of Procurement Services as soon as practicable. The Using Department shall submit an emergency-type Purchase Order to Procurement Services no later than the first business day after the emergency situation, together with a written justification for the procurement.

(F) Prior authorization for emergency procurements shall be obtained from the Director of Finance whenever possible.

(G) For emergency contracts over \$100,000, written notice of the procurement shall be documented in a public space including the items procured, the selected contractor, and the date the contract was awarded.

§300.12 Sole Source

(A) Sole source procurements shall be exempt from the competitive bidding requirements of these regulations.

(B) Where services or goods are only practicably available from a single source, either because of legal requirements, specific patents or copyrights, peculiar qualifications and skills, technical specifications, or other reasons, the head of Procurement Services may obtain such goods or services from the sole source.

(C) It shall be the responsibility of the Using Department to provide a written justification for a sole source procurement.

- (D) The head of Procurement Services is authorized to enter into direct negotiations with the sole source supplier to obtain such terms and conditions as the Procurement Manager may determine to be in the best interest of the County. The Procurement Manager shall maintain a record of negotiations with the sole source supplier.
- (E) For sole source procurements over \$100,000, a written notice of the procurement shall be posted in a public space including the items procured, the contractor selected and the date that the contract was awarded.

§300.13 Pre-Qualification

- (A) The Procurement Manager is authorized to pre-qualify prospective contractors prior to any solicitation, whether for goods, services, insurance, or construction, by requiring prospective contractors to submit such information as the Procurement Manager shall deem appropriate, including samples, financial reports, and references; provided, however, that opportunity to pre-qualify shall be given to any prospective contractor who has not been suspended or debarred under these regulations.
- (B) The prequalification process shall be established in writing and sufficiently in advance of its implementation to allow prospective contractors a fair opportunity to complete the process.
- (C) The Procurement Manager may refuse to pre-qualify any prospective contractor, provided that written reasons for refusing to pre-qualify are made a part of the record in each procurement. The decision of the Procurement Manager shall be final.
- (D) In considering any request for pre-qualification, the Procurement Manager shall determine whether there is reason to believe that the prospective contractor possesses the management, financial soundness, and history of performance which indicate apparent ability to successfully complete the plans and specifications of the Invitation for Bid (IFB). The Procurement Manager may employ standard forms designed to elicit necessary information or may design other forms for the purpose.
- (E) Pre-qualification of a prospective contractor shall not constitute a conclusive determination that the prospective contractor is responsible, and such prospective contractor may be rejected as non-responsive on the basis of subsequently discovered information.
- (F) Failure of a prospective contractor to pre-qualify with respect to a given procurement shall not bar the prospective contractor from seeking pre-qualification as to future

procurements, or from bidding on procurements that do not require pre-qualification.

§300.14 High-Volume Low-Dollar Purchases

Under special circumstances, the head of Procurement Services may provide written Departmental exemption for orders placed outside of the County's financial management system.

§300.15 Public Auction Sale

- (A) Upon determination in writing, made in advance by the Procurement Manager, goods may be purchased at a public auction sale.
- (B) A record shall be kept documenting the basis for the use of the public auction sale being in the best interest of the County.

§300.16 Cancellation of Solicitation

A solicitation may be canceled when the Procurement Manager determines that is in the best interest of the County to do so. The reasons for cancellation shall be part of the record and kept in the procurement file.

§400.00 COMPETITIVE SEALED BIDDING

§400.01 Applicability

Competitive sealed bidding is the preferred procurement method, except where exceptions are provided in these regulations.

§400.02 Preparation of Invitation for Bid (IFB)

- (A) Procurement Services shall prepare an Invitation for Bid (IFB) after obtaining requirements and a requisition from the Using Department.
- (B) The IFB shall clearly, accurately, and completely state the provisions (terms and conditions) and technical and descriptive requirements of the procurement for the intended purpose.
- (C) Specifications/Scope of Work shall not be unreasonably restrictive and shall allow for alternatives within reasonable and acceptable tolerance levels and ranges. The procurement must satisfy competitive bidding requirements and maximize competition.

§400.03 Invitation for Bid (IFB) Format

- (A) The IFB shall include all pertinent documents, whether attached or incorporated by reference. An IFB shall generally be comprised of:
 - 1. Instructions to Bidders (pertinent dates/times/locations)
 - 2. Definitions;
 - 3. Site Inspection and Pre-Bid Conference Information, when necessary;
 - 4. Special Provisions;
 - 5. General Provisions/Mandatory Provisions;
 - 6. Qualifications of Bidders (Experience, Certifications, Licenses);
 - 7. Evaluation/Award Criteria;
 - 8. Securities (Insurance, Bonds, Liquidated Damages), when necessary;
 - 9. Specifications/Scope of Work;
 - 10. Pricing Schedule/Pricing Structure;
 - 11. Forms/Signature Page; and
 - 12. Other Pertinent Documents (Plans, Maps, Photos, Samples, etc.).
- (B) Other information may be included as deemed appropriate and necessary by the Procurement Manager.

- (C) Evaluation and award factors described in the IFB may include special qualifications of potential contractors, life cycle costing, value analysis, or other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

§400.04 Brand Name Specification, or Equal

An IFB shall include the following provisions relating to equal brand products other than those that may be set forth by name or other clear identification in the specifications.

- (A) Unless otherwise provided in the IFB, 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.
- (B) Any other brand, make of material, device or equipment, which is recognized as an equal product, considering quality, workmanship, economy of operation, and is suitable for the purpose intended, shall be considered responsive to the specification at the County's sole discretion.

§400.05 Public Notice of IFB

The County shall provide public notice of the IFB at least ten (10) calendar days prior to the date set for receipt of bids by posting a notice in a designated public County building and by publication on the County website. Vendors registered with the County under the pertinent commodity code for such procurement shall also be solicited electronically. The public notice may also be published in a newspaper of general circulation when the County knows or anticipates that there are a limited number of potential bidders.

§400.06 Amendment to Invitation for Bid (IFB)

If changes or clarifications to an IFB are necessary, a written amendment shall be issued. In addition, the County may, but is not required to, consider extending the due date for receipt of bids.

§400.07 Bid Submission

- (A) Written sealed bids shall be submitted to the Procurement Manager. The bid due date and time and the physical location for receipt of bids must be specified in the IFB.
- (B) Bids shall be submitted in sealed package. The package shall be clearly labeled as a "Bid" and shall include the bidder's name, IFB/Project Name, bid due date and time,

and the statement "This package shall not be opened prior to the bid due date and time."

- (C) If authorized by the County, bids may be submitted electronically, using approved secure techniques, if this method of submitting bids is permitted by the IFB; otherwise, written sealed bids must be submitted.
- (D) Packages received and opened by the County that are not identified as a bid but are identified as a bid once opened, shall be resealed and properly marked with the IFB name and number and shall be reopened at the bid due date and time. The County is not responsible for opening a bid package prior to the bid due date and time which is not properly identified as a bid.

§400.08 Public Opening and Announcement

- (A) All bids, either electronic or hard copy, received by the due date and time shall be opened, read aloud in a public space, witnessed, and recorded. The reading shall consist of identifying each bidder, bidder's cost, acknowledging receipt of any required addendums, bonds, or other required submittals.
- (B) The recorded bids shall be posted on the County's website for public viewing.

§400.09 Late Bids

Bids that are received after the designated bid due date and time shall not be opened nor considered for contract award.

§400.10 Alternate Bids

Any bidder may submit a bid that varies from the bid requirements. 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 bid may be considered when the alternate bid is in substantial compliance with the bid requirements. When an Alternate Bid is received that substantially varies from the IFB requirements and the Using Department determines that it is in the County's best interest to consider those variances, then the IFB must be cancelled, requirements revised, and a new IFB issued reflecting the revised requirements.

§400.11 Rejection of Bids

The Procurement Manager may reject any or all bids as deemed in the best interest of the County. A written record of the rejection, including the reason(s) for it, shall be kept in the procurement file.

§400.12 Waiver of Informalities

The Procurement Manager may waive any informality in any bid, however, a late bid shall not be considered an informality.

§400.13 Only One Responsive and Responsible Bid

- (A) In the event that only one responsive and responsible bid is received, the IFB may be canceled and the goods, services, insurance, or construction rebid unless the Procurement Manager determines that the price bid is reasonable and in the best interest of the County, on the basis of price comparison, value analysis, prior price history, an engineering estimate, or other method which establishes price reasonableness.
- (B) When the Procurement Manager determines that the above methods of establishing price reasonableness are not feasible, the Procurement Manager may enter into negotiations with the responsive and responsible bidder. Before negotiations begin, reasonable price/cost objectives shall be determined. Such negotiations may pertain to labor hours/labor rates, cost of goods, discounts, delivery/performance, overhead, and profit.
- (C) Any bidder who is a party to such negotiations shall be required to certify that its price proposal is complete, current, and accurate prior to the initiation of such negotiations.
- (D) A record of negotiations shall be prepared for the procurement file once this process is complete. The record shall reflect the significant elements and considerations of the negotiation which resulted in a mutually fair and reasonable contract award.

§400.14 Evaluation of Bids

- (A) Bids shall be evaluated on the basis of requirements set forth in the IFB, which may include criteria to determine acceptability as to inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.
- (B) Where the apparent low bidder submitted a substantially lower bid price than the other bidders, the apparent low bidder may be asked to review the bid for mistakes. If no mistake(s) is identified, the bidder shall certify in writing that the bid submitted has been reviewed, no mistake(s) was made, and the bid stands as submitted.
- (C) In determining the award of any contract for paper and paper products to be purchased for the County, Procurement Services shall use competitive sealed bidding and shall award to the lowest responsive 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 (10%) greater than the bid price of the low responsive and responsible bidder offering a product that does not meet the United States Environmental Protection Agency (EPA) Recommended Content Standards as defined in 40 C.F.R. Part 247.

- (D) In the case of a tie bid where goods are being offered and existing price preferences have already been considered, preference then shall be given to the bidder whose goods contain the greatest amount of recycled content.

§400.15 Determination of Non-Responsibility

- (A) Notwithstanding the provisions of § 200.11 of these regulations any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract award shall be notified in writing by the Procurement Manager. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) business days to the Director of Finance.
- (B) The Director of Finance shall decide appeals regarding non-responsibility determinations within five (5) business days of receipt thereof and shall notify the bidder in writing. The decision of the Director of Finance shall be final, unless appealed under these regulations and/or the Virginia Public Procurement Act, Virginia Code § 2.2-4300 et seq.

§400.16 Withdrawal of Bids

- (A) Any bidder for goods, services, insurance, or construction, other than a contract for construction and 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.
- (B) If a bid contains both clerical and judgment mistakes, a bidder may withdraw its 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 or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from

inspection of original work papers, documents, and material used in the preparation of the bid sought to be withdrawn.

- (C) The Director of Finance shall require, and so state in the Invitation for Bid (IFB), the following procedure for withdrawal of a bid.
1. The bidder shall give notice in writing of its claim of right to withdraw its bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such claim.
 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. No bidder which is permitted to withdraw a bid shall for compensation, provide any goods or labor to or perform any subcontract or other work agreement for the person or business 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.
- (D) If a bid is withdrawn, the lowest remaining bid submitted by a responsible bidder shall be deemed to be the low bid.
- (E) If the County denies the withdrawal of a bid under this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the price, provided such bidder is a responsive and responsible bidder, and the County determines the award would be in the County's best interest. If the County determines that an award is not in the County's best interest, such determination shall be put in writing and shall be made part of the procurement file.

§400.17 Tie Bids

- (A) When two (2) or more responsible bidders submit bids, which are responsive and contain identical prices, preference shall be given to the bidder whose principal place of business is in Prince William County. In the event that there is no Prince William County bidder, or that this does not resolve the tie, preference shall be given to the bidder whose principal place of business is in the Commonwealth of Virginia. In the event that there is no Virginia bidder, or that this does not resolve the tie, preference shall be given to bidders that produce the goods or services in the Commonwealth of Virginia.

- (B) In the event that subsection (A) of this section does not resolve the tie, the Procurement Manager shall draw lots in the presence of two (2) or more witnesses, to select the bidder to whom award shall be made.
- (C) Detailed records of any proceeding connected with tie bids shall be kept in the procurement file.
- (D) The County's decision to award a contract to one or more such bidders under this section shall be final.

§400.18 Bids Exceeding Available Funds

- (A) Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except if the bid from the lowest responsible bidder exceeds available funds. The Procurement Manager or designee may negotiate with the apparent low bidder to obtain a contract within available funds. Such negotiation may be undertaken in accordance with the procedures in subsection (B) of this section, which shall be specified in the IFB.
- (B) Negotiations may be directed to:
 - 1. Reduction of goods, services, insurance, or construction procured;
 - 2. Substitution of materials; and/or
 - 3. Change in the period for project completion, if the procurement is a construction project.
- (C) Procurement Services shall conduct the negotiations with the bidder. The County Attorney may be requested to assist in or conduct such negotiations. If the negotiation does not result in a contract price within available funds, Procurement Services shall seek an appropriation of additional funds from the Using Department prior to execution of a contract with the low responsive and responsible bidder; otherwise, the solicitation shall be canceled. A record of the cancellation shall be included in the procurement file.

§400.19 Award for All or Part of a Bid

The Procurement Manager may award all or part of a bid to any bidder whose bid is determined to be the lowest responsive and responsible bid. Awards can be made by line item, by group, or by the overall lowest total cost. Furthermore, specific line items may be deleted from award consideration if in the County's best interest.

§400.20 Multiple Awards

Where provided for in the IFB, the Procurement Manager may award multiple contracts for the same procurement which can include primary, secondary, and tertiary contract awards. Procedures for the utilization of multiple contractors shall be addressed in the IFB.

§400.21 Notice of Award

Contracts shall be awarded with reasonable promptness by written notice to the successful bidder(s). Nothing herein shall prevent the Procurement Manager from giving a Notice of Intent to Award to the apparent successful bidder, but such notice shall not constitute an award.

§400.22 Contract Award

- (A) All procurements of goods, services, insurance, or construction which are subject to the competitive bidding requirements in these regulations shall be awarded to the lowest responsive responsible bidder based upon the lowest cost and/or other criteria specified in the IFB.
- (B) Whenever the lowest responsive responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered.

§500.00 COMPETITIVE NEGOTIATION

§500.01 Applicability

- (A) Competitive Negotiation is used when requirements cannot be clearly defined, negotiations are necessary, price is not a major determining factor for award selection, and as required by law. The Procurement Manager or designee shall determine in writing prior to the use of a Request for Proposal, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.
- (B) In making a determination under this section, the Procurement Manager shall consider whether:
 - 1. Quality, availability, or capability is overriding in relation to price in procurements for research and development, technical goods, or special services;
 - 2. The initial installation needs to be evaluated together with subsequent maintenance and service capabilities, and what priority should be given these requirements in the County's best interest; 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, or specially-designed phone systems.

§500.02 Preparation of Request for Proposal

Procurement Services shall prepare a Request for Proposal (RFP) after the Using Department submits a requisition with requirements.

- (A) The RFP shall describe the County's requirements in general terms.
- (B) The RFP shall clearly describe the evaluation criteria to be used to evaluate proposals and award the contract(s).

§500.03 Public Notice of Request for Proposals

The County shall provide public notice of the RFP at least ten (10) calendar days prior to the date set for receipt of the proposals by posting a notice in a designated public area and by publication on the County's website. The public notice may also be published in a newspaper of general circulation. In addition, the County may solicit proposals directly from registered vendors.

§500.04 Format of Requests for Proposals

- (A) The RFP shall contain at least the following information:
1. The required goods and services;
 2. A description of the work and work location;
 3. An estimate of when and how long the services shall be required;
 4. A date and time proposals shall be submitted;
 5. A statement that all proposals shall be in writing;
 6. A statement that information received will not be disclosed to other offerors during selection;
 7. Except where the offerors have been pre-qualified, a statement of the minimum information that the proposal must contain, to include where appropriate:
 - (a) The offeror's name and the location of the offeror's principal place of business;
 - (b) 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 goods, services, insurance, or construction;
 - (d) A listing of other contracts under which goods, services, insurance, or construction similar in scope, size, or discipline to the RFP's requirements specified were delivered or performed within a previous specified period of time, and a list of current references, including telephone numbers, who may be contacted with respect to such contracts; and
 - (e) A plan, in as much detail as practical, explaining how the required goods, services, insurance, or construction shall be performed or provided or of what they shall consist; and
 8. The RFP shall include the factors, including compensation, to be used in the evaluation and selection process, listed in descending order of their relative importance or accorded a specified point value.

§500.05 Selection Committee

- (A) Prior to issuing the RFP, the approving authority shall appoint a Selection Committee that shall review and evaluate proposals received in response to the RFP.

- (B) When the Board of County Supervisors is the approving authority, the County Executive shall appoint the Selection Committee.

§500.06 Amendment to RFP

A written amendment shall be issued for necessary corrections or additions to the RFP.

§500.07 Late Proposals

Proposals that are received after the date and time designated in the RFP or subsequent amendments shall be considered late and shall not be opened or considered.

§500.08 Receipt and Handling of Proposals

- (A) Proposals shall be received only by Procurement Services.
- (B) Proposals shall be dated, and the time of receipt shall be recorded on the proposal.
- (C) Proposals shall not be publicly opened or disclosed to any person that is not a member of the Selection Committee, non-voting Technical Advisors, or Procurement Services, except the County Executive, County Attorney, Director of Finance, or their designees.
- (D) Nothing contained in any offer shall be open for public inspection until such time as an award has been made, except as may be required by the Virginia Freedom of Information Act, Virginia Code § 2.2- 3700 *et seq.* and/or Virginia Code § 2.2-4342.
- (E) Proprietary or confidential information from and properly identified by an offeror shall not be disclosed to the public except as required by the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.* and/or Virginia Code § 2.2-4342.
- (F) A register of proposals received shall be compiled by Procurement Services and kept in the procurement file.

§500.09 Evaluation of Proposals

- (A) The Selection Committee shall review and evaluate proposals and prepare a recommendation for the approving authority.
- (B) The evaluation criteria shall be set forth in the RFP and shall be strictly adhered to in the selection process.

§500.10 Discussions with Responsible Offerors

- (A) Discussions may be conducted with responsible offerors who submit proposals determined by the Selection Committee to have a reasonable chance 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 discussion of proposals, and revisions thereto may be made by the offeror after submissions and prior to award.
- (B) At the conclusion of the discussions, the Selection Committee shall select in the order of preference two (2) or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors stated in the Request for Proposal, including price if so stated in the Request for Proposal. Should the Selection Committee 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.

§500.11 Negotiations

- (A) The Director of Finance or a designee shall negotiate a contract with the selected offeror(s) for the required goods, services, insurance, or construction at a compensation determined to be fair and reasonable.
- (B) Negotiations shall be conducted with the selected offeror(s). Price shall be considered but need not be the sole or primary determining factor. After negotiations have been conducted with the selected offeror(s), the Selection Committee shall select the offeror which, in its opinion, has made the best proposal and provides the best value at a fair and reasonable price, and shall award the contract to that offeror. When the terms and conditions of multiple awards are provided in the Request for Proposal, awards may be made to more than one offeror.

§500.12 Record of Negotiation

- (A) The County negotiator shall keep detailed records of any negotiations that were entered into in accordance with this section.
- (B) The record of these negotiations shall be kept in the procurement file.

§500.13 Contract Award

Award of a contract shall be made by the head of the Using Department to the responsible offeror whose proposal offers the best value to the County and with whom negotiations have been successfully completed. The County Attorney may be consulted with respect to the form and content of the contract with the selected offeror.

§600.00 CONSTRUCTION

§600.01 Applicability

Construction contracts shall be governed generally by § 300.00 *et seq.* of these regulations, and by § 600.00 *et seq.* of these regulations. Where a provision of § 600.00 *et seq.* of these regulations is in conflict with any other provision of these regulations, the provisions of § 600.00 *et seq.* shall govern.

§600.02 Definitions

- (A) For the purpose of the procurement of construction, the following terms have the meanings ascribed to them in this section, except where the context clearly requires another meaning.
1. Addendum: Written or graphic instruments issued prior to the opening of bids that clarify, correct, or change the bidding documents.
 2. Bond, Bid: A form of security/financial protection issued by a third party submitted with a bid as a guarantee that the principal will enter a contract with the County, if selected for award.
 3. Bond, Payment: A form of security/financial protection issued by a third party (surety bond company) to guarantee that the principal (prime contractor) will promptly pay its financial obligations to its subcontractors, material suppliers, and other hires. The payment bond guarantees protection to the obligee (County) from claims from the principal's subcontractors, material suppliers, and other hires, in the event of default by the principal.
 4. Bond, Performance: A form of security/financial protection issued by a third party (surety bond company) to guarantee that the principal (prime contractor) will perform the work/complete the project as described in the contract. The performance bond guarantees compensation to the obligee (County) in the event of default by the principal.
 5. Construction: The term used to include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities, including draining, dredging, excavation, grading or similar work upon real property.

6. Construction Administration: Non-professional services provided under a contract with the Owner which generally includes inspection of the Work, coordinating testing services contracts procured by the Owner, reviewing change orders and schedule submittals from the contractor, and providing other construction period services for the benefit of the Owner. The Construction Administrator is the entity responsible to the Owner for providing these services to assure compliance with the contract Documents but is not responsible under the Construction Administration contract for providing the Work. The Owner may use an employee to perform construction administration services. This differs from the construction administration services required under the Architectural and Engineering (A&E) contract.
7. Construction Management: Services provided under contract with the Owner which generally includes coordinating and administering construction contracts for the benefit of the Owner, but may also include, if provided in the contract, furnishing construction services to the Owner. The Construction Manager has direct responsibility and liability to the Owner for performing the Work as described by the contract documents.
8. Design-Build: A contract between the County and another party in which the other party agrees to both design and build the structure, roadway, or other item specified in the contract.
9. Job Order Contracting: A multi-year fixed unit-price contract which provides for issuance of task orders to accomplish alterations, renovations, building repairs and parking improvements for County facility projects. New construction and the preparation of construction design or bid documents are specifically excluded from the scope of the Job Order contract. Job Order contracts are subject to the limitations outlined in the Virginia Public Procurement Act.
10. Owner: The Board of County Supervisors of Prince William County and its officers and employees.

§600.03 Prequalification

- (A) Pursuant to Virginia Code § 2.2-4317, any prequalification of vendors for construction shall be pursuant to a written prequalification process adopted by the County.
- (B) The application form for prequalification shall set forth the criteria upon which the qualifications of vendors shall be evaluated. The application form shall only request information as is appropriate for an objective evaluation of all vendors under such

criteria. The form shall show the vendor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the vendor shall be considered a trade secret or proprietary information subject to the provisions of subsection D of Virginia Code § 2.2-4342.

- (C) Advance notice shall be given of the need for submission of the prequalification application and shall be sufficiently in advance of the date set for the submission of bids so as to allow the established prequalification process to be accomplished.
- (D) Within thirty (30) calendar days, the County shall notify, in writing, each vendor who has submitted a prequalification application, whether the vendor has been pre-qualified. In the event that a vendor is denied prequalification, the written notice to the vendor shall state the reasons for denying the vendor's pre-qualification and the factual basis of such reasons. The County's decision denying prequalification shall be final.
- (E) The County may deny prequalification if it finds one of the following.
 1. The vendor does not have sufficient financial ability to perform the contract that would result from the procurement. If a bond is required to ensure performance of a contract, evidence that the vendor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the vendor to perform the contract resulting from such procurement.
 2. The vendor does not have appropriate experience to perform the construction project in question.
 3. The vendor or any officer, director, or owner thereof has had judgments entered against them within the past ten years for breach of contracts for construction, including, but not limited to, design-build or construction management.
 4. The vendor has been in substantial noncompliance with the terms and conditions of prior construction contracts for the County or other public bodies without good cause.
 5. The vendor or any officer, director, owner, project manager, procurement manager or chief financial officer thereof has been convicted, within the last ten years, of a crime related to construction or contracting.

6. The vendor or any officer, director, or owner thereof is currently debarred from bidding by the County, the state, or an agency of the Federal government.
7. The vendor failed to provide any information relevant to subsections 1 through 6 of this section requested by the County in a timely manner.

§600.04 Prohibition of Certain Purchases from Architects and Engineers

- (A) No building goods for any building or structure constructed by 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 goods for any building or structure constructed by or for the County shall be sold by or purchased from any person who has provided, or is currently providing, design services specifying a sole source for such goods to be used in building a structure to such 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.

§600.05 Bid Bonds

- (A) The Director of Finance shall require that each bidder on a competitively bid procurement for construction estimated in excess of \$100,000 submit, with its bid, a certified check or a cashier's check payable to the County of Prince William, for a sum not to exceed five percent (5%) of the bid total for construction contracts, as a guarantee that the bidder will enter into a contract for the goods or services sought should it be awarded the contract.
- (B) Provided, however, that in lieu of a certified check it shall be sufficient that the bidder provide a 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 or cash escrow in the face amount required for the bond with a lending institution insured by the FDIC. The conditions of such bond shall be established by the Director of Finance, unless otherwise established by law. Noncompliance with this section shall require the rejection of the bid.
- (C) Annual bid bonds may be accepted.
- (D) No forfeiture under a bid bond for a construction contract 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.

§600.06 Requirements for IFB

- (A) Bids for construction shall be solicited by the Procurement Manager by means of a formal Invitation for Bid (IFB).
- (B) Instructions to bidders, plans, and specifications for the project, and proposed contracts for the work, shall be prepared by the Procurement Manager in consultation with appropriate persons including architects, engineers, and other consultants who may be contracted by, or employed by the County for the purposes of any project or projects.
- (C) Prior to distribution, all IFBs for construction shall be reviewed by the County Attorney.
- (D) The IFB may be distributed by architects and engineers designated by the County in the IFB as responsible for the project.
- (E) Construction bids shall require the successful contractor to carry all appropriate insurance as designated in the IFB.
- (F) A person or firm which has been engaged as an architect or engineer for a construction project under a separate contract shall not be eligible to bid or submit a proposal for the construction of the same project.

§600.07 Award or Rejection of Bids

- (A) Contracts for construction with a value of more than \$20 million shall be awarded by the Board of County Supervisors, in accordance with the regulations governing the award of bids generally. The Board may reject any or all bids without giving reason therefore.
- (B) Construction contracts for less than \$20 million may be awarded by the County Executive, in accordance with the regulations governing the award or rejection of bids generally and County policy. The head of Procurement Services may reject any or all bids without giving reason therefore.
- (C) In addition, the Board may award a single Job Order Construction contract which provides for multiple task orders to accomplish alterations, renovations, building repair and parking improvements for County facilities projects up to \$500,000 per project.

§600.08 Changes and Modifications to Construction Contracts

- (A) A construction contract may include provisions for modification of the contract by issuance of change order during performance, but no contract may be increased by more than twenty-five percent (25%) of the original amount of the contract award, or \$50,000, whichever is greater, without the advance written approval by the Board of County Supervisors.
- (B) The head of the Using Department responsible for the contract may approve change orders provided:
 - 1. No additional appropriations are required; and
 - 2. Modifications or change order to contracts shall be approved by the Procurement Manager in writing prior to commencement of work.
- (C) The head of the Using Department with the concurrence of the Procurement Manager, may authorize under written change order extension of time for completion of the work.
- (D) Unilateral modifications may be issued by the County for minor or administrative purposes.

§600.09 Payment and Performance Bonds

- (A) The Procurement Manager shall require any bidder for a construction contract in excess of \$100,000, and may require any bidder, 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, specification, and conditions for same.
- (B) The Procurement Manager shall require any successful bidder for a construction contract in excess of \$100,000, and may require any bidder, 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 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.

- (C) Any performance or payment bond required under these regulations shall be in the form of a certified check, cashier's check, a bond executed by a surety company authorized to do business as a surety in Virginia, or cash escrow in the face amount required for the bond by an institution insured by the Federal Deposit Insurance Corporation (FDIC).

§600.10 Restrictions on Asbestos Projects

The County shall not award a contract in connection with an asbestos project to a vendor which does not hold an asbestos contractor; roofing, flooring, or siding (RFS) contractor; inspector; management planner; or project designer license at the time the bid is submitted unless the General Contractor to whom the contract is awarded shall be contractually committed to have all asbestos related work performed by its own subcontractors who are appropriately licensed as asbestos contractors; RFS contractors; inspectors; management planners; or project designers.

§600.11 Applicability of State and Federal Law

Contracts for construction of any building or for an addition to or improvement of an existing building for which State funds of \$50,000 or more, either by appropriation, grant-in-aid or loan, are used or to be used or all or part of the cost of construction shall be procured pursuant to Virginia Code § 2.2-4305. Other construction contracts which are subject to State and Federal law, shall be governed by these regulations where they do not conflict with such State and Federal law.

§600.12 Retainage

In any contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the County shall pay the contractor at least ninety-five percent (95%) of the earned sum when payment is due. The County may retain up to five percent (5%) of the earned sum to assure faithful performance of the contract by the contractor. All amounts withheld by the County shall be included in the final payment to the contractor.

§600.13 Deposit of Funds Retained in an Escrow Account

- (A) Contracts in excess of \$200,000 for the 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 by the County, shall include in the bid proposal an option for the contractor to use an escrow account procedure for funds retained by the County pursuant to § 600.12 of these regulations.

- (B) Any bidder who elects to use the escrow account procedure shall indicate this in its response to the IFB or RFP. Within fifteen (15) calendar days of notification by the Procurement Manager that it has been awarded the contract, the contractor shall submit to the Procurement Manager the executed Escrow Agreement that was included in the bid or proposal. The contractor shall forfeit its rights to use the escrow account procedure if the Escrow Agreement is not submitted to the Procurement Manager within the fifteen (15) calendar day period.
- (C) In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute the Escrow Agreement form. The contractor's escrow agent shall be a trust company, bank, or savings institution acceptable to the County with its principal office located in the Commonwealth of Virginia. The Escrow Agreement form shall contain the complete address of the escrow agent and surety, and the executed Escrow Agreement will be the authority for the County to make payment of retained funds to the escrow agent.
- (D) After approving the Escrow Agreement, the County shall pay to the escrow agent the funds retained as provided herein except that funds retained for lack of progress or other deficiencies on the part of the contractor will not be paid to the escrow agent. The escrow agent may, in accordance with the stipulation contained in the Escrow Agreement, invest the funds paid into the escrow account and pay earnings on such investments at time of final payment to the contractor or release the funds to the contractor provided such funds are fully secured by securities approved by the Director of Finance.
- (E) Retained funds invested and securities held as collateral for retainage may be released only as authorized and directed by the Director of Finance. When the final progress payment is made to the contractor, the Director of Finance shall direct the escrow agent to settle the escrow account by paying the contractor or the County monies due them as determined by the Director of Finance. The Director of Finance reserves the right to recall retained funds and to release them to the surety upon receipt of written request from the contractor or in the event of default.
- (F) This section shall not apply to construction contracts for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation of 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.
- (G) Any such construction contract, which includes payment of interest on retained funds, may include 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.

- (H) Any subcontract for the construction of projects set out in subsection (A) of this section which provides for similar progress payments shall be subject the provisions set forth in subsection (A) through (G) of this section.

§600.14 Contract Management and Design Build Contracts

- (A) Special Definitions.

As used in this section, unless the context requires a different meaning:

“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 management contract” 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.

“Design-build contract” means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

- (B) While competitive sealed bidding remains the preferred method of construction contracting, the Board of County Supervisors may utilize competitive negotiation to enter into a contract for construction on a fixed price or not- to-exceed price design-build or construction management basis, provided the contract has implemented procedures consistent with those adopted by the Secretary of Administration for utilizing design-build or construction management contracts, pursuant to Virginia Code § 2.2-4382.
- (C) Prior to determination as to the use of design-build or construction management for a specific construction project, the County shall have under contract, or employ, a licensed architect or engineer with professional competence appropriate to the project who shall advise the County regarding the use of design-build or construction management for that project and who will assist the County with the preparation of the RFP and the evaluation of proposals.

- (D) A written determination shall be made in advance that competitive sealed bidding is not practicable or fiscally advantageous and there is a benefit to the County in using design-build or construction management contract for the construction project. The determination shall be in writing and included in the Request for Qualifications and maintained in the procurement file.
- (E) Procedures adopted by the County for construction management pursuant to this section include the following requirements:
1. Construction management contracts may be utilized for projects where the project cost is expected to exceed \$10 million;
 2. Construction management may be utilized on projects where the project cost is expected to be less than \$10 million, provided that (i) the project is a complex project and (ii) the project procurement method is approved by the County. Written approval of the County shall be maintained in the procurement file;
 3. Public notice of Request for Qualifications is posted on the County's procurement website at least 30 calendar days prior to the date set for receipt of Statements of Qualifications;
 4. The construction management contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;
 5. Prior construction management or design-build experience or previous experience with the Virginia Department of General Services Bureau of Capital Outlay Management shall not be required as prerequisite for award of a contract. However, the County may consider the experience of each contractor on comparable projects;
 6. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable;
 7. The procedures allow for a two-step competitive negotiation process; and
 8. Price is a critical basis for award of the contract.

Procedures adopted by the County for design-build construction projects shall include a two- step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Virginia Department of General Services for public bodies.

- (F) Prior to issuing an RFP for any design-build or construction management contract the County shall incorporate procedures governing the selection, evaluation, and award of design-build and construction management contracts as outlined in this section and those developed for competitive negotiation in § 500.00 *et seq.* of these regulations; and
- (G) The Procurement Manager shall issue a written RFP by posting on a public bulletin board and advertising in a newspaper of general circulation in the County at least ten (10) calendar days preceding the date set for the receipt of proposals.

The RFP shall:

1. define the pre-design, design phase, bid phase and construction phase services to be performed by the design-builder or construction manager;
 2. include and define the requirements of the specific construction project in areas such as site plans, floor plans, exterior elevations, basic building envelope materials, fire protection information plans, structural, mechanical (HVAC), and electrical systems, and special telecommunications;
 3. specify the criteria which will be used in evaluating the proposals;
 4. contain or incorporate by reference the applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of offerors; and
 5. include such other requirements as the County Executive or Procurement Manager deems appropriate for the construction project.
- (H) The RFP shall request of offerors only such information as is appropriate for an objective evaluation of all offerors pursuant to the specified RFP criteria.
 - (I) The Procurement Manager shall receive and consider comments concerning specifications or other provisions in the RFP, prior to the time set for receipt of proposals.
 - (J) Each offeror shall submit a cost proposal and a technical proposal. Cost proposals shall be sealed separately from technical proposals. Cost proposals shall include a lump sum or guaranteed maximum price for all requested services. Upon receipt of an offeror's technical and cost proposals, the offeror's cost proposal shall be secured by the Procurement Manager and kept sealed until evaluation of all technical proposals is completed.

- (K) The Selection Committee appointed by the County Executive shall evaluate each technical proposal and select two (2) or more offerors deemed to be fully qualified and best suited among those submitting proposals based on the criteria set forth in the RFP for further consideration. The Selection Committee shall hold discussions with each of the selected offerors exercising care to discuss the same owner information with each offeror. In addition, the Selection Committee shall not disclose any trade secret or proprietary information for which the offeror has properly invoked protection pursuant to Virginia Code § 2.2-4342(F).
- (L) Upon completion of the discussions, the Selection Committee shall determine whether any changes to the proposals should be requested to correct errors or omissions or to clarify ambiguities, or to incorporate project improvements or additional details identified by the Selection Committee during its review. Offerors may submit revised technical proposals, as well as sealed modifications to their cost proposals. The Selection Committee will complete its evaluations of the revised technical proposals. Following opening of the cost proposals, the Selection Committee shall make its recommendation to the Procurement Manager based upon the criteria included in the RFP. Award shall be made to the fully qualified offeror determined to offer the best value in response to the RFP.
- (M) Should the Procurement Manager determine in writing that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the other offerors under consideration, a contract may be negotiated and awarded to that offeror.
- (N) Trade secrets or proprietary information provided by an offeror in response to a request for qualifications or a request for proposals shall not be disclosed to the public or to competitors, provided the offeror has invoked protection pursuant to Virginia Code.
- (O) The County shall provide a report each year to the Director of the Virginia Department of General Services in accordance with Virginia Code § 2.2-4383(B).
- (P) The County Executive may promulgate such additional procedures, not inconsistent with the provisions of this section or the rules and regulations of the Virginia Department of General Services Bureau of Capital Outlay Management, and consistent with the procedures for the procurement of nonprofessional services through competitive negotiation, as deemed necessary and appropriate to affect the selection and evaluation of offerors and the award of design-build and construction management contracts.

§700.00 PROFESSIONAL SERVICES

§700.01 Applicability

Professional services shall be procured by competitive negotiation as described in § 500.00 *et seq.* of these regulations and by the § 700.00 *et seq.* of these regulations. Where regulations set forth in § 700.00 *et seq.* of these regulations conflict with any other provision of these regulations, the provisions of § 700.00 *et seq.* of these regulations shall govern.

§700.02 Use of Request for Proposal

A Request for Proposal (RFP) shall be used to solicit professional services for the County.

§700.03 Format for Requests for Proposals

- (A) Written RFPs shall specify the factors which will be used in evaluating the proposal.
- (B) Estimates of cost or man-hours shall not be solicited prior to the discussion stage for professional services.

§700.04 Discussions and Interviews

- (A) The Selection Committee shall engage in individual discussions with two (2) or more offerors, deemed fully qualified, responsible and suitable on the basis of initial responses with emphasis on professional competence, to provide the required services. Such 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. At the discussion stage, the Selection Committee may discuss non-binding estimates of costs and man-hours. Repetitive informal interviews are permissible.
- (B) No information may be conveyed to any offeror that was submitted by any other offeror in the conduct of such discussions and interviews.
- (C) Proposals may be modified or withdrawn at any time prior to the conclusion of the discussions entered into.

§700.05 Selection of Best Qualified Offerors

- (A) Following discussions as provided in § 700.04 of these regulations, on the basis of evaluation factors published in the RFP and all information developed in the selection process to this point, the Selection Committee shall rank, in the order of its preference, offerors whose professional qualifications and proposed services are deemed adequate to meet contract requirements as stated in the RFP.

- (B) The Procurement Manager shall solicit a formal cost proposal from the offeror ranked first.
- (C) Negotiations shall then be conducted with this offeror.
- (D) Should the Selection Committee determine in writing and 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.

§700.06 Award of Contract

- (A) If negotiations with the best qualified offeror are successful, the contract should be awarded to that offeror.
- (B) Professional services estimated to cost or have a value of \$60,000 or more shall be contracted for only with the approval of the Board of County Supervisors, notwithstanding that funds may have been budgeted and appropriated, unless the Board specifically delegates this authority by resolution.

§700.07 Negotiations with Additional Offerors

- (A) If a contract cannot be agreed upon between the County and the first ranked offeror, negotiations with the offeror ranked first shall be formally terminated, a written record stating the reasons therefore shall be placed in the file, and the Procurement Manager 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 second ranked offeror as determined by the Selection Committee's recommendation to the approving authority. If negotiations with such offeror again fail, the negotiator shall terminate the negotiations, and commence negotiations with the next ranked offeror.
- (C) If all negotiations fail to produce a contract with any of the ranked offerors, the Selection Committee may make additional recommendations to the approving authority.

§700.08 Architectural and Professional Engineering Term Contracting Limitations

A contract for architectural or professional engineering services relating to construction projects may be negotiated by the County for multiple projects in accordance with the Virginia Public Procurement Act (VPPA), Virginia Code § 2.2-4303.

§800.00 EQUAL OPPORTUNITY, SMALL BUSINESS AND SUPPLIER DIVERSITY

§800.01 Equal Opportunity and Non-Discrimination

The County shall not discriminate against any person on the basis of race, religion, color, sex, national origin, age, disability, status as a service-disabled veteran, political affiliation, or other basis prohibited by state law.

§800.02 Small Business and Supplier Diversity

Within the limits of the funds appropriated, and as required by Virginia Code § 2.2-4310 and the other applicable Federal or State law, the Director of Finance shall cooperate with the Department of Small Business and Supplier Diversity in promoting the purposes of that Department.

§800.03 Nonprofit Sheltered Workshops and Nonprofit Organizations

Pursuant to Virginia Code § 2.2-4344(A)(1), as amended, the Director of Finance may waive application of these regulations when acquiring goods and services (i) which are performed or produced by persons or in schools or workshops, under the supervision of the Virginia Department for the Blind and Visually Impaired; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving individuals with disabilities under the supervision of the Virginia Department of Employment Services and Special Programs and the United States Department of Labor, as evidenced by possession of a National Accreditation Certificate issued by the Commission on Accreditation of Rehabilitation Facilities.

§800.04 Faith-Based Organizations

The County shall not discriminate against faith-based organizations.

§900.00 DISPOSAL OF SURPLUS PROPERTY

§900.01 General

- (A) Surplus property is defined as personal property including, but not limited to, goods or seized property, where legal claim is established, and recyclable items, that no longer contribute to a Using Department's core business and to the County's desired outcomes. In accordance with the Virginia Department of General Services Agency Purchasing and Surplus Property Manual (APSPM) (Chapter 12), trade-ins are not considered as surplus property. Refer to the County's Asset Disposal Procedure for applicable authorization thresholds related to disposal of surplus property. Hazardous Waste must follow the Department of Environmental Quality Regulations per APSPM Chapter 12.8.
- (B) The Using Department (including Internal Service Agencies when applicable) shall identify surplus property and request authorization to dispose of surplus property from the Director of Finance or designee prior to disposal, with the exception of the Internal Service Agency related assets (Refer to the County's Asset Disposal Procedure). Justification for declaring property to be Surplus Property includes a determination that such property is non-repairable, unsalvageable, obsolete, requires excessive storage costs, or no longer meets the Using Department's core business needs or the County's desired outcomes.
- (C) As defined in § 100.05 of these regulations, the Director of Finance is authorized to sell, trade, transfer or otherwise dispose of any surplus property which is the property of the Board of County Supervisors, whether donated or acquired in whole or in part using County funds in accordance with Virginia Code § 2.2-1124, and Federal and State laws, regulations, and/or grant guidelines. For the purpose of this section, the Director of Finance may authorize a designee to approve the disposal of surplus property. The Director of Finance authorizes the Procurement Manager to review all disposals to ensure all disposals are in compliance with Virginia laws and regulations.
- (D) Upon receipt of written authorization from the Director of Finance or designee, the head of the Using Department is responsible for storage, maintenance, and safekeeping of all surplus property in its charge, and for the transportation of surplus property (if needed) within the County for disposal.

§900.02 Sales and Other Disposal of Property

- (A) The County's Asset Disposal Procedure approved by the Director of Finance addresses a cost-efficient manner of disposing surplus property. Any deviation from

that procedure requires submission of a business justification and approval by the Director of Finance or designee.

- (B) Whenever any organization/individual acquires property that has been disposed of by the County and is required to remove such property from premises, the acquirer of such property shall execute a written agreement to indemnify and hold the County (including any departments, officials, personnel, volunteers, etc.) harmless and defend from any and all liability which may be incurred during the removal of the property. The Procurement Manager shall be provided with evidence of an existing liability insurance policy covering the risks potentially involved, a worker's compensation insurance policy or any other applicable insurance policy as deemed appropriate by the County.
- (C) The Using Department shall maintain documentation per the Library of Virginia, Record Retention and Disposition Schedule (General Schedule No. 16).

§900.03 Methods for Disposal of Surplus Property

The Code of Virginia provides multiple methods of disposal of surplus property. Refer to the County's Asset Disposal Procedure for methods of disposal of surplus property.

§1000.00 PROJECTS PROPOSED PURSUANT TO THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002 OR THE PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995

§1000.01 Introduction

- (A) The Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code § 56-575.1 et seq. (the "PPEA") and the Public-Private Transportation Act of 1995, Virginia Code § 33.2-1800 et seq. (the "PPTA") (together, the "Acts") grant the County, a responsible public entity as defined in the Acts, the authority to create public-private partnerships for the development of a wide range of projects for public use if the County determines there is a public need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Individually negotiated comprehensive agreements between an operator, as defined in the Acts, and the County will define the respective rights and obligations of the County and the private operator. Although guidance with regard to the application of the PPEA and PPTA is provided here, it will be incumbent upon the County and all private entities to comply with the provisions of the PPEA or PPTA as applicable.
- (B) In order for a project to come under the PPEA or the PPTA, it must meet the definition of a "qualifying project" as defined in the applicable Act.
- (C) The Acts establish requirements that the County must adhere to when reviewing and approving proposals received pursuant to the PPEA or the PPTA. In addition, the Acts specify the criteria that must be used to select a proposal and the contents of the comprehensive agreement detailing the relationship between the County and the private entity. Any proposal received or solicited by the County pursuant to either the PPEA or the PPTA will be reviewed in accordance with the applicable Act and these regulations as they may apply.
- (D) The Board of County Supervisors adopted these regulations effective July 1, 2003, to implement the PPEA and the PPTA. Therefore, in accordance with Board directive, the County Executive will follow this policy to receive and evaluate any proposal submitted to the County under the provisions of the PPEA or the PPTA. The Board must adopt any amendments to these regulations.
- (E) The County Executive is authorized to designate a working group to be responsible for evaluating proposals and negotiating the comprehensive agreement.

- (F) The individual designated by the County Executive to serve as the point of contact for implementation of procedures, to receive proposals submitted under the PPEA or the PPTA and to respond to inquiries regarding the PPEA or the PPTA or this policy shall be the Director of Finance.

§1000.02 General Provisions

- (A) Proposal Submission.
 - 1. A proposal under either Act may be either solicited by the County or delivered by a private entity on an unsolicited basis. Proposers may be required to follow a two-part proposal submission process consisting of a conceptual phase and a detailed phase, as described herein.
 - 2. The Acts allow private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations. Proposals may include, if applicable, the portion of the tax-exempt private activity bonds.
 - 3. Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the County. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project. The County may, at any time, require the proposer to provide additional information and clarification to the submission.

- (B) Affected Local Jurisdictions.

The term "affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying project or qualifying transportation facility is located or with respect to the PTA, any other public entity directly affected by a qualifying transportation facility. Any private entity requesting approval from or submitting a conceptual or detailed proposal to the County must provide any other affected jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery or hand delivery within five (5) business days of submission of the

proposal to the County. Evidence of the delivery of the proposal to any other affected local jurisdiction shall be provided to the County within five (5) business days of such delivery. Any affected jurisdiction shall have sixty (60) calendar days from the receipt of the request or proposal to submit written comments to the County and to indicate whether the proposed qualifying project is compatible with the (i) jurisdiction's comprehensive plan, (ii) jurisdiction's infrastructure development plans, and (iii) capital improvements budget or other government spending plan. Comments received within the sixty (60) day period shall be given consideration by the County, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The County may begin or continue its evaluation of any such proposal during the sixty (60) day period for the receipt of comments from other affected local jurisdictions. In providing the request or proposal to the affected local jurisdictions, the private entity may withhold information that the Agency has deemed to be confidential and not subject to release under the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.*.

(C) Proposal Review Fee.

No fee will be charged to process, review, or evaluate any solicited proposal submitted.

A review fee will be charged a private entity submitting an Unsolicited Proposal to the County, to cover the County's costs of processing, reviewing, and evaluating the proposal. Such cost includes but are not limited to County staff time, the cost of any materials or supplies expended, and the cost of any outside advisor or consultants, including but not limited to attorneys, consultants, financial technical advisors, used by the County in its sole discretion to assist in processing, reviewing, or evaluating the proposal.

For unsolicited proposals and competing proposals, review fees shall be imposed on the reasonably anticipated costs to the County in accordance with the following schedule: 1) Initial fee. Payment of an initial fee shall be submitted with the initial proposal or competing proposal. The initial fee shall be two and one-half percent (2.5%) of the reasonably anticipated cost of processing the proposal but shall be no less than \$5,000 nor more than \$50,000, regardless of the anticipated cost. The County may accept the \$5,000 minimum fee with the balance due and payable prior to proceeding beyond the initial review stage. 2) Reimbursement of excess fees paid. In the event the total fees paid by the private entity exceed the County's total costs incurred in processing, reviewing, and evaluating the proposal, the County shall reimburse the difference. Otherwise, the County shall retain all fees paid. If during the initial review, the County decides not to proceed to the conceptual stage review

of an unsolicited proposal, the proposal fee, less any direct cost of the initial review shall be refunded.

(D) Freedom of Information Act.

1. Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act (FOIA), Virginia Code § 2.2-3700 *et seq.* Virginia Code § 2.2-3705.6(11), exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and the County may elect to release some or all documents except to the extent the documents are:

- (a) Trade secrets of the private entity as defined in the Uniform Trade Secrets Act Virginia Code § 59.1- 336 *et seq.*;
- (b) Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or
- (c) Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the County must comply with the order.

2. Subsection 56-575.4 (G) of the PPEA and subsection 33.2-1803 (H) of the PPTA imposes an obligation on the County and any affected jurisdiction to protect confidential proprietary information submitted by a private entity or operator pursuant to Virginia Code § 2.2-3705.6 (11). When a private entity requests that the County not disclose information, the private entity must (i) invoke the exclusion when the data or materials are submitted to the County or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the County as to the anticipated scope of protection prior to submitting the proposal. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire

proposal has been designated confidential by the proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the responsible public entity at the time the documents are submitted designating with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one (1) or more of three classes of records listed in subsection (D)1 of this section.

3. Upon the receipt of a written request for protection of documents, the County shall determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the County or private entity in accordance with subsection (D)1 of this section. The County shall make a written determination of the nature and scope of the protection to be afforded by the County under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity should be accorded an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in subsection (D)1 of this section.

Once a written determination has been made by the responsible public entity, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of the County or any affected local jurisdiction.

Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

4. Protection from mandatory disclosure for certain documents produced by the responsible public entity.

Memoranda, staff evaluations, or other records prepared by or for the responsible public entity, its staff, outside advisors or consultants, exclusively for the evaluation and negotiation of proposals may be withheld from disclosure if the disclosure of such records required by the PPEA or PPTA would adversely affect the financial interest or bargaining position of the responsible public entity

or private entity, and the basis for the determination of adverse effect is documented in writing by the responsible public entity.

Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

5. If a private entity fails to designate, or fails to properly designate, confidential or proprietary information, records or documents for protection from disclosure, such information, records, or documents shall be subject to disclosure under FOIA.
6. A responsible public entity may not withhold from public access:
 - (a) procurement records other than those subject to the written determination of the responsible public entity;
 - (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind executed by the responsible public entity and the private entity;
 - (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or
 - (d) information concerning the performance of any private entity developing or operating a qualifying project.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then the responsible public entity must comply with such order.

(E) Use of Public Funds.

Virginia constitutional and statutory requirements and County ordinances and policies as they apply to appropriation and expenditure of public funds apply to any comprehensive agreement entered into under the Acts. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA or PPTA project or project(s).

- (F) Proposals submitted in accordance with the requirements herein shall be posted by the County within ten (10) business days after acceptance such proposals by the Board. Posting shall be on the County's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed with a summary of the proposal(s) and the location where copies of the proposal(s) are

available for inspection. The County may also publish the notice in a newspaper of general circulation in the area in which the contract is to be performed. A copy of the proposal shall also be made available for public inspection by Procurement Services.

(G) Applicability of Other Laws.

Nothing in the PPEA or PPTA shall affect the duty of the County to comply with all other applicable laws not in conflict with the PPEA or the PPTA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA and the PPTA.

§1000.03 Solicited Proposals

- (A) The County may invite bids or proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate qualifying projects or a qualifying transportation facility. The County may use a two-part process consisting of an initial conceptual phase and a detailed phase. The County will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the applicable Act.
- (B) The solicitation will specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The solicitation will be posted in such public areas as are normally used for posting of the County's notices, including the County's website. The solicitation will also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the County.

§1000.04 Unsolicited Proposals

- (A) The PPEA and the PPTA permit the County to receive and evaluate unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project or a qualifying transportation facility.
- (B) The County may publicize its needs and may encourage or notify interested parties to submit proposals subject to the terms and conditions of the PPEA or PPTA. When such proposals are received without issuance of a solicitation, the proposal shall be treated as an unsolicited proposal.

(C) Decision to Accept and Consider Unsolicited Proposal.

1. The County reserves the right to reject any and all proposals at any time.
2. Upon receipt of any unsolicited proposal or group of proposals and payment of the required fee by the proposer or proposers, the County will determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration. If the County determines not to accept the proposal and not proceed to publication and conceptual-phase consideration, it shall return the proposal, together with all fees and accompanying documentation, to the proposer.
3. If the County chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall post a notice within ten (10) business days on its website or in a public area regularly used by the County for posting of public notices for a period of not less than forty-five (45) calendar days. The County shall also publish the same notice in one or more newspapers or periodicals of general circulation in the County to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have forty-five (45) calendar days from the date the notice is published to submit competing unsolicited proposals. The notice shall state that the County (i) has received and accepted an unsolicited proposal under the PPEA or PPTA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the procedures adopted by the County and the PPEA or PPTA. The notice will summarize the proposed qualifying project or project or qualifying transportation facility and identify their proposed locations.

(D) Initial Review at the Conceptual Stage.

1. Only proposals complying with the requirements of the PPEA or PPTA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the County for further review at the conceptual stage.
2. The County will determine at this initial stage of review whether it will proceed using:
 - (a) Standard "procurement procedures consistent with the VPPA; or

- (b) Procedures developed by the County that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in Virginia Code §2.2-4301. The County may proceed using competitive negotiation procedures only if it makes a written determination that doing so is likely to be advantageous to the County and the public based upon either (i) the probable scope, complexity, or urgency of need, or (ii) the risk sharing, added value, increase in funding, or economic benefit from the project would otherwise not be available.
3. After reviewing the original proposal and any competing unsolicited proposals submitted during the notice period, the County may determine:
- (a) Not to proceed further with any proposal;
 - (b) To proceed to the detailed phase of review with the original proposal;
 - (c) To proceed to the detailed phase with a competing proposal; or
 - (d) To proceed to the detailed phase with multiple proposals.

§1000.05 Unsolicited Proposal Preparation and Submission

- (A) Format for Submissions at the Conceptual Stage.

The County shall require that unsolicited proposals at the conceptual stage contain the following information in the following format plus such other information as the County may reasonably request to complete its review or to comply with the requirements of the PPEA or PPTA:

1. Qualifications and Experience.
- (a) Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team. All members of the offeror's team, including major subcontractors known to the proposer must be identified at the time a proposal is submitted for the conceptual stage.

- (b) Describe the experience of the firm or consortium of firms making the proposal, the key principals and project managers involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the length of time in business, business experience, public sector experience, and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction, and completion guarantees and warranties, and a description of such guarantees and warranties.
 - (c) Provide the names, prior experience, addresses, telephone numbers and e-mail addresses of persons within the firm or consortium of firms who will be directly involved in the project or who may be contacted for further information.
 - (d) Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent (20%) or greater.
 - (e) Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interests Act, Virginia Code § 2.2-3100 *et seq.*
 - (f) Identify the proposed plan for obtaining a sufficient number of qualified workers in all trades or crafts required for the project.
 - (g) For each firm or major subcontractor that will perform construction and/or design activities, provide a sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any Federal, State, or Local governmental entity.
2. Project Characteristics.
- (a) Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.

- (b) Identify and fully describe any work to be performed by the County or any other public entity.
 - (c) Include a list of all Federal, State, and County permits and approvals required for the project and a schedule for obtaining such permits and approvals.
 - (d) Identify any anticipated adverse social, economic, environmental, and transportation impacts of the project measured against the County's comprehensive plan, and applicable County ordinances, design and construction standards, and policies. Specify the strategies or actions to mitigate known impacts of the project.
 - (e) Identify the projected positive social, economic, environmental, and transportation impacts of the project measured against the County's comprehensive land use plan and applicable County ordinances, design and construction standards, and policies.
 - (f) Identify the proposed schedule for the work on the project, including sufficient time for the County's review, any State department or agency review, and the estimated time for completion.
 - (g) Propose allocation of risk and liability, and assurances for timely completion of the project.
 - (h) State all assumptions related to ownership, legal liability, law enforcement, and operation of the project, and the existence of any restrictions on the County's use of the project.
 - (i) Provide information relative to any phased opening(s) of the proposed project.
 - (j) List any other assumption(s) relied on for the project to be successful.
 - (k) List any contingency(ies) that must occur for the project to be successful.
3. Project Financing.
- (a) Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.

- (b) Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs based upon the County's adopted operational standards.
- (c) Include a list and discussion of any assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach.
- (d) Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.
- (e) Identify any County, State, or Federal resources, including, but not limited to, financial resources, that the proposer contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.
- (f) Identify the need, if any, for the County to provide either its general obligation or moral obligation backing. The underlying assumptions should address this need or state that the credit would be via a "Service Agreement," for example. Any debt issuance should be expected to receive an investment grade rating from a nationally-recognized statistical rating agency. If the natural rating is not investment grade, the County may require the use of credit enhancements.
- (g) Outline what impact, if any, a drop in interest rates would have on the ultimate annual project cost. Indicate if there is a method to refinance for cost savings or does the firm only receive benefit of this potential?
- (h) Provide a breakout/breakdown of the fees to be paid to any underwriting firm(s) and the type of obligation the firm(s) is using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc.

4. Project Benefit and Compatibility.

- (a) Identify who will benefit from the project, how they will benefit, and how the project will benefit the County and the overall community. Describe any anticipated significant benefits to the community and the County, including anticipated benefits to the economic, social, environmental, transportation, etc., condition of the County and whether the project is critical to attracting or maintaining competitive industries and businesses to the County.
- (b) Identify any anticipated public support or opposition, as well as any anticipated Federal, State, and/or Local government support or opposition (including that in any affected jurisdiction), for the project.
- (c) Explain the strategy and plans, including the anticipated timeline that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- (d) Compatibility with the County's and/or affected jurisdiction's local comprehensive plan (including applicable environmental, land use, and facility standards ordinances), infrastructure development plans, transportation plans, the capital improvements plan, and capital budget or other government spending plan.

5. Any additional information as the County may request.

(B) Format for Submissions at the Detailed Stage.

If the County decides to proceed to the detailed phase of review with one or more proposals, the following information should be provided by the private entity unless waived by the County in writing:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings.
3. A statement and strategy setting out the plans for securing all necessary property and/or easements. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the County or affected jurisdiction to condemn.

4. A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction, and completion guarantees and warranties, and a brief, thorough description of such guarantees and warranties along with a record of any prior defaults for performance.
5. A total life-cycle cost, including maintenance, specifying methodology, and assumptions of the project or projects including major building systems (e.g., electrical, mechanical, etc.), and the proposed project start date. The life-cycle cost includes the anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses using County adopted service levels and standards.
6. A detailed discussion of assumptions about user fees or rates, lease payments, and other service payments, and the methodology and circumstances for changes, and usage of the projects over the useful life of the projects.
7. Identification of any known Federal, State, or Local government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
8. Demonstration of consistency with appropriate County and/or affected jurisdiction comprehensive plans (including applicable environmental, land use and facility standards ordinances), infrastructure development plans, transportation plans, the capital improvement plan, and capital budget, or indication of the steps required for acceptance into such plans.
9. Explanation of how the proposed project would impact the County's or affected jurisdiction's development plans.
10. Identification of any known conflicts of interest or other factors that may impact the County's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interests Act, Virginia Code § 2.2-3100 *et seq.*

11. Additional material and information as the County may in its sole discretion request.

§1000.06 Proposal Evaluation and Selection Criteria

In evaluating any request or proposal, the County may rely upon internal staff reports or the advice of outside advisors or consultants. Some or all of the following items, along with the specified information required under § 1000.05 (A) and (B) of these regulations, shall be considered in the evaluation and selection of PPEA and PPTA proposals. The County, however, reserves and retains the right to reject any request or proposal at any time for any reason whatsoever. The County shall solicit public comment and/or hold a public hearing as required by the applicable Act. Prior to entering into an interim or comprehensive agreement a public hearing must be held on the proposals.

(A) Qualifications and Experience.

Factors to be considered in either phase of the County's review to determine whether the proposer possesses the requisite qualifications and experience may include, but are not limited to:

1. Experience, training, and preparation with similar projects;
2. Demonstration of the ability to perform work;
3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control, project safety, responding and addressing client concerns in a timely manner, and ability to work successfully and professionally with other project partners;
4. Demonstrated conformance with applicable Federal, State, and Local laws, codes, ordinances, standards, regulations, requirements, policies, and contracts/agreements on past projects;
5. Leadership structure;
6. Project manager's experience and the experience of other key project personnel;
7. Management approach;
8. Financial condition; and
9. Project ownership.

(B) Project Characteristics.

Factors to be considered in determining the project characteristics may include, along with the specified information required under § 1000.05 (A) and (B) of these regulations, but are not necessarily limited to, the following:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to Federal, State, County or affected jurisdiction laws, codes, ordinances, regulations, requirements, policies, and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

(C) Project Financing.

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include:

1. Cost and cost benefit to the County;
2. Financing and the impact on the debt or debt burden of the County;
3. Financial plan including overall feasibility and reliability of plan;
4. Estimated cost; including debt source, operating costs, etc.;
5. Life-cycle cost analysis;
6. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable; and
7. Such other items as the County deems appropriate.

(D) Project Benefit and Compatibility.

Factors to be considered in determining the proposed project's compatibility with the County's, affected jurisdictions or regional comprehensive or development plans may include,

1. Community benefits;
2. Community support or opposition, or both;
3. Public involvement and information strategy;

4. Compatibility with existing and planned facilities;
5. Compatibility with County, regional, and state economic development efforts; and
6. Compatibility with County's and affected jurisdiction's comprehensive plan.

(E) Other Factors.

Other factors that may be considered in the evaluation and selection of proposals include, but may not be limited to:

1. The proposed cost of the qualifying project;
2. The proposed design of the qualifying project;
3. Local citizen and government comments;
4. Public benefit(s); including whether the project will lead to productivity or efficiency improvements in the County's processes or delivery of services to the public; and
5. Other criteria that the County deems appropriate.

§1000.07 Interim and Comprehensive Agreements

(A) The County shall not be obligated in any manner for any part or phase of a project prior to entering into a properly executed interim or comprehensive agreement. All interim and comprehensive agreements are subject to Board of County Supervisors' approval. Any changes to the terms of an executed agreement shall be in the form of a written amendment.

(B) Interim Agreement Terms.

Interim agreements may be used when it is necessary or advisable to segment a project into phases to produce distinct and clear deliverables to keep the project moving forward to the development of a comprehensive agreement. An interim agreement may not be used to have the County assume risks that should be assumed by the proposer or to pay costs attributable to the private entity's efforts in making the proposal.

Development of an interim agreement is in the sole discretion of the County and in no way limits the rights reserved by the County to terminate the evaluation of any or all proposals at any time.

The terms of the interim agreement may:

1. Permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying project or qualifying transportation facility, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, surveying, and ascertaining the availability of financing for the proposed facility or facilities;
 2. Establish the process and timing of the negotiation of the comprehensive agreement; and
 3. Contain any other provision relating to any aspect of the development or operation of a qualifying project that the parties deem appropriate.
- (C) Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the qualifying project, the selected proposer shall enter into a written contract with the County. Each contract shall define the rights and obligations of the County and the selected proposer with regard to the project.
- (D) The terms of the contract shall be tailored to address the specifics of the project and shall include but not be limited to:
1. The delivery of maintenance, performance, and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;
 2. The review and approval of plans and specifications for the qualifying project by the County and any Federal or State department or agency;
 3. The rights of the County to inspect the qualifying project to ensure compliance with the contract and any development plans and specifications and the rights of the County to any third-party inspection, including any reports;
 4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;

5. The monitoring of the practices of the operator by the County to ensure proper maintenance, safety, use, and management of the qualifying project;
6. The terms under which the operator will reimburse the County for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the County and the operator in the event that the contract is terminated or there is a material default by the operator including the conditions governing assumption of the duties and responsibilities of the operator by the County and the transfer or purchase of property or other interests of the operator by the County;
8. The terms under which the operator will file appropriate financial statements on a periodic basis;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project or qualifying transportation facility;
 - (a) A copy of any service contract shall be filed with the County.
 - (b) A schedule of the current user fees or lease payments shall be made available by the operator to any member of the public upon request.
 - (c) Classifications according to reasonable categories for assessment of user fees may be made.
10. The terms and conditions under which the County will contribute financial resources, if any, for the qualifying project;
11. Other requirements of the PPEA or PPTA or provisions that the County determines serve the public purpose of the PPEA or PPTA;
12. A periodic reporting procedure that incorporates a description of the impact of the project on the County; and

13. Such other terms and conditions as the County may deem appropriate or the Board of County Supervisors determines are necessary to secure and promote the health, safety, and general welfare of the County and its citizens.

Parties submitting proposals understand that representations, information, and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the County. Accordingly, as part of the Contract, the proposer shall certify that all material representations, information, and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information, or data provided for a proposal, the proposer shall immediately notify the County. Any violation of this section of the Contract shall give the County the right to terminate the contract, withhold payment or other consideration due, and seek any other remedy available under the law.

- (E) The contract and any amendments thereto shall be approved by and entered into in writing by the Board of County Supervisors.
- (F) Notice and Posting Requirements.

In addition to the posting/notice requirements in this article, the County shall hold a public hearing on the proposals during the proposal review process, but not later than thirty (30) calendar days prior to entering into an interim or comprehensive agreement.

A finding of Public Interest must be prepared in accordance with in accordance with Virginia Code § 33.2-1803.1.

1. Once the negotiation phase for the development of an interim or comprehensive agreement is complete and a decision to award has been made by the County, the County shall publicly post the proposed agreement.
2. Once the interim or comprehensive agreement has been executed, the County shall make the procurement records for the transaction available for public inspection in accordance with the Virginia Public Procurement Act.
 - a. The procurement records shall include documents initially protected from disclosure on the basis that the release of such documents would adversely affect the financial interest or bargaining position of the County.

- b. Trade secrets or financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise shall not be released.

(G) Governing Provisions.

In the event of a conflict between these guidelines and procedures and the PPEA or PPTA, the terms of the PPEA or PPTA, as applicable, shall control.