

**Procurement Policies and Procedures**  
**As Amended November 20, 2024**

Adopted by the Board of Supervisors of the County of Accomack, Virginia on October 15, 2003.  
\*Revised on May 18, 2018; Revised on January 19, 2022; Revised on July 20, 2022, Revised on September 20, 2023, Revised on November 20, 2024.

**ARTICLE I. Title.**

This document shall be known as the “Procurement Policies and Procedures of the County of Accomack, Virginia,” hereinafter referred to as the “Procurement Policy” or “Policy.” In the event of conflict between this Policy and any state or federal law or regulation, the state or federal law, as the case may be, shall govern.

**ARTICLE II. Purpose.**

The purpose of this Policy is to provide for the fair and equitable treatment of all persons involved in public procurement with the County, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity. This Procurement Policy is intended to promote competition to the maximum extent feasible in compliance with the Virginia Public Procurement Act (VPPA) of the *Code of Virginia*, Chapter 43, Title 2.2.

In the event of conflict between this Policy and the VPPA, the requirements of the VPPA shall control.

**ARTICLE III. Organization.**

- A. Procurement is a staff function under the direction and control of the County Administrator.
- B. The County Administrator shall be responsible for all County procurement activity. The County Administrator may serve as the County’s Procurement Agent, or in his or her sole discretion, may appoint a Procurement Agent to perform all procurement related duties.
- C. The primary duty of the County Procurement Agent is to carry out the principles of purchasing in accordance with applicable laws and regulations and with generally accepted professional standards to ensure the maximum efficiency of government operations and to give to County taxpayers the benefit in savings and efficiency resulting from the proper application of the VPPA and this Policy.

**ARTICLE IV. Exceptions.**

- A. The procurement of construction, goods and services (professional and nonprofessional) and the contracting for these services and projects are excluded from the duties of the County Procurement Agent for the organization(s) as specified below:

1. Accomack County Public Schools. Procurement activities shall be the responsibility of the school system in accordance with the VPPA and rules and regulations established by the Accomack County School Board.

2. Agencies, organizations, and departments as may be specifically delegated procurement authority by the County of Accomack Board of Supervisors; provided that the procurement activity is conducted in accordance with the VPPA and this Policy.

B. The County of Accomack may enter into contracts **without competition** in the following transactions:

1. For the purchase of goods and services that are produced or performed by persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Visually Impaired. (*VPPA Code of Virginia*, §2.2-4344(A)(1)(a)).

2. For the purchase of goods and services that are produced or performed by employment services organizations that offer transitional or supported employment services serving individuals with disabilities (*VPPA Code of Virginia*, §2.2-4344(A)(1)(b)).

3. For legal services, expert witnesses and other services associated with litigation or regulatory proceedings (*VPPA Code of Virginia*, §2.2-4344(A)(2)).

4. For the acquisition of motor vehicles by the Accomack Department of Social Services for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients (*VPPA Code of Virginia*, §2.2-4343(A)(4)).

5. For the acquisition of real estate or any interest in real property (see *R.I.S.E., Inc. v. Kay*, 768 F. Supp. 1141 (E.D. Va. 1992)).

6. For the donation of goods or services, without consideration. (see Opinion of the Attorney General 06-068 (11/30/2006)).

7. For contracts, agreements and memoranda of understanding between the County and one or more public bodies or governmental entities (*VPPA Code of Virginia*, §2.2-4301, Definition of “Public Contract”).

8. For acquisition of goods or services exempt from procurement under the Public-Private Transportation Act (*Code of Virginia*, §33.2-1819) or under the Public-Private Education Facilities and Infrastructure Act (*Code of Virginia*, §56-575.16).

C. The County of Accomack may enter into contracts **without competitive sealed bidding or competitive negotiation** in accordance with applicable exemptions as specified in the *VPPA Code of Virginia*, §2.2-4345 for public bodies.

## **ARTICLE V. Joint and Cooperative Procurement.**

The County or any other agency or board of the County of Accomack may participate in Joint Procurement or Cooperative Procurement with one or more public bodies, or such other departments, agencies, authorities, associations, institutions and territories of the Commonwealth of Virginia and the United States, as specified in, and subject to the provisions of, the VPPA (*Code of Virginia*, § 2.2-4304). No Cooperative Procurement shall be permitted unless the RFP or IFB specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies. If the County enters into Cooperative Procurement with a locality whose governing body has adopted alternative procurement policies and procedures in accordance with state law shall comply with the alternative procurement policies and procedures adopted by the governing body of such locality.

In entering into a contract using Cooperative Procurement, the prices quoted to the County by the Vendor must match those listed in the original (open) contract on which the County is “piggybacking.” The County may not purchase services or products that are not procured under the original (open) contract. The original (open) contract must have terms and condition that are not inconsistent with the County’s General Terms and Conditions.

Cooperative procurement shall not apply to contracts for (1) architectural or engineering services, or (2) construction contracts, except construction contracts for (a) the installation of artificial turf and track surfaces, (b) stream restoration, (c) stormwater management practices, including all associated and necessary construction and maintenance, or (d) any other exceptions enacted by the General Assembly.

**ARTICLE VI. Definitions.**

**Best Value:** The overall combination of quality, price, and various elements of required services in total, as predetermined in the solicitation, that are optimal relative to the County’s needs.

**Bidder:** A person or Business that submits a competitively priced offer in response to an Invitation for Bid (IFB).

**Board or Board of Supervisors:** The Board of Supervisors of Accomack County, Virginia.

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

**Competitive Bidding:** The offer of firm bids by individuals or Businesses competing for a contract, privilege, or right to supply specified non-professional services and/or goods (VPPA *Code of Virginia*, § 2.2-4302.1).

**Competitive Negotiation:** A method for purchasing goods and services, usually of a complex and technical nature, whereby qualified individuals or firms are solicited by means of a Request for Proposals (RFP) (VPPA *Code of Virginia*, § 2.2-4302.2).

**Competitive Sealed Bidding:** A method for purchasing goods and services whereby an Invitation for Bids (IFB) is issued and bids are submitted in a sealed envelope to prevent disclosure of its contents before the deadline set for the receipt and opening of all bids. Sealed bidding procedures are required on procurements of more than \$50,000. Competitive sealed bidding shall not be used to contract for professional services (see VPPA *Code of Virginia*, § 2.2-4302.1).

**Construction:** Construction shall mean building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property (VPPA *Code of Virginia*, § 2.2-4301).

**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 (VPPA *Code of Virginia*, § 2.2-4379).

**Contract:** When used as a noun in this document, contract refers to an agreement enforceable by law, between two or more competent parties, to do or not to do something, not prohibited by law or by public policy, for consideration. A contract is any type of agreement or order for the procurement of goods or services. As a verb, contract or contracting has its usual legal sense, signifying the making of an agreement for consideration.

**Contractor:** An individual or firm that has entered into an agreement to provide goods or services to the County.

**Cooperative Procurement:** A purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association, even if the County did not participate in the RFP or IFB, provided that the RFP or IFB specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies (see VPPA *Code of Virginia*, § 2.2-4304).

**County or County of Accomack:** County of Accomack, Virginia, and its agencies, boards, and departments that have not been specifically delegated procurement authority by the County of Accomack Board of Supervisors.

**Department Head:** Directors of departments and agencies and such other County officials designated by the County Administrator as senior leaders in the County administration.

**Emergency:** An occurrence of a serious and urgent nature that demands immediate action.

**Employment Services Organization:** An organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Virginia Department for Aging and Rehabilitative Services (VPPA *Code of Virginia*, § 2.2-4310).

**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 (VPPA *Code of Virginia*, § 2.2-4343.1).

**General Terms and Conditions:** The County's standard clauses and requirements incorporated into all solicitations (IFBs/RFPs) and resulting contracts which are derived from laws, or administrative procedures of the government agency (also called "Boiler Plate").

**Goods:** All material, equipment, supplies, printing, and automated data processing hardware and software (VPPA *Code of Virginia*, § 2.2-4301).

**Informality:** A minor defect or variation of the bid or proposal from the exact requirements of the IFB or RFP, which does not affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured (VPPA *Code of Virginia*, § 2.2-4301).

**Invitation For Bid (IFB):** A document containing or incorporating by reference the specifications or scope of work and all contractual terms and conditions, including the County's General Terms and Conditions, that is used to solicit written bids for specific goods or nonprofessional services. The Invitation for Bid shall include a statement of any requisite qualifications. No Invitation for Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor (see VPPA *Code of Virginia*, § 2.2-4302.1).

**Joint Procurement:** Participation in or sponsorship of public procurement in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, provided that such joint effort is for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction. (see VPPA *Code of Virginia*, § 2.2-4304).

**Micro-owned Business:** A Small, Women-owned, or Minority-owned Business that has no more than twenty-five (25) employees (see *Code of Virginia*, § 15.2-965.2).

**Minority Individual:** An individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

(VPPA *Code of Virginia*, § 2.2-4310)

**Minority-owned Business:** A Business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and

both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university, as defined in *Code of Virginia*, § 2.2-1604, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity (*VPPA Code of Virginia*, § 2.2-4310).

**Negotiation:** A bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach an agreement, or settlement of, a matter of common concern, on terms that are mutually beneficial and satisfactory to both.

**Non-professional Services:** Any services not specifically identified as professional services in the definition of professional services (*VPPA Code of Virginia*, § 2.2-4301).

**Notice of Award:** Written notification stating that a Vendor has received an award by the County.

**Notice of Intent to Award:** The Notice of Intent to Award is a written notice, or bid tabulation sheet publicly displayed, prior to award, that shows the selection of a Vendor for the award of a specific contract or Purchase Order. A Notice of Intent to Award is not binding on the County and may be changed prior to the actual award of a contract or purchase order.

**Offeror:** A person who makes an offer in response to a Request for Proposals.

**Owner:** The County of Accomack, Virginia, unless otherwise specifically provided in the Invitation for Bids or Request for Proposal.

**Prequalification:** A procedure to prequalify particular types of supplies, services, or insurance or to prequalify Vendors or Contractors and to limit consideration of bids or proposals to only those supplies, services, insurance, Vendors or Contractors that have been prequalified (*VPPA Code of Virginia*, § 4317(C)).

**Procurement:** The procedures for obtaining goods or services, including all activities from the planning steps and preparation and processing of a requisition, through receipt and acceptance of delivery and processing of a final invoice for payment.

**Procurement Agent:** Individual appointed by the County Administrator to oversee all County procurement related functions or, if no appointment has been made, the County Administrator shall serve as the Procurement Agent.

**Professional Services:** Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, dentistry, law, medicine, optometry, pharmacy, or professional engineering (*VPPA Code of Virginia*, § 2.2-4301).

**Public Bid Opening:** The process of opening sealed bids and reading those bids at the time and place specified in the Invitation for Bids and in the presence of anyone who wishes to attend.

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 procurement activities (VPPA *Code of Virginia*, § 2.2-4301).

Purchase Order: A document used by the County to execute a purchase transaction with a vendor. It serves as notice to a vendor that an award has been made and that performance can be initiated under the terms and conditions of the Purchase Order and any other contract documents.

Request for Proposals (RFP): All documents, whether attached or incorporated by reference, utilized for soliciting proposals in competitive negotiation; the RFP procedure requires negotiation with offerors (to include prices) as distinguished from competitive bidding when using an Invitation for Bids (IFB).

Request for Quotations (RFQ): A request for prices for complex projects qualifying for as a Small Purchase, including terms and conditions. Responses to such solicitations (unsealed bids) shall include a description of the item or brief scope of work, the County's General Terms and Conditions (either in full or by reference), any special terms and conditions, and a bid response sheet.

Responsible Bidder or Offeror: A person or business that has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been pre-qualified, if required (VPPA *Code of Virginia*, § 2.2-4301).

Responsive Bidder: A person or business that has submitted a bid which conforms in all material respects to the Invitation for Bid (VPPA *Code of Virginia*, § 2.2-4301).

Sealed Bid: A bid which has been submitted in the competitive bidding process in a sealed envelope to prevent its contents from being revealed or known before the deadline for the submission and public opening of all bids.

Service-Disabled Veteran: A veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs (VPPA *Code of Virginia*, § 2.2-4310).

Service-Disabled Veteran Business: A Business that is at least 51 percent owned by one or more service disabled veterans, or in the case of a corporation, partnership, limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, limited liability company or other entity, is owned by one or more individuals who are service disabled veterans, and both the management and daily business operations are controlled by one or more individuals who are disabled veterans (VPPA *Code of Virginia*, § 2.2-4301).

Services: Services are any activities performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies (VPPA *Code of Virginia*, § 2.2-4301).

**Small Business:** a Business independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of these individual owners shall control both the management and daily business operations of the Small Business (*VPPA Code of Virginia*, § 2.2-4310).

**Small Purchase:** The obtaining of goods, services, or insurance at a price estimated in good faith not to exceed, in the aggregate or in the sum for all phases, \$50,000.

**Software:** All applications software, whether packaged or requiring development, and all systems software such as assemblers, compilers, CPU performance measurement systems, database management systems, file back-up and recovery, job accounting, operating systems, programming aids and development systems and soft-merge utilities.

**Sole Source:** A product or service which is practicably available only from one source (*VPPA Code of Virginia*, § 2.2-4303(E)).

**Solicitation:** An Invitation for Bid (IFB), a Request for Proposals (RFP), a Request for Quotations (RFQ) or any other attempt by the County to obtain bids, proposals, or pricing for the purpose of entering into a “contract” as defined herein.

**Surplus Property:** Property which is in excess of the needs of the County and which is not required for its foreseeable need. The property may be used or new but shall possess some usefulness for the purpose for which it was intended or for some other purpose. The term includes scrap, which is material that is damaged, defective, or deteriorated to the extent that it has no value except for its basic material content. Surplus Property must be disposed of in accordance with *Virginia Code* §15.2-951 (referencing *Virginia Code* §2.2-1124).

**Unsealed Bid:** An unsealed written offer conveyed by U. S. Mail, commercial courier service, facsimile, e-mail, or other means as part of the Small Purchase procedure. The bids are normally opened and recorded as received.

**Vendor:** A person or business who provides goods or services.

**Virginia Public Procurement Act:** Chapter 43 of Title 2.2, *Code of Virginia*, which contains the public policies pertaining to governmental procurement from nongovernmental sources.

**Women-Owned Business:** A Business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or legal resident aliens, and both the management and daily business operations are controlled by one or more women (*VPPA Code of Virginia*, § 2.2-4310).

**ARTICLE VII. Nondiscrimination.**

The Purchasing Agent shall ensure that procurement activities are conducted in accordance with County, state, and federal procurement laws.

In the solicitation or awarding of contracts, the County shall not discriminate against a Bidder or Offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service-disabled veteran, or any other basis prohibited by state law relating to discrimination in employment.

In procuring goods or services, or in making disbursements, the County shall not discriminate against a faith-based organization on the basis of the organization's religious character or impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in *Code of Virginia*, § 2.2-4343.1(F), or (b) impair, diminish or discourage the exercise of religious freedom by the recipients of goods, services or disbursements.

**ARTICLE VIII. Approval Authority.**

The type of approval needed to award contracts shall be based on the total contract amount, which shall include the estimated aggregate or sum of all phases of a contract. All awards for goods and services that are estimated to exceed **\$50,000** shall first be presented to the Board of Supervisors for approval of the award before the Notice of Award is issued.

The County Administrator/ Procurement Agent shall have the authority to approve the award of contracts competitively solicited where the contract amount is not estimated to exceed **\$50,000**. Department heads shall have the delegated authority to procure goods and services and authorize purchases where the contract amount is not estimated to exceed **\$50,000** provided that competition is sought in accordance with the provisions contained herein.

A requisition or purchase request shall be prepared by the using department and forwarded to the Finance Department in accordance with the provisions described herein when the contract amount is expected to exceed **\$5,000**. However, **all** purchases and purchase requests for computers and computer related equipment, to include monitors, printers, digital cameras and scanners, shall be submitted to the Information Technology (IT) Department for prior approval.

All Purchase Orders resulting from competitive procurement shall incorporate by reference the County's General Terms and Conditions and shall be executed by the County and the Vendor.

The County Attorney shall review and approve all contracts and Purchase Orders estimated to exceed \$50,000. The County Attorney shall also approve as to form all contracts referenced in *Code of Virginia*, § 15.2-1237.

The Purchasing Agent shall ensure that procurement activities are conducted in accordance with state and federal procurement laws and this Policy.

In the solicitation or awarding of contracts, the County shall not discriminate against a Bidder or Offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service-disabled veteran, or any other basis prohibited by state law relating to discrimination in employment.

In procuring goods or services, or in making disbursements, the County shall not discriminate against a faith-based organization on the basis or the organization's religious character or impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in *Code of Virginia*, § 2.2-4343.1(F), or (b) impair, diminish or discourage the exercise of religious freedom by the recipients of goods or services.

## **ARTICLE IX. Methods of Procurement.**

### **A. Competitive Sealed Bidding:**

1. All contracts with nongovernmental contractors for the purchase or lease of goods or for the purchase of nonprofessional services or insurance expected to exceed \$200,000 in the aggregate or sum of all phases shall be awarded after Competitive Sealed Bidding in accordance with the Procurement Act and as described in Article XI of this Policy.
2. All construction contracts with nongovernmental contractors for non-transportation projects expected to exceed \$300,000 in the aggregate or sum of all phases shall be awarded after Competitive Sealed Bidding in accordance with the Virginia Public Procurement Act and as described in Article XI of this Policy.
3. Construction contracts for transportation-related facilities expected to exceed \$25,000 in the aggregate or sum of all phases shall be awarded after Competitive Sealed Bidding in accordance with the Virginia Public Procurement Act and as described in Article XI of this Policy.

### **B. Competitive Negotiation:**

Professional Services contracts with nongovernmental contractors, expected to exceed \$80,000 in the aggregate or sum of all phases, shall be procured by Competitive Negotiation in accordance with the Virginia Public Procurement Act and as described in Article XII of this Policy. Under the limited circumstance described in Article XII, the purchase of goods and non-professional services, other than construction services, may be procured by Competitive Negotiation.

### **C. Small Purchases:**

The following contracts may be procured without competitive sealed bidding or competitive negotiation, provided that the requirements of the Virginia Public Procurement Act and this Policy are met:

1. Any contract with nongovernmental contractors for the purchase or lease of goods or for the purchase of services, excluding contracts for construction and contracts for professional services, not expected to exceed \$200,000 in the aggregate or sum of all phases, may be made in accordance with the Small Purchase Procedures set forth in Article XIII of this Policy; provided, however, that contract requirements shall not be artificially divided so as to constitute two or more small purchases.
2. All construction contracts with nongovernmental contractors for non-transportation projects not expected to exceed \$300,000 in the aggregate or sum of all phases may be made in accordance with the Small Purchase Procedures set forth in Article XIII of this Policy; provided, however, that contract requirements shall not be artificially divided so as to constitute two or more small purchases.
3. All construction contracts for transportation-related facilities not expected to exceed \$25,000 in the aggregate or sum of all phases may be made in accordance with the Small Purchase Procedures set forth in Article XIII of this Policy; provided, however, that contract requirements shall not be artificially divided so as to constitute two or more small purchases.
4. All contracts with nongovernmental contractors for professional services not expected to exceed \$80,000 in the aggregate or sum of all phases may be made in accordance with the Small Purchase Procedures set forth in Article XIII of this Policy; provided, however, that contract requirements shall not be artificially divided so as to constitute two or more small purchases.

#### **4. Sole Source:**

Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. A written record documenting the basis for this determination shall be included with the records of the procurement. In addition, the County shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the County's website and may be published in a newspaper of general circulation on the day the County awards or announces its decision to award the contract, whichever occurs first (*VPPA Code of Virginia*, § 2.2-4310(E)).

#### **5. Emergency:**

In case of an emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included with the records of the procurement. In addition, the County shall issue a written notice stating that the contract was awarded on an emergency basis and identifying that which is being procured, the contractors selected, and the date on which the contract was or will be awarded. This notice shall be posted on the County's

website and may be published in a newspaper of general circulation on the day the County awards or announces its decision to award the contract, whichever occurs first (VPPA *Code of Virginia*, § 2.2-4310(F)). Further:

i) If an emergency occurs during regular County business hours, the Department Head needing to procure goods or services on an emergency basis shall immediately notify the County Procurement Agent who shall either purchase the required goods or services or authorize the Department Head to do so.

ii) If an emergency occurs at times other than regular County business hours, the Department Head needing to procure goods or services on an emergency basis may purchase the required goods or services directly. The Department Head shall, however, when practical, secure competition via oral or written bids and order delivery to be made by the lowest responsive and responsible bidder. The Department Head shall post the notice required above on the County's website as soon as possible and shall also, not later than the next regular County business day thereafter, submit to the County Procurement Agent a record of, to include an explanation of, the circumstances of the emergency procurement.

#### **6. Public Auction:**

Where the Purchasing Agent makes a written determination that the purchase of goods and products from a public auction sale, including on-line auctions, is in the best interest of the public, such items may be purchased at the auction. The written determination shall be part of the contract file. The purchase of goods or non-professional services, other than construction services, may be made by reverse engineering. However, no bulk purchase of goods used in road and highway construction and maintenance shall not be made by on-line auctions or reverse auctioning (VPPA *Code of Virginia*, § 2.2-4303).

#### **ARTICLE X. Prequalification.**

Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals shall be limited to prequalified contractors. Each prequalification procedure shall be established in writing and sufficiently in advance of the bid or proposal process to allow potential contractors a fair opportunity to complete the prequalification process. In most cases, the procedure will be initiated with a Request for Qualifications (RFQ).

Prequalification of prospective contractors for construction shall be consistent with the provisions of this section. An application shall be developed that sets forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application shall request of prospective contractors only such information as is appropriate to objectively evaluate qualifications of the prospective contractors for the construction work. The application shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all confidential information voluntarily submitted by the contractor pursuant to this section be considered a trade secret or proprietary information subject to the provisions of the *Code of Virginia*, § 2.2-4342(F).

Advance notice shall be given of the deadline for the submission of prequalification applications. Public notice of the prequalification process shall be published in a newspaper of general circulation in Accomack County at least ten (10) days prior to the date set for submission of applications. Each contractor who submitted an application shall be advised in writing at least 30 days prior to the date established for submission of bids or proposals whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for denial. The County may deny prequalification to any contractor based on the provisions of Chapter 43 of Title 2.2, *Code of Virginia*, § 4317(C). A decision to deny the prequalification shall be final and conclusive unless the contractor appeals the decision in accordance with *Code of Virginia*, § 2.2-4342(F).

(VPPA *Code of Virginia*, § 2.2-4317).

## **ARTICLE XI. Competitive Sealed Bidding.**

A. Competitive Sealed Bidding shall be used for acquiring goods and non-professional services, when the estimated cost exceeds ~~\$50,000~~ \$200,000. Construction services shall be procured using Competitive Sealed Bidding only, unless one or more of the exemptions in *Virginia Code* §2.2-4303 applies; however, where non-transportation services are being procured and the estimated cost is \$300,000 or less, the County may use the Small Purchase Policy. Competitive Sealed Bidding shall not be used to contract for Professional Services. The Competitive Sealed Bidding process is fully set out in the Chapter 43 of Title 2.2, *Code of Virginia*.

B. On any procurement involving Competitive Sealed Bidding, the Procurement Agent shall issue a written Invitation for Bid (IFB) containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. The IFB shall set forth any requisite qualifications of potential vendors unless the County has provided for prequalification of bidders. No IFB for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor, as defined in *Code of Virginia* §2.2-4302.1. An IFB shall specify one of the procedures for withdrawal set out in *Code of Virginia* §2.2-4330.

C. Except in the case of construction projects, Invitations for Bids (IFB) issued by the County may allow consideration of Best Value concepts. The IFB may contain Value Engineering bidding options when the IFB is issued for construction services or other applicable project. Unless otherwise provided in the IFB, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. (*Code of Virginia* §2.2-4315).

D. Public notice of the IFB shall be published on the County website and may be published in a newspaper of general circulation in Accomack County at least ten (10) days prior to the date set for receipt of bids. Said notice shall specify the date, time and place that bids will be opened and shall expressly reference any pre-bid conferences to be held and shall state whether attendance to the conference is mandatory or non-mandatory. All IFBs shall prominently display a nondiscrimination statement to include nondiscrimination against faith-based organizations as required by *Code of Virginia*, §2.2-4343.1. Bids may also be solicited directly from potential vendors, provided that such direct solicitations shall include certified businesses selected from a list made available by the Virginia Department of Small Business and Supplier Diversity (*VPPA Code of Virginia*, §2.2-4302.1).

E. Bidders may submit comments and questions to Procurement Agent concerning the specifications in an IFB prior to the deadline for receipt of bids (*VPPA Code of Virginia*, §2.2-4316). If necessary to amend a solicitation, the Purchasing Agent shall prepare and post an addendum. Bidders are responsible for checking the County website for addenda. When an addendum is issued that extends the time for the vendor to prepare a solicitation response, the opening date shall be extended not less than ten (10) days after the issue date of the addendum.

F. All sealed bids shall be opened in public and announced at the date, time and place set forth in the notice. No bid shall be considered if received after the time established for the receipt of bids or any extension thereof made in accordance with section “E” above.

G. The Purchasing Agent may, in his discretion, waive informalities in bids. Withdrawal of bids shall be governed by *Code of Virginia* §2.2-4330.

H. Unless the IFB is canceled or a bid rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted. When the terms and conditions of multiple awards are so provided in the IFB, awards may be made to more than one bidder.

I. A determination of non-responsibility shall be made in accordance with *Code of Virginia*, § 2.2-4359. A protest of an award or decision to award shall be made in accordance with *Code of Virginia*, § 2.2-4360.

J. Invitation for Bids may be canceled and bids may be rejected at the discretion of the Purchasing Agent, provided that such cancellation or rejection is not solely for the purpose of avoiding the award of a contract to a particular responsive and responsible bidder. The reasons for the cancellation or rejection shall be made part of the contract file.

## **ARTICLE XII. Competitive Negotiation.**

A. Competitive Negotiation may be used for acquiring goods, insurance, and non-professional services in certain instances, and shall be used for acquiring Professional Services when the estimated cost exceeds \$80,000. Competitive Negotiation shall not be used to procure construction services unless one or more of the exemptions in *Code of Virginia* § 2.2- 4303 applies. The competitive negotiation process is fully set out in the Chapter 43 of Title 2.2, *Code of Virginia*.

B. Competitive Negotiation may be used for the procurement of goods, insurance, and non-professional services, other than construction, upon a determination made in advance by the County and set forth in writing that Competitive Sealed Bidding is either not practicable or not fiscally advantageous to the County. The writing shall document the basis for this determination, be signed by the Procurement Agent, and retained in the procurement file.

C. On any procurement involving Competitive Negotiation, the Procurement Agent shall issue a written Request for Proposal (RFP) indicating in general terms that which is sought to be procured, specifying the factors that will be used to evaluate the proposal and containing or incorporating by reference other contractual terms and conditions, including any unique capabilities or qualifications, which will be required. In the event a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the RFP and posted on the County's website prior to the due date and time for receiving proposals. The RFP shall not request that offerors furnish estimates of man-hours or cost for services.

D. Public notice of the Request for Proposal shall be published on the Accomack County website, and may be published in a newspaper of general circulation in Accomack County, at least ten (10) days prior to the date set for receipt of proposals. Said notice shall specify where the RFP may be viewed; the date, time and place that proposals will be received; and the evaluation criteria and point values assigned to each criterion. The RFP shall expressly reference any pre-bid conferences to be held and shall state whether attendance to the conference is mandatory or non-mandatory. All RFPs shall prominently display a nondiscrimination statement and include a statement regarding faith-based organizations required by *Code of Virginia*, §2.2-4343.1. Proposals may be solicited directly from potential contractors, provided that such direct solicitations shall include certified businesses selected from a list made available by the Virginia Department of Small Business and Supplier Diversity (VPPA *Code of Virginia*, §2.2-4302.1).

E. Offerors may submit comments and questions to Procurement Agent concerning the specifications in a RFP prior to the deadline for receipt of proposals (VPPA *Code of Virginia*, §2.2-4316). If necessary to amend a solicitation, the Purchasing Agent shall prepare and post an addendum. Bidders are responsible for checking the County website for addenda. When an addendum is issued that extends the time for the contractor to submit a solicitation response, the deadline for submitting proposals shall be extended not less than ten (10) days after the issue date of the addendum.

F. No proposal shall be considered which is received after the time established for the receipt of proposals or any extension thereof made in accordance with section "E" above. The Purchasing Agent may, in his discretion, waive informalities in bids. *Code of Virginia* §2.2-4330

G. Public openings of proposals are not required. If a public opening is held, the names of the individuals, or the names of the firms, submitting proposals in a timely manner, is the only information to be read aloud and made available to the offerors and general public.

H. Offerors for goods, non-professional services, and insurance shall be evaluated by the Procurement Agent or an evaluation team appointed by the Procurement Agent. As an

option, evaluators may request presentations or discussions with offerors, as necessary, to clarify material in the offerors' proposals and to help determine those fully qualified and best suited. An offeror shall state exceptions to terms or conditions in writing at the beginning of negotiations. Such exceptions may be considered during negotiations but shall not be used as a basis for scoring or evaluating which offerors are selected for consideration; however, the County shall not request or require offerors for architectural or engineering services to list any exceptions to the proposed contract terms and conditions, unless such terms and conditions are required by statute or regulation, until after the qualified offerors are ranked for negotiations.

I. Proposals shall be evaluated on the basis of the criteria set forth in the RFP, using the numerical scoring previously determined. All RFP responses shall be evaluated. Proposals not meeting requirements in the RFP will be scored lower than those that are complete. (Only bids in response to an IFB may be determined to be "non-responsive.") Offerors may be given an opportunity to correct a deficiency in their proposals, within an appropriate period of time, as determined by the Procurement Agent, provided that such opportunity is provided equally to all other offerors. Offerors who fail to submit required documentation or meet mandatory requirements for evaluation purposes may be eliminated from further consideration.

J. Two or more offerors determined to be fully qualified and best suited may be selected for negotiation. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the evaluators may select the offeror which in their opinion has made the best proposal and provides the Best Value and may award the contract to that offeror. When the terms and conditions of multiple awards are provided in the RFP, awards may be made to more than one offeror. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

K. Offerors for professional services shall be evaluated by the Procurement Agent or an evaluation team appointed by the Procurement Agent, which shall engage in individual discussions with two or more offerors deemed fully qualified, responsible, and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. 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. In addition, offerors shall be informed of any ranking criteria that will be used by the County in addition to the review of the professional competence of the offeror. At the discussion stage, the evaluators may discuss non-binding estimates of total project costs, including but not limited to, life-cycle costs and non-binding estimates of prices for services.

L. Proprietary information under *Code of Virginia*, §2.2-4342 from competing offerors shall not be disclosed to the public or to competitors.

M. At the conclusion of discussions outlined in this article on the basis of evaluation factors published in the RFP and all information developed in the selection process to this point, the evaluators shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiation shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and

advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the procuring agency determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror. (*VPPA Code of Virginia* § 2.2-4301).

N. A contract for architectural or professional engineering services related to multiple construction projects may be awarded by the County provided i) the projects require similar experience and expertise, ii) the nature of the projects is clearly identified in the RFP, iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first; and iv) the sum of all projects performed in a one-year contract term shall not exceed \$500,000, unless one of the exceptions provided in *Code of Virginia* § 2.2-4303.1 is met. Such contracts may be renewable for four additional one-year terms at the option of the County. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the RFP so states, and (ii) the RFP sets out procedures for distributing multiple projects among the selected contractors during the contract term. The distribution of projects among the selected contractors shall not be based on price. (*VPPA Code of Virginia* § 2.2-4303.1).

O. At any time during the Competitive Negotiation process, the Procurement Agent may terminate or reject the RFP and proposals, provided that such cancellation or rejection is not solely for the purpose of avoiding the award of a contract to a particular responsive and responsible offeror. The reason for such termination shall be made a part of the contract file.

### **ARTICLE XIII. Job Order Contracting.**

A. A job order contract may be awarded for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first. Contractors may be selected through either competitive sealed bidding or competitive negotiation, provided that any job order contract that involves construction shall be procured by Competitive Sealed Bidding unless one or more of the exemptions in *Code of Virginia* § 2.2- 4303 applies.

B. Such contracts may be renewable for two additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed the maximum threshold amount. The maximum threshold amount shall be \$10 million. Subject to the maximum threshold amount, no individual job order shall exceed \$1 million.

C. For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

D. Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection B is prohibited.

E. No job order, under a job order contract, shall be used solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in Virginia Code § 54.1-400. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term.

F. Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass. However, job order contracting may be used for safety improvements or traffic calming measures for individual job orders up to \$250,000, subject to the maximum annual threshold amount established in this section.

(VPPA Code of Virginia, § 2.2-4303.2).

#### **ARTICLE XIV. Small Purchase Procedure.**

A. The following Small Purchase procedure, adopted pursuant to the authority set out in *Code of Virginia*, § 2.2-4303(G), shall apply when the acquisition of goods, materials, supplies, equipment, printing, professional, or nonprofessional services, including construction services, is not expected to exceed in the aggregate or sum of all phases ~~\$50,000~~ the amounts set out below. Contract requirements shall not be artificially divided so as to constitute two or more small purchases under this article. Such Small Purchase procedures shall apply only to single or term contracts. **Procurements made pursuant to these procedures do not require sealed bids, public bid openings or newspaper advertising of the solicitations, but may be publicly posted. Competition shall be provided to the extent practicable.**

1. The Procurement Agent shall have the authority to procure goods, and nonprofessional services for contracts if the aggregate or sum of all phases of the contract is not expected to exceed \$200,000.

2. The Procurement Agent shall have the authority to procure construction contracts for non-transportation projects if the aggregate or sum of all phases is not expected to exceed \$300,000.

3. The Procurement Agent shall have the authority to procure contracts for the construction of transportation-related facilities if the aggregate or sum of all phases is not expected to exceed \$25,000.

4. The Procurement Agent shall have the authority to procure contracts for professional services if the aggregate or sum of all phases is not expected to exceed \$80,000.

B. Notwithstanding the foregoing, **all** purchases and purchase requests for computers, software, and computer related equipment shall be submitted to the IT (Information Technology) Department for prior approval.

C. Documentation to support **S m a l l P u r c h a s e** procurement shall be maintained by the Department requesting or making the purchase. Such documentation shall be subject to review by the Finance Department. The County Administrator reserves the right to revoke the delegated authority given under this section, in whole or in part.

D. In making Small Purchases, the following procedures shall apply:

(All Purchases 0 - \$5,000) Where the estimated cost of goods, professional or nonprofessional services is \$5,000 or less, purchases may be made upon receipt of one documented, telephone, fax, or email quotation to be kept on file with purchase. Department Heads should seek additional competition whenever there is reason to believe a quotation is not a fair and reasonable price. The purchase of computers, software, and computer related equipment shall be an exception. **All** purchases for computers, software, and computer related equipment shall be submitted to the IT (Information Technology) Department for prior approval regardless of cost.

(Goods and Nonprofessional Services Over \$5,000 - \$200,000) Where the estimated cost of goods or nonprofessional services is over \$5,000 to \$200,000, purchases may be made upon solicitation of three (3) valid sources. Solicitations may be obtained by telephone, fax, or email but must be documented. A record of the solicitations and quotation(s) shall be kept on file with the purchase. If fewer than the required number of sources are solicited, the reasons shall be documented. Department Heads shall submit to the Finance Department a Purchase Request including any specific purchase specifications and documentation that demonstrates competitive pricing was sought. **All** purchase requests for computers, software, and computer related equipment shall be submitted to the IT (Information Technology) Department for prior approval regardless of cost.

(Non-transportation Construction Over \$5,000 - \$300,000) When the estimated cost of a construction contract for non-transportation projects is over \$5,000 to \$300,000, purchases may be made upon solicitation of three (3) valid sources. Solicitations may be obtained by telephone, fax, or email but must be documented. A record of the solicitations and quotation(s) shall be kept on file with the purchase. If fewer than the required number of sources are solicited, the reasons shall be documented. Department Heads shall submit to the Finance Department a Purchase Request including any specific purchase specifications and documentation that demonstrates competitive pricing was sought.

(Transportation-related Construction Over \$5,000 - \$25,000) When the estimated cost of a construction contract for transportation projects is over \$5,000 to \$25,000, purchases may be made upon solicitation of three (3) valid sources. Solicitations may be obtained by telephone, fax, or email but must be documented. A record of the solicitations and quotation(s) shall be kept on file with the purchase. If fewer than the required number of sources are solicited, the reasons shall be documented. Department Heads shall submit to the Finance Department a Purchase Request including any specific purchase specifications and documentation that demonstrates competitive pricing was sought.

(Professional Services Over \$5,000 - \$80,000) When the estimated cost of a contract for professional services is over \$5,000 to \$80,000, purchases may be made upon solicitation of three (3) valid sources. Solicitations may be obtained by telephone, fax, or email but must be documented. A record of the solicitations and quotation(s) shall be kept on file with the purchase. If fewer than the required number of sources are solicited, the reasons shall be documented. Department Heads shall submit to the Finance Department a Purchase Request including any specific purchase specifications and documentation that demonstrates competitive pricing was sought.

E. The Finance Department will assist Department Heads to develop a Request for Quotations (RFQ) for Small Purchases that are complex in nature. Such solicitations (unsealed bids) shall include a description of the item or brief scope of work, the County's General Terms and Conditions (either in full or by reference), any special terms and conditions, and a bid response sheet. Responses received by the designated date and time shall be evaluated and awarded according to the requirements within the solicitation. Such solicitations may be posted to the County website and in the place designated for public notices depending upon the nature of the good or service required.

#### **ARTICLE XV. Participation of Small, Women-Owned, Minority-Owned, and Service-Disabled Veteran-owned Businesses and Employment Services Organizations.**

It is the intention of the County to comply fully with applicable federal and state laws, orders, and regulations relating to the participation of Small, Women-owned, Minority-owned, and Service-Disabled Veteran-Owned Businesses and Employment Services Organizations, as defined in this Policy, in procurement transactions and to promote the interests of the Virginia Department of Small Business and Supplier Diversity and like agencies. The procurement practices of the County are non-discriminatory and promote equality of opportunity for all qualified businesses. To this end, it is the policy of the County to:

1. Include in every direct solicitation those businesses selected from a list made available by the Virginia Department of Small Business and Supplier Diversity which list shall include all companies and organizations certified by the Department. (*Code of Virginia*, § 2.2-4310).
2. Strive to procure goods and services from Small, Women-owned, Minority-owned, and Service-Disabled Veteran-owned Businesses and Employment Services Organizations.
3. Work towards the attainment of procurement of goods and services from Small, Women-owned, Minority-owned, and Service-Disabled Veteran-owned Businesses and Employment Services Organizations through education and outreach to increase competition, maximizing the value received for the money expended on goods and services purchased by the County.
4. Ensure that the County's bidding documents request Businesses to self-identify as Small, Women-owned, Minority-owned, and Service-Disabled Veteran-owned Businesses and

Employment Services Organizations as part of the Competitive Bidding and Competitive Negotiation processes.

**ARTICLE XV. Participation by Micro-Businesses.**

It is the intention of the County to enhance the participation of Micro-Businesses, as defined in this Policy, in the County's procurement transactions. The Purchasing Agent shall take such reasonable measures as may be practicable to attain this objective. The Purchasing Agent shall ensure that the County's bidding documents request Micro-Businesses to self-identify as part of the Competitive Bidding and Competitive Negotiation Processes.

**ARTICLE XVI. Preferences.**

A. The County shall give preference for energy-efficient and water-efficient products when procuring goods as required by *Code of Virginia* § 2.2-4328.1.

B. In the case of a tie bid in Competitive Sealed Bidding, the Procurement Agent shall give preference to foods, services and construction produced in the County or provided by persons, firms or corporations having principal places of business in the County, if such choice is available. (*VPPA Virginia Code* § 2.2-4328).

C. If County goods or services are not available:

1. Preference in the event of a tie bid shall be given to goods produced in Virginia and preference shall then be given to goods produced in the United States; otherwise, the tie shall be decided by lot.

2. In the case of procurement of goods sold by manufacturers, if (i) the lowest responsive and responsible bidder is not a resident of Virginia and (ii) the bid of any Virginia resident is within 10 percent of such bid, then the lowest responsive and responsible bidder that is a Virginia resident shall be granted the option to match the price of the lowest responsive and responsible bidder. If the lowest responsive and responsible bidder is a resident of a state other than Virginia and such state under its laws allows a resident of that state a percentage preference or price-matching preference for the procurement of goods, a like preference shall be granted to responsive and responsible bidders who are residents of Virginia. An eligible bidder that is a Virginia resident shall be granted the greater of either preference pursuant to this subsection.

3. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be granted to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be granted to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. For purposes of compliance with this section, the County may rely upon the accuracy of the information posted on the Virginia Department of General Services' website. (*VPPA Virginia Code* § 2.2-4324).

4. Notwithstanding the foregoing, in the case of a tie bid in instances where goods are being offered, and existing price preferences have been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

5. For the purposes of this section, a firm or corporation shall be deemed to be a resident of Virginia if such firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

D. To the extent that this article conflicts with federal law or regulations and application of this article to a project or procurement would render a public body ineligible to receive federal funds for such project or procurement, such project or procurement shall be exempt from the provisions of this article.

VPPA *Virginia Code* § 2.2-4324)

E. To the extent permitted by state law, where federal funds are used, the County is encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduced project costs.

F. To the extent permitted by state law, where federal funds are used, the County shall procure goods and services in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this subsection preempts state licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project to compete for the contract.

E. As appropriate and to the extent consistent with state law, the County should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, including but not limited to iron, aluminum, steel, cement, and other manufactured products. To the extent permitted by state law, the requirements of this subsection shall be included in all subawards including all contracts and purchase orders for work or products.

For purposes of this subsection:

(i) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(ii) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics, and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **ARTICLE XVII. Procurement of Contracts Funded by Federal Government.**

All contracts for goods and services that are funded in whole or part by the United States shall comply with applicable federal laws, regulations and conditions, subject to approval of the Board of Supervisors in the event such law, regulation or condition is in conflict with the VPPA. See *Code of Virginia*, § 2.2-4343(B) Also, to the extent permitted by the laws and regulations of the Commonwealth of Virginia, the following shall apply:

1. The County shall strive to include value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. As used in this article, “value engineering” shall mean a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at an overall lower cost.
2. The County shall negotiate profit as a separate element of the price for each contract in which there is no competition and all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the amount of the contractor’s investment, the amount of subcontracting involved, the quality of the contractor’s record of past performance, and industry profit rates in the surrounding geographical area for similar work.
3. In order to eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, IFBs, RFPs, must be excluded from competing for such procurements. Additionally, restrictive conditions that may hinder fair competition shall not be permitted. Restrictive conditions include without limitation: (1) placing unreasonable requirements and qualifications on Businesses, (2) requiring unnecessary experience and excessive bonding, (3) allowing noncompetitive pricing practices between Businesses, (4) awarding noncompetitive contracts to consultants that are on retainer contracts, (5) allowing or promoting organizational conflicts of interest, (6) specifying only “brand name: products instead of allowing an equal product to be offered, and (7) acting in an arbitrary manner.

## **Article XVIII. Debarment.**

Prospective contractors may be debarred for unsatisfactory performance from contracting with the County for particular types of supplies, services, insurance of construction, for a period of time specified by the Board of Supervisors. “Unsatisfactory performance” includes, without limitation, i) early termination of a contract due to breach, default, or other cause; ii) failure of a public body, including the County, to renew a contract due to dissatisfaction with the quality of work performed by the contractor; iii) conviction of the contractor, or any principal thereof, of a crime of moral turpitude; iii) a finding of unethical behavior by the contractor, or any principal thereof, by a court of law, administrative agency, hearing officer, or quasi-judicial body; and/or iv) a statement or finding from a public body, including the County, that work performed by the contractor pursuant to a contract was of poor quality or was otherwise unsatisfactory.

Upon a decision by the Board of Supervisors to debar a contractor for unsatisfactory performance, the contractor may not enter into negotiations to contract with the County or make an offer, proposal or bid in response to a RFP, IFB, or other form of solicitation by the County, for supplies, services insurance or construction. The County shall give the contractor written notice of the date, time and location of the meeting at which the Board will consider debarment,

and the contractor shall have the right to object either in writing or by appearance during the public comment portion of the Board of Supervisor’s meeting. If the Board of Supervisors votes to debar the contractor, it shall establish the period of time during which such debarment shall remain in effect. The decision of the Board of Supervisors shall be final.

(VPPA Code of Virginia, § 2.2-4321)

**Article XIX. Modification of Contracts.**

A. Any contract for goods and services may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Board of Supervisors. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. The Purchasing Agent may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Modifications that fail to comply with this section are voidable at the discretion of the Board of Supervisors. Any authorized approval of a modification cannot be the basis of a contractual claim as set forth in *Virginia Code* § 2.2-4363.

(VPPA Code of Virginia § 2.2-4309).

**Article XX. \_\_\_\_\_ General Terms and Conditions.**

The County has developed, and may amend from time to time, General Terms and Conditions applicable to contracts for goods and nonprofessional services, contracts for professional services, contracts for information technology goods and services, and contracts that require vendor access to County data systems. Such General Terms and Conditions shall be incorporated into each contract unless waived or modified, in whole or part, by the Purchasing Agent. In no event shall those terms and conditions required by state or federal law be waived or modified.















