CULPEPER COUNTY

PURCHASING RESOLUTION

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CULPEPER COUNTY PURCHASING RESOLUTION

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CULPEPER COUNTY

PURCHASING RESOLUTION

PREAMBLE

The Board of Supervisors wants to buy goods and services of high quality at reasonable cost and also make sure that all purchasing actions are fair and impartial with no impropriety nor appearance of impropriety, that all qualified buyers and sellers have access to County business and that no offeror is arbitrarily or capriciously excluded, and that there is the maximum feasible amount of competition; therefore the Board of Supervisors

RESOLVES that the following policies for the conduct of purchasing by Culpeper County shall take effect immediately.

ARTICLE 1 - GENERAL PROVISIONS

1-101 Application

This Resolution applies to all contracts for goods, services, insurance and construction entered into by this County. All public bodies in Culpeper County, as defined in Section 1-201 of this Resolution, that are funded in whole or in part by Culpeper County, except the Culpeper County School Board, the Social Services Board and the Library Board, provided they maintain their own Purchasing system compliant with the Virginia Public Procurement Act, are required to comply with the provisions of this Resolution; purchase goods, services, insurance and construction through the purchasing system established under this Resolution; and, unless otherwise expressly authorized by law, dispose of surplus property pursuant to the provisions of this Resolution.

When the procurement involves the expenditure of Federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation which is not reflected in this Resolution.

1-102 Effective Date

This Resolution shall become effective July 1, 1996. The provisions of this Resolution shall not apply to those contracts entered into prior to passage which shall continue to be governed by the procurement policies and regulations of the County and State in effect at the time those contracts were executed.

1-103 Severability

If any provision of this Resolution or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are declared to be severable.

1-104 Gender References

Whenever in this Resolution words referring to a particular gender are used, they shall be deemed to include any gender unless the context otherwise clearly requires.

1-201 Definitions

Brand name specification A specification by manufacturers' names or catalogue numbers.

Brand name or equal specification A brand name specification to describe the standard of quality, performance, and other characteristics needed to meet County requirements and which provides for the submission of equivalent products.

Change order (Unilateral) A written order signed and unilaterally issued by the Purchasing Agent directing the contractor to make changes which the contract authorizes the Purchasing Agent to order without the consent of the contractor.

Confidential information Any information which is available to an employee only because of the employee's status as an employee of this County and is not a matter of public knowledge or available to the public on request.

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

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.

Contract modification Any written alteration of a contract signed by the parties bound by the modification.

Cost-reimbursement contract A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Resolution, and a fixed fee or profit, if any.

County The Board of Supervisors of Culpeper County, Virginia, or its agent as designated herein, or, where applicable, the governing board or chief constitutional officer of any other public body subject to the requirements of this Resolution.

Goods All material, equipment, supplies, printing and automated data processing hardware and software.

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

Nominal value A fair market value of seven dollars or less, except that consumable items under $25.00 in value offered to all participants or members at a professional association or organization meeting shall be considered as nominal.

Nonprofessional services Any services not specifically identified as professional services in § 1-201 of this Resolution.

Potential bidder or offeror As used in Article 7 hereof, a person, corporation or other entity who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who is eligible and qualified in all respects to perform the contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

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

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 this Resolution, including, unless excepted in Section 1-101 above, the Board of Supervisors, all departments, agencies, boards, commissions, committees, officers and employees of the County of Culpeper, Virginia.

Request for proposals All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible bidder or offeror A bidder or offeror 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 prequalified, if required.

Responsive bidder A bidder that has submitted a bid which conforms in all material respects to the Invitation to Bid.

Services Any work performed by an independent contractor, except for construction, which does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

Sheltered workshop A facility that provides work experience and related services for the purpose of assisting handicapped persons to progress toward normal living and a productive vocational status.

ARTICLE 2 - PURCHASING AGENT

2-101 Establishment and Appointment

The purchasing system shall operate under the direction and supervision of the County Administrator who shall be responsible for the enforcement and implementation of this Resolution as Purchasing Agent for the County. In carrying out his responsibilities hereunder, he may delegate and supervise another, at his option, to serve as the Purchasing Agent for the County.

2-102 Authority and Duties of the Purchasing Agent

(1) Authority The Purchasing Agent shall serve as the principal public purchasing official for this County and shall be responsible for the procurement of goods, services, insurance and construction in accordance with this Resolution, as well as for the management of the disposal of surplus supplies and equipment.

(2) Duties In accordance with this Resolution, and subject to the supervision and direction of the County Administrator or his designee, the Purchasing Agent shall:

A. Contract for all goods, services, insurance and construction needed by this County.

B. Sell, trade or otherwise dispose of surplus goods belonging to the County;

C. Establish and maintain programs for specification development, contract administration, inspection, and acceptance, in cooperation with the County agency or public body that has requested the good, service, insurance or construction;

D. Prepare and update standard specifications;

E. Inspect or require the using agency to inspect all deliveries of goods, services, or construction purchased through the Purchasing Agent to assure conformance with the contract specifications;

F. Procure for the County the highest quality goods, services, insurance and construction at the lowest cost;

G. Endeavor to obtain maximum feasible competition for all purchases and sales;

H. Keep informed of current developments in the field of purchasing, prices, market conditions and new products;

I. Secure for the County the benefits of research done in the field of purchasing by other governmental jurisdictions, national societies, national trade associations, and private businesses and organizations;

J. Prepare and adopt standard purchase definitions and forms;

K. Prepare, adopt, and maintain a contract file containing descriptions of commodities, prices and discounts of goods and services available for purchase under term contracts established by the Purchasing Agent;

L. Maintain a current file of sources of goods, services, insurance and construction to be known as a "bidder list" on which vendors can request to be included;

M. Assure that sufficient money has been appropriated to cover the cost of all purchases or contracts; and

N. Perform other functions and duties as required by this Resolution or as the County Administrator or his designee may assign.

O. Incentive Contracting: The Purchasing Agent shall, after review and approval as to legal form by the County Attorney, adopt and amend from time to time as may be required, a policy that provides for the inclusion of incentive contracting in those County construction projects where such inclusion is considered by the Purchasing Agent to be in the best interest of the County. The policy shall offer a contractor whose bid is accepted the opportunity to share in any cost savings realized by the County when project costs are reduced by such contractor, without affecting project quality, during construction of the project. Such policy shall provide that the fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

2-103 Delegation

With the written approval of the County Administrator or his designee, the Purchasing Agent may delegate authority to purchase certain supplies, services, or construction items to other County employees or public bodies, if such delegation is deemed necessary for the effective procurement of those items.

2-104 Revisory Authority

The Purchasing Agent shall have the authority to disapprove any purchase as to the quantity or quality of the commodity requested, and shall have the authority to change specifications. Decisions under this section may be appealed to the County Administrator within ten (10) calendar days of the decision.

2-105 Rules and Regulations

The Purchasing Agent shall prepare and maintain a purchasing manual containing detailed rules and regulations consistent with this Resolution and the laws of the Commonwealth of Virginia governing the operation of the County purchasing system. Publication of this purchasing manual requires approval by the County Administrator as will all subsequent amendments and reissuance.

ARTICLE 3 - COOPERATIVE PROCUREMENT

3-101 Conditions for Use

The County may enter into a cooperative agreement under Sections 2.2-4304 and 2.2-4343 of the Virginia Code for the purpose of combining requirements to increase efficiency or reduce administrative expenses.

All cooperative contracts entered into or used by the County shall be based on procurement principles contained in this Resolution.

The County may participate in or purchase goods and services through contracts awarded by other governmental bodies when it is determined by the Purchasing Agent that such use is in the best interest of the County and the contract is based on competitive principles.

ARTICLE 4 - CONTRACT FORMATION AND METHODS OF SOURCE SELECTION

4-101 Competitive Sealed Bidding

(1) Conditions for Use All public contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction in excess of the maximum amount permitted in § 4-105 of this Resolution shall be awarded after competitive sealed bidding, or by such other procedures required or otherwise authorized by this Resolution.

(2) Prequalification of Bidders

A. The Purchasing Agent is authorized to prequalify bidders prior to any solicitation of bids, whether for goods, services, insurance or construction.

B. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. Such form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor shall be considered a trade secret or proprietary information pursuant to §4-110 of the Culpeper County Purchasing Resolution.

C. In all instances in which the Purchasing Agent requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

D. At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Purchasing Agent shall advise in writing each contractor which submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to such contractor shall state the reasons for such denial of prequalification and the factual basis of such reasons.

E. A decision by the Purchasing Agent denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in §7-101 of this Resolution.

F. The County may deny prequalification to any contractor for construction only if the County finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of such contractor to perform the contract resulting from such procurement;

2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or any officer, director, or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the County without good cause. If the County has not contracted with a contractor in any prior construction contracts, the Purchasing Agent may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The County may not utilize this provision to deny qualification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any owner, officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to a violation of Article 9 of the Culpeper County Purchasing Resolution, the Virginia Governmental Frauds Act (§18.2-498.1 et seq.), Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or any substantially similar law of the United States or another state;

6. The Contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government;

7. The contractor failed to provide to the County in a timely manner any information requested by the County relevant to subdivisions 1 through 6 of this subsection;

G. If the County adopts a prequalification ordinance which provides for minority participation in municipal construction contracts, the County may also deny prequalification based on minority participation criteria.

H. Prequalification of a bidder shall not constitute a conclusive determination that the bidder is responsible, and such bidder may be rejected as non-responsible on the basis of subsequently discovered information.

I. Failure of a bidder to prequalify with respect to a given procurement shall not bar the bidder from seeking prequalification as to future procurements, or from responding to procurements which do not require prequalification.

(3) Notice of Invitation to Bid The Purchasing Agent shall solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "bidder list" which the Agent shall maintain, and other responsible prospective suppliers in the Purchasing Agent's discretion, by sending such notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidder list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

The Purchasing Agent also shall post all pending purchases or sales by notice in a public place designated by the Purchasing Agent.

(3.1) Invitation to Bid The Purchasing Agent shall issue a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless provision has been made for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors.

(4) Use of Brand Names Unless otherwise provided in the invitation to bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer names; it conveys the general style, type, character, and quality of the articles desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

(5) Bid Bonds on Construction Contracts Except in cases of emergency, all bids or proposals for construction contracts in excess of $100,000 shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid. Nothing in this section shall preclude the Purchasing Agent from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than $100,000.

No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

(6) Bonds for other than Construction Contracts At the discretion of the Purchasing Agent bidders may be required to submit with their bid a bid bond in an amount to be determined by the Purchasing Agent and specified in the invitation to bid, as a guarantee that if the contract is awarded to such bidder, that the bidder will enter into the contract for the work described in the bid.

The Purchasing Agent may require successful bidders to furnish performance and/or payment bonds at the expense of the successful bidder, in amounts to be determined by the Purchasing Agent and specified in the invitation to bid, to ensure the satisfactory completion of the work for which a contract or purchase order is awarded.

(7) Rejection of Bids An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part or informalities waived when the Purchasing Agent determines that it is in the best interest of the County to do so. The reasons therefore shall be made a part of the record in the matter.

(8) Bid Opening All bids received under this section must be opened in public.

(9) Withdrawal of Bid Due to Error

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers,

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

The Purchasing Agent shall select one of these procedures:

1. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and at the request of the Purchasing Agent shall submit original work papers with such notice; or

2. The bidder shall submit to the Purchasing Agent his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids.

In either instance, such work papers, documents and materials shall be deemed a trade secret pursuant to § 2.2-3704 of the Virginia Code, subject to the conditions of Section 4-110(6) of this Resolution. The bids shall be opened one day following the time fixed by the County for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the County until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

B. Procedures for the withdrawal of bids for other than construction contracts may be established by the Purchasing Agent.

C. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

D. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

F. If the Purchasing Agent denies the withdrawal of a bid under the provisions of this section, he shall notify the bidder in writing stating the reasons for his decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

(10) Bid Evaluation

A. Evaluation of bids shall be based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

B. In determining "lowest responsible bidder", in addition to price, the Agent shall consider:

1. The ability, capacity, skill and financial resources of the bidder to perform the contract or provide the service required;

2. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

4. The quality of performance of previous contracts or services;

5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

6. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

7. Whether the bidder is in arrears to the County on a debt or contract or is a defaulter on surety or whether the bidder's taxes or assessments are delinquent.

(11) Bid Award Bids shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of the invitation to bid provide that multiple awards may be made, awards may be made to more than one bidder.

Unless canceled or rejected for good cause, a responsive bid from the lowest responsible bidder shall be accepted as submitted except that if the bid from the lowest responsible bidder exceeds available funds or is deemed excessive, the County may negotiate with the lowest responsible bidder to obtain an acceptable contract price.

When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the Purchasing Agent and filed with the other papers relating to the transaction.

(12) Tie Bids

A. In the case of a tie bid submitted pursuant to a written invitation to bid, preference shall be given to goods, services and construction produced in Culpeper County or provided by persons, firms or corporations having principal places of business in Culpeper County, if such a choice is available. Like preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations.

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

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, when the tie bid still exists after existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

D. In the event that none of the foregoing provisions of this section resolve the tie, the Purchasing Agent may:

1. decide the tie by lot; or

2. invite the tie bidders to resubmit written bids below the original bid, and award shall be made to the bidder with the lowest bid price; or

3. cancel the solicitation and rebid.

(13) Multi-Step Sealed Bidding When it is considered impractical to prepare initially a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers. Bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation shall be invited to submit priced offers.

(14) Contract Pricing Arrangement Public contracts may be awarded on any basis that is not prohibited. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carriers administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section. Architect, Engineer and similar contracts which are based on a percentage of construction cost shall not be prohibited by this section, providing the construction contract is not awarded by or to that Architect, Engineer or similar contractor.

(15) Multi-Term Contracts

A. Specified Period Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interest of the County provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

(16) Retainage on construction contracts

A. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more

than five percent being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

C. Nothing in this section shall preclude the Purchasing Agent from establishing retainage for contracts other than construction.

(17) Performance and Payment Bonds For Construction Contracts

A. Upon the award of any public construction contract exceeding $100,000 awarded to any prime contractor, such contractor shall furnish to the County the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

2. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.

C. Bonds shall be made payable to the County.

D. Each of the bonds shall be filed with the County, or a designated office or official thereof.

E. Nothing in this section shall preclude the Purchasing Agent from requiring payment or performance bonds for construction contracts below $100,000.

F. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for the in the subcontract.

(18) Action on Performance Bond No action against the surety on a performance bond shall be brought unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, if the action be for such.

(19) Actions on Payment Bonds

A. Subject to the provisions of subsection B hereof, any claimant who has performed labor or furnished materials in accordance with the contract documents in the prosecution of the work provided in any contract for which a payment bond has been given, and who

has not been paid in full therefor before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.

B. Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under § 4-101 (17) F, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under § 4-101 (17) F of this Resolution, but who has not contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainage with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

(20) Alternative Forms of Security

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

B. If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or saving and loan association's letter of credit on certain designated funds in the face amount required for the bid bond, payment bond or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

4-102 Competitive Negotiation

(1) Competitive Negotiation For Goods or Services Other Than Professional Services

A. Conditions for Use Upon a determination made in advance by the Purchasing Agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public; goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Purchasing Agent and set forth in writing that competitive sealed

bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. For the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than $500,000; or

2. For the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.

B. Request for Proposal The Purchasing Agent shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying 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 contractor.

C. Public Notice Public notice of the Request for Proposal shall be given at least ten days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide notice to the maximum number of offerors that can reasonably be anticipated to submit proposals in response to the particular request. In addition, proposals may be solicited directly from potential contractors.

D. Receipt of Proposals Proposals shall not be public and no proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation.

E. Selection and Award Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposal, including price if so stated in the request for proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that 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.

(2) Competitive Negotiation for Professional Services

A. Conditions for Use Contracts for professional services, as defined in § 1-201 (14) of this Resolution, the cost of which is expected to exceed $30,000 in the aggregate or for the sum of all phases of a contract or project shall be entered into by use of the Competitive Negotiations For Professional Services method. Services estimated to cost less than $30,000 in the aggregate or for the sum of all phases of a contract or project, may be procured in accordance with the procedures for Competitive Sealed Bidding, Competitive Negotiation for Goods and Services Other Than Professional Services, Competitive Negotiation for Professional Services or any other method that is authorized by this Resolution, at the direction of the Purchasing Agent.

B. Request for Proposals The Purchasing Agent shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying 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 contractor.

C. Public Notice Public notice of the Request for Proposal shall be given at least ten days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide notice to the maximum number of offerors that can reasonably be anticipated to submit proposals in response to the particular request. In addition, proposals may be solicited directly from potential contractors.

D. Selection and Award The County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial response and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the County may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, non-binding estimates of prices for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this paragraph above, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, the County shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed the most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

E. Architectural or Professional Engineering Services Contracts A contract for architectural or professional engineering services relating to construction projects may be negotiated by the County 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 year or when the cumulative project fees reach $500,000, whichever occurs first. Such contract may be renewable for one additional term at the option of the County. Under such contract, (i) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (ii) the sum of all projects performed in one contract term shall not exceed $500,000 or such lesser amount as may be determined by the Purchasing Agent, and (iii) the project fee of any single project shall not exceed $100,000 or such lesser amount as may be determined by the Purchasing Agent. Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (i) the Request for Proposal so states and (ii) the County has established procedures for distributing multiple projects among the selected contractors during the contract term.

(3) Purchase of Insurance Upon a written determination made in advance by the Purchasing Agent that competitive negotiation for the purchase of insurance is either not practicable or not

fiscally advantageous, insurance may be procured through a licensed agent or broker who shall be selected in the same manner provided for in § 4-102 (1), above.

4-102.1 Design-Build or Construction Management Contracts

(1) The County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the County complies with the requirements of this section and has obtained the approval of the Design-Build/Construction Management Review Board (the Review Board) as provided in §§ 2.2-2404 through 2.2-2406 of the Code of Virginia.

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

(3) The Request for Proposal for any design-build or construction management contract for a specific construction contracts shall include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. Except as may otherwise be approved by the Review Board, such procedures for:

A. Design-build construction projects shall include a two-step competitive negotiation process consistent with the applicable provisions of the Design-Build Selection Procedures of paragraph D of Chapter IX (Special Construction Procedures) of the Capital Outlay Manual of the Commonwealth developed by the Department of General Services through the Division of Engineering and Buildings. The provisions of the Capital Outlay Manual shall apply, mutatis mutandis, to such procedures for design-build construction projects.

B. Construction management projects shall include (i) selection procedures consistent with the applicable provisions of the Selection Procedures of paragraphs D and E of Chapter IX (Special Construction Procedures) of the Capital Outlay Manual of the Commonwealth and (ii) required construction management contract terms consistent with applicable provisions of the Required Construction Management Contract Terms of paragraph F of Chapter IX (Special Construction Procedures) of the Capital Outlay Manual. The provisions of the Capital Outlay Manual shall apply, mutatis mutandis, to such procedures for construction management projects.

(4) Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the Purchasing Agent shall have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

(5) Once approved by the Review Board in accordance with § 2.2-2406 of the Code of Virginia, the County may award a design-build or construction management contract. Unless otherwise specified in the Request for Proposal, such contract shall be awarded to the fully qualified offeror who submits an acceptable proposal at the lowest cost in response to the Request for Proposal. The provisions of this subsection shall supersede any related provision in the Capital Outlay Manual.

(6) The Purchasing Agent shall provide information as requested by the Review Board to allow post-project evaluation by the Review Board.

4-103 Sole Source Procurement

A contract may be awarded without competition when the Purchasing Agent determines in writing, documenting the basis for the determination, after conducting a good faith review of available sources, that there is only one source practicably available for the required good, service, insurance or construction item. The Purchasing Agent shall conduct negotiations, as appropriate, to obtain the best price, delivery, and terms. A record of sole source procurements shall be maintained that lists each contractor's name, the type of each contract, the item(s) procured and the identification number of each contract file.

4-104 Emergency Purchases

In case of emergency, a contract may be awarded without Competitive Sealed Bidding or Competitive Negotiation. If any emergency occurs during regular County business hours, the using department shall immediately notify the Purchasing Agent who shall either purchase the required supplies or contractual services, authorize the department to do so, or disapprove the emergency purchase. A written explanation of the circumstances of the emergency shall be filed with the Purchasing Agent.

If an emergency occurs at times other than regular business hours, the concerned department may purchase directly the required goods or contractual services. The department, shall, however, whenever practicable, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder. The department shall also, as soon as practicable, submit to the Purchasing Agent a tabulation of bids received, if any, a copy of the delivery record and a written explanation of the circumstances of the emergency.

An emergency situation exists when the safety, health or welfare of the public is vitally affected by: (a) a breakdown in machinery and/or threatened termination of essential services, (including maintenance and repair of essential office equipment), or (b) the development of a dangerous condition, or (c) any other circumstance in which supplies are needed for immediate use in the discretion of the Purchasing Agent with the approval of the County Administrator.

Monthly, the Purchasing Agent shall submit a list of all emergency purchases in excess of $5,000 to the County Administrator.

4-105 Small Purchases

(1) Any contract for goods and services other than professional services not expected to exceed $50,000 may be awarded, at the discretion of the Purchasing Agent, in accordance with small purchase procedures approved by the County Administrator and included in the Culpeper County Purchasing Manual.

(2) Any contract for professional services not expected to exceed $30,000 may be awarded, at the discretion of the Purchasing Agent, in accordance with small purchase procedures approved by the County Administrator and included in the Culpeper County Purchasing Manual.

(3) Small purchase procedures include but are not limited to the following provisions:

A. Contract requirements shall not be artificially divided so as to constitute a small purchase.

B. Insofar as it is practical, no less than three businesses shall be solicited to submit quotations for purchases under $15,000 and no less than four businesses shall be solicited to submit written quotations for purchases between $15,000 and $50,000 ($30,000 for professional services).

C. Award shall be made to the business offering the lowest acceptable quotation.

D. The name of the businesses submitting quotations and the date and the amount of each quotation shall be recorded and maintained as a public record.

E. If required by the Purchasing Agent, quotations shall be selected from a list prepared by the Purchasing Agent. Purchases under $2,500 may be made without soliciting competitive quotations. Purchases between $2,501 and $15,000 as it is practical, no less than three businesses shall be solicited and submitted to the Department Head for approval. Any fixed asset over $1,000 shall require a Purchase Order.

F. Nothing in this section shall preclude the Purchasing Agent from requiring more stringent procedures for purchases made under the small purchase method or from waiving these small purchase procedures in whole or in part when, in the opinion of the Purchasing Agent, the best interests of the County would be served by such waiver.

4-106 Interest in More Than One Bid and Collusion

(1) More than one bid or proposal received in response to a single solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names will be rejected.

(2) Reasonable grounds for believing that a bidder or offeror is interested in more than one bid or proposal for a solicitation both as a bidder or offeror and as a subcontractor for another bidder or offeror, will result in rejection of all bids or proposals in which the bidder or offeror is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two or more bidders or offerors submitting a bid or proposal for the work.

(3) Any or all bids or proposals may be rejected if reasonable grounds exist for believing that collusion exists among any bidders or offerors.

(4) Bidders or offerors rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.

(5) The Purchasing Agent may waive the provisions in Paragraph 2, above, when the Purchasing Agent determines in writing, after the approval of the County Administrator, that the County's interest would be best served by such a waiver.

4-107 Capital Improvement Projects and Professional Services Contracts

(1) No contract for a capital improvement project that exceeds $75,000 shall be awarded without the approval of the County.

(2) Capital improvement projects are defined as work on real property or its improvements other than normal maintenance in excess of the maximum permitted amount in § 4-105 of this Resolution, provided however that the work shall not be artificially divided to avoid classification as a capital improvement project under this section.

(3) No contract for professional services that exceeds $50,000 performed as part of a capital improvement project shall be awarded without the approval of the County.

4-108 Unauthorized Purchases

(1) Whenever any officer or employee of the County government purchases or contracts for any supplies or contractual services contrary to the provisions of the Purchasing Manual or this Resolution, such purchases or contract shall be void and shall not be considered to be an obligation of Culpeper County.

(2) Any County officer or employee making or approving the original purchase contrary to the provisions of the Purchasing Manual or this Resolution shall be personally liable for the costs of such purchases or contract. If already paid out of County funds, the amount thereof may in the name of the County, be recovered by deduction from that person's compensation or, an appropriate legal action instituted.

4-109 Competitive Bidding or Competitive Negotiation on State-aid Projects

No contract for the construction of any building or for an addition to or improvement of an existing building by the County for which state funds of not more than $30,000 in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under § 4-102(1)(A)(2) of this Resolution. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to the Virginia Public Procurement Act, Sections 11-35 et seq.

4-110 Public Access to Procurement Information

(1) Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

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

(3) Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids, but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

(4) Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed, but prior to award, except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

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

(6) Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection 4-101(2) shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protection of this

section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

4-111 Employment Discrimination by Contractor Prohibited

Every contract over $10,000 shall include the following provision:

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.

D. The contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

E. The contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

4-111.1 Drug-Free Workplace

Every contract over $10,000 shall include the following provision:

During the performance of this Agreement, the Contractor agrees as follows:

A. The Contractor will provide a drug-free workplace for the Contractor's employees.

B. The Contractor will 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.

C. The Contractor will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace.

D. The Contractor will include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

E. As used herein, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this Agreement, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

4-112 Exemptions

(1) Purchases exempted from the competitive procurement requirements of this Resolution include:

A. Purchases of land and rights of way, sole source purchases, emergency purchases, printing and engraving of bonds, utility services, intergovernmental purchases, purchases from state government agencies which offer services or goods to Virginia political subdivisions, and cooperative purchases as defined herein;

B. Purchases of goods or services produced or performed by nonprofit sheltered workshops serving the handicapped or which are produced or performed by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped or other nonprofit organizations which offer transitional or supported employment services serving the handicapped;

C. Legal services, provided that any pertinent provisions of Chapter 5, §§ 2.2-500 et seq.) of Title 2.2 of the Virginia Code remain applicable; or expert witnesses and other services associated with litigation or regulatory proceedings; and

D. Those purchases exempted as provided in Virginia Code §§ 2.2-4345 and 2.2-4346.

(2) The County may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which the County is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the Purchasing Agent has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

(3) The County may extend the term of an existing contract for services to allow for completion of any work undertaken but not completed during the original term of the contract.

(4) Upon a determination made in advance by the Purchasing Agent and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interest of the public, such items may be purchased at the auction. The writing shall document the basis for this determination.

4-113 Escrow Deposits on Certain Retained Funds

(1) The County, when contracting directly with contractors for public contracts of $200,000 or more 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, shall include in the bid document an option for the contractor to use an escrow account procedure for utilization of the County's retainage funds by so indicating in the space provided in

the bid form. In the event the contractor elects to use the escrow account procedure, the "Escrow Agreement" form included in the bid document shall be executed and submitted to the County within fifteen calendar days after notification. If the "Escrow Agreement" form is not submitted within the fifteen day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

(2) In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an "Escrow Agreement" form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The "Escrow Agreement" and all regulations promulgated by the County shall be substantially the same as that used by the Commonwealth of Virginia Department of Transportation.

(3) This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

(4) Any such public contract for construction, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

(5) Any subcontract for such public project which provides for similar progress payments shall be subject to the provisions of this section.

4-114 Fees for Construction Documents and Solicitation Documents

(1) Fee Schedule The Purchasing Agent, with the review and approval of the County Administrator, may adopt a reasonable schedule of fees to be charged to purchasers for each set of Construction Documents or Solicitation Documents requested when the work is expected to exceed the maximum amount permitted in § 4-105 of this Resolution.

(2) Exceptions Once a schedule of fees for Construction or Solicitation Documents has been adopted by the Purchasing Agent, such fees may be waived by the Purchasing Agent when:

A. The Construction or Solicitation Documents are for the use of other public bodies;

B. The Construction or Solicitation Documents are for use by organizations which provide plan and specification review services to clients, contractors, or vendors offering the goods or services covered by the Construction or Solicitation Documents; or,

C. The Purchasing Agent determines in writing that there is a compelling reason for waiving such fees.

D. Notwithstanding the above, the Purchasing Agent may charge a lower fee for a set of Construction Documents than the fee arrived at by using the specified formula when the establishment of such lower fee is determined to be in the best interest of the County.

(3) Procedures Procedures for collection of all fees and refund of variable fees, where applicable, shall be established by the Finance Director.

4-115 Incentive Contracting

Any procurement hereunder may, but is not required to, provide for incentive contracting which offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

4-116 Preference for Community Reinvestment Activities in Certain Contracts

When determining the award of any contract for time deposits or investment of the County's funds, the Treasurer or Director of Finance may consider, in addition to the typical criteria, the investment activities of qualifying institutions which enhance and preserve agricultural uses and agribusiness activities within the County. No more than fifty percent of the County's funds, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment activities as a factor in the award of a contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (§ 2.2-4400 et. seq. of the Virginia Code) and all local terms and conditions for security, liquidity and rate of return.

4-117 Workers' Compensation Requirements

(1) No contractor shall perform any work on a construction project procured hereunder unless he (i) has obtained, and continues to maintain for the duration of such work, such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia, and (ii) provides prior to the award of contract on a form furnished by the County evidence of such coverage.

(2) The form required by Subsection 1 above shall be obtained by the Purchasing Agent from the Department of General Services and provided to the contractor. Failure of the Purchasing Agent to provide such form prior to the award of contract shall waive the requirements of clause (ii) of subsection 1.

(3) No subcontractor shall perform any work on a construction project of the County unless he has obtained, and continues to maintain for the duration of such work, such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia.

4-118 Provisions Barring Damages for Unreasonable Delays

(1) Pursuant to the provisions of § 2.2-4335 of the Code of Virginia, any provision contained in any public construction contract entered into on or after July 1, 1991, that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent such delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control is against public policy and is void and unenforceable.

(2) Subsection 1 shall not be construed to render void any provision of a public construction contract that:

A. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees; or

B. Requires notice of any delay by the party claiming the delay; or

C. Provides for liquidated damages for delay; or

D. Provides for arbitration or any other procedure designed to settle contract disputes.

(4) A contractor making a claim against a public body for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the public body and shall pay it for a percentage of all costs incurred by the public body in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.

ARTICLE 5 - DISPOSAL OF SURPLUS PROPERTY

5-101 Policy

(1) Unless otherwise directed by the County, all property taken out of service by any department or agency of the County of Culpeper and owned by the County of Culpeper or other public body subject to this Resolution shall first be made available to other departments or agencies of the County of Culpeper, or other public body subject to this Resolution for use as may be determined by the County Administrator, or, in the case of other public bodies subject to this Resolution, the chief executive officer of that public body.

1.1 Any wireless device(s) or computer(s) deemed obsolete by the Purchasing Agent may be offered first to the County employee who operated the wireless device before such surplus property is offered to any County agency or department. Any such sale shall be based on the fair market value determined by the Purchasing Agent.

(2) If such surplus property is not so determined to be needed by any County department or other agency, it shall be offered to all County agencies on a first-come, first-served basis.

(3) If such surplus property is not claimed by any County agency, it shall next be offered to a County volunteer fire company or rescue squad, also on a first-come, first-served basis.

(4) If, after notification in writing of the availability of such surplus property, none of the above-listed entities indicates a desire for such property, then such property shall become available for purchase by the general public as indicated in § 5-102 below, provided, however, that in the event the cost of disposing of such property pursuant to § 5-102 is anticipated to equal or exceed the expected sale value of the property, then the property may be disposed of in such manner as the County Administrator may direct.

(5) The County Administrator is authorized to create and direct such further policies as may be necessary in the future so as to effectively dispose of surplus personal property belonging to the County.

(6) Nothing herein shall be construed to prohibit the disposal of damaged or worthless property by County employees.

5-102 Procedure

(1) With the written approval of the County Administrator, the Purchasing Agent shall sell, transfer, trade or otherwise dispose of personal property belonging to the County which has become obsolete, unusable or surplus or which is being transferred in order to be leased back by the County under a lease purchase agreement. Any such sales, trades or exchanges shall be based wherever feasible on competitive bids. If not, or if the Purchasing Agent determines in writing that such requirements to not be in the best interests of the County, public auction or other form of competitive sale may be utilized. No County agency shall permit any obsolete, surplus or damaged equipment, supplies or materials to be transferred, loaned or otherwise disposed of except as the Purchasing Agent shall direct. If the amount of the sale is estimated by the Purchasing Agent to exceed $5,000, sealed bids may be, but are not required to be, solicited by public notice posted or published as deemed advisable by the Purchasing Agent.

(2) County employees are not eligible to buy surplus County personal property that is disposed of in accordance with this section, unless such property is disposed of by public auction or other form of competitive sale for an amount not to exceed $500.

ARTICLE 6 - DEBARMENT

6-101 Authority to Debar or Suspend

After ten days written notice to the person involved and reasonable opportunity for that person to be heard by the Purchasing Agent, the Purchasing Agent, after consulting with the County Attorney, may debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. After consultation with the County Attorney, the Purchasing Agent may suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding six months. When debarment or suspension occurs, such debarment or suspension shall be considered to be just cause for cancellation of any existing contracts held by the person or business debarred or suspended. The causes for debarment or suspension include:

(1) Conviction for commission of a criminal offense relating to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction under state or Federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;

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

(4) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

(5) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(6) Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a County contractor including debarment or suspension by another governmental entity for any cause in this Resolution; and for violation of the ethical standards set forth in this Resolution.

6-102 Decision to Debar or Suspend

The Purchasing Agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial or administrative review.

6-103 Notice of Decision

A copy of the decision required by § 6-102 (Decision to Debar or Suspend) shall be mailed or otherwise furnished immediately to the debarred or suspended person, with a copy to the County Administrator.

6-104 Finality of Decision

A decision under § 6-102 (Decision to Debar or Suspend) shall be final and conclusive, unless the debarred or suspended person within 10 days after receipt of the decision protests the decision in writing to the County Administrator. The County Administrator shall issue a decision in writing within ten

days after receipt of the protest stating the reasons for the action taken. This decision shall be final unless legal action as provided for in § 7-108 of this Resolution is taken within ten days of the County Administrator's decision.

ARTICLE 7 - APPEALS AND REMEDIES FOR BID PROTESTS.

7-101 Ineligibility of Bidder, Offeror or Contractor

Any bidder, offeror or contractor refused permission to participate, or disqualified from participating in a public contract shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror or contractor appeals within ten days of receipt by instituting legal action as provided in § 7-108 of this Resolution.

Upon appeal, the action shall not be overturned unless it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations. Upon such a finding, the sole relief shall be restoration of eligibility.

7-102 Appeal of Denial of Withdrawal of Bid

A decision denying withdrawal of bid under the provisions of § 4-101 (9) of this Resolution shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by instituting legal action as provided in § 7-108 of this Resolution.

If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 4-101 (9) of this Resolution prior to appealing, shall deliver to the Purchasing Agent a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next lowest bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

Upon appeal, the decision shall not be overturned unless it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious. Upon such a determination, the sole relief shall be withdrawal of the bid.

7-103 Determination of Nonresponsibility

Any bidder or offeror who, despite being the apparent low, responsive bidder, is determined not to be a responsible bidder for a particular contract shall be notified by the Purchasing Agent in writing. Such notice shall state the basis for the determination, which shall be final unless the bidder or offeror appeals in writing the decision of the Purchasing Agent to the County Administrator within ten days after issuance of the notice. The written appeal shall include the basis for the appeal and the relief sought. The County Administrator shall issue a decision in writing within ten days after receipt of the appeal. This decision shall be final unless the bidder or offeror appeals within ten days of the written decision of the County Administrator by instituting legal action as provided in § 7-108 of this Resolution.

Upon appeal the decision shall not be overturned unless it is determined that the decision of the Purchasing Agent was arbitrary or capricious. Upon such a determination, if the award of the contract in question has not been made, the sole relief shall be a finding that the bidder or offeror is a responsible bidder for the contract in question, or a directed award as provided in § 7-108(1) of this Resolution, or both. If it is determined that the decision of the Purchasing Agent was arbitrary or capricious and the award has been made, the relief shall be as set forth in § 7-104 of this Resolution.

A bidder or offeror contesting a determination that he is not a responsible bidder or offeror for a particular contract shall proceed under this section, and may not protest the award or proposed award under § 7-104 of this Resolution.

Nothing contained in this section shall be construed to require the County, when procuring by the Competitive Negotiation method to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

7-104 Protest of Award or Decision to Award

(1) Any bidder or offeror who desires to protest the award or decision to award a contract shall submit such protest in writing to the County Administrator, no later than ten days after public notice the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the County in the manner prescribed in the terms and conditions of the Invitation to Bid or Request for Proposal. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Administrator shall issue a decision in writing within ten days after receipt of the appeal stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of the written decision by instituting legal action as provided in § 7-108 of this Resolution.

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

(3) If at any time the County Administrator 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 Article 7 of the Virginia Public Procurement Act (§ 2.2-4367 et. seq.) of the Code of Virginia (1950), as amended, or Article IV of Chapter 9 of the Culpeper County Code, the County Administrator may enjoin the award of the contract to a particular bidder and authorize either cancellation or re-bid.

(4) Nothing in this Section shall be construed to permit the bidder to challenge the validity of the terms and conditions of the Invitation to Bid or the Request for Proposal.

7-105 Effect of Appeal upon Contract

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

7-106 Stay or Award during Protest

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

7-107 Contractual Disputes

(1) Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment, however, written notice of the contractor's intention to file such claim must have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after the completion and acceptance of the work or

acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

(2) Contractual claims shall first be presented to the Project Officer, or if none, to the Purchasing Agent.

(3) Any such claims shall be set forth in writing with the amount and nature of each item separately stated. When no specific liquidated damages fees are allowed by law, the time actually and necessarily devoted to performance under the contract shall be verified by affidavit filed with the claim. The Purchasing Agent shall render a decision on any such claims within ten business days. Appeals of such decision may be made by the contractor within ten business days to the County Administrator by serving a written notice of appeal upon the Project Officer or Purchasing Agent, as applicable, and the County Administrator.

(4) The decision of the County Administrator shall be rendered within fifteen business days and shall be final and conclusive unless the contractor appeals such decision within six months of the date of the decision to the Board of Supervisors in accordance with the requirements of §§ 15.2-1245 through 15.2-1248 of the Virginia Code.

(5) As provided by law, a contractor may not institute legal action as provided in § 7-108 of this Resolution prior to receipt of the Board of Supervisors decision on the claim and proper appeal of such decision.

7-108 Legal Actions

(1) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding on any competitive procurement, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the Circuit Court of Culpeper County challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious or, in the case of denial of prequalification, that the decision to deny prequalification was not based upon the criteria for denial of prequalification set forth in subsection 4-101(2).

(2) A bidder denied withdrawal of a bid under § 7-102 of this Resolution may bring an action in the Circuit Court of Culpeper County challenging that decision, which shall be reversed only if the bidder establishes that the decision of the County was not an honest exercise of discretion, but rather was arbitrary and capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid.

(3) A bidder, offeror or contractor may bring an action in the Circuit Court of Culpeper County challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, this Resolution or the terms and conditions of the Invitation to Bid or Request for Proposal.

(4) Subject to procedures in § 7-107 of this Resolution, a contractor may bring an action involving a contract dispute with the County in the Circuit Court of Culpeper County. Nothing herein shall be construed to prevent the County from instituting legal action against a contractor.

(5) If injunctive relief is granted pursuant to any provision of law, the court, upon request of the County, shall require the posting of reasonable security to protect the County. Nothing contained herein shall be construed o grant any right to injunctive relief not otherwise provided for by law.

ARTICLE 8 - PARTICIPATION OF SMALL AND DISADVANTAGED BUSINESSES

8-101 Establishment of Policy to Expand Participation

The Purchasing Agent shall establish a written policy consistent with all provisions of this Resolution to facilitate the participation of small businesses owned by women and minorities in procurement transactions.

8-102 Discrimination Prohibited

In the solicitation of awarding of contracts, the County shall not discriminate because of race, religion, color, sex, or national origin of the bidder or offeror.

ARTICLE 9 - ETHICS IN PUBLIC CONTRACTING

9-101 Purpose

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

9-102 Definitions

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

"Immediate family" shall mean spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

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

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

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

"Public Employee" shall mean any person employed by a public body of Culpeper County, including elected officials or appointed members of governing bodies.

9-103 Proscribed Participation by Public Employees in Procurement Transactions

Except as may be specifically allowed by subdivisions A 2, 3 and 4 of §2.2-3112, no public employee having official responsibility for a procurement transaction shall participate in that transaction of behalf of the public body when the employee knows that:

(1) The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement transaction; or

(2) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or

(3) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

(4) The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with the bidder, offeror or

contractor.

9-104 Solicitation or Acceptance of Gifts

No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. Culpeper County may recover the value of anything conveyed in violation of this section.

9-105 Disclosure of Subsequent Employment

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

9-106 Gifts by Bidders, Offerors, Contractors or Subcontractors

No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

9.107 Participation in bid preparation; limitation on submitting bid for same procurement

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

9-108 Kickbacks

No contractor or subcontractor shall demand or receive from any of his suppliers or subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

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

9-109 Purchase of Building Materials, etc., from Architect or Engineer Prohibited

No building materials, supplies or equipment for any building or structure constructed by or for Culpeper County shall be sold by or purchased from any person employed as an independent contractor by Culpeper 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 § 2.2-3101 of the Code of Virginia.

No building materials, supplies or equipment for any building or structure constructed by or for Culpeper County shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by Culpeper County to furnish architectural or engineering services in which such person has a personal interest as defined in § 2.2-3101 of the Code of Virginia. The provisions of this section shall not apply in the case of an emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

9-110 Misrepresentations Prohibited

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

9-111 Certification of Compliance Required; Penalty for False Statements

(A) Culpeper County requires public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions, a written certification that they complied with the provisions of the Code of Virginia.

(B) Any public employee required to submit a certification as provided in subsection (A) of this section who knowingly makes a false statement in such certification shall be punished as provided in § 2.2-4377.

9-112 Penalty for Violation

Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.