

ARTICLE II.

PURCHASING ORDINANCE*

* State Law References: Virginia Public Procurement Act, Code of Virginia, § 2.2-4300 et seq.

Sec. 2-21. General provisions; definitions:

(a) *Application.* This article applies to all contracts for goods, services, insurance and construction entered into by King George County. All public bodies in the county, as defined herein, that are funded in whole or in part by the county, including but not limited to the county school board, board of social services, or King George Fire and Rescue, Inc. are required to comply with the provisions of this article and purchase goods, services, insurance and construction through the purchasing system established under this article.

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 article.

(b) *Effective date.* This article shall become effective _____. The provisions of this article 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.

Amendments to this ordinance shall be effective from the date of Board of Supervisors adoption. The provisions of any Ordinance approved amendment 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.

(c) *Definitions.*

Best value, as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required materials and/or services that in total are optimal relative to a public body's needs.

Brand name specification shall mean a specification by manufacturers' names or catalogue numbers.

Brand name or equal specification shall mean 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) shall mean 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 shall mean any information which is available to an employee only

because of the employee's status as an employee of King George County and is not a matter of public knowledge or available to the public on request.

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

Construction management contract shall mean 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 shall mean any written alteration of a contract signed by the parties bound by the modification and authorized by the public body.

County shall mean the Board of Supervisors of King George County, Virginia.

Goods shall mean all material, equipment, supplies, printing and automated data processing hardware and software.

Informality shall mean 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 shall mean a fair market value of \$7.00 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 shall mean any services not specifically identified as professional services in the definition of professional services within this article.

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

Public body shall mean 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 article.

Public contract shall mean an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

Request for proposals shall mean all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible bidder or offeror shall mean 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 shall mean a person who has submitted a bid that conforms in all material respects to the invitation to bid.

Services shall mean 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 shall mean 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.

(Ord. of 3-5-2002; Amend. of 5-18-2004)

Sec. 2-22. Purchasing agent.

(a) *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 article 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.

(b) *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 article, as well as for the management of the disposal of surplus supplies and equipment.

(2) *Duties.* In accordance with this article, 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. Assure that sufficient money has been appropriated to cover the cost of all purchases or contracts;
- m. Perform other functions and duties as required by this article or as the county administrator or his designee may assign.
- n. *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.

(c) *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.

(d) *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 calendar days of the decision.

(e) *Rules and regulations.* The purchasing agent shall prepare and maintain a purchasing manual containing detailed rules and regulations consistent with this article and the laws of the Commonwealth of Virginia governing the operation of the county purchasing system. (Ord. of 3-5-2002)

Sec. 2-23. Cooperative procurement.

Conditions for use. The county may enter into a cooperative agreement under Code of Virginia,

§ 2.2-4304 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 article.

The county may participate in or purchase goods and services through cooperative 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.
(Ord. of 3-5-2002)

Sec. 2-24. Contract formation and methods of source selection.

- (a) *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 this article shall be awarded after competitive sealed bidding, or by such other procedures required or authorized by this article.
- (2) *Notice of invitation to bid.* The purchasing agent shall solicit sealed bids from all responsible prospective suppliers in the purchasing agent's discretion, by posting such notice as will acquaint them with the proposed purchase or sale.
- The purchasing agent also shall post all pending purchases or sales by notice in a public place designated by the purchasing agent at least ten days prior to the date set for receipt of bids. The Purchasing Agent shall also use other methods of advertising as he deems appropriate to aid in increased competition.
- (3) *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.
- (4) *Bid bonds on construction contracts.* Except in cases of emergency, all bids or proposals for construction contracts in excess of \$100,000.00 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 \$100,000.00.
- (5) *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.

- (6) *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.
- (7) *Bid opening.* All bids received under this section must be opened in public.
- (8) *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 quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and 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 or proprietary

information pursuant to Code of Virginia, §2.2-2342(F). 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.* In determining "lowest responsible bidder", in addition to price, the agent shall consider:
- a. The ability, capacity, skill and financial resources of the bidder to perform the contract or provide the service required;
 - b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - c. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
 - d. The quality of performance of previous contracts or services;
 - e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
 - f. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

g. 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, preference shall be given to goods, services and construction produced in the county or provided by persons, firms or corporations having principal places of business in the county. The provisions of this section shall apply only to bids submitted pursuant to a written invitation to bid.
- b. Whenever any bidder is a resident 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. In the event that there is a tie bid which is not resolved under a. or b. above, the tie bidders may be invited to resubmit written bids below the original bid, and award shall be made to the bidder with the lowest bid price.
- d. Notwithstanding the provisions of subsections a., b. and c., 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.
- e. In the case of a tie bid, preference will be given to goods, services, and construction produced in the county or provided by persons, firms or corporations having principal places of business in the county, if such a choice is available.
- f. In the event that none of the foregoing provisions of this section resolve the tie, the purchasing agent may decide the tie by lot or 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 thereof.
 - 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 95 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. Code of Virginia, § 2.2-4334, 1950, hereby applies to the deposit of certain retained funds on certain contracts.
 - d. 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 (i) public construction contract exceeding \$100,000.00 awarded to any prime contractor; (ii) construction contract exceeding \$100,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structure or other improvements to real property owned or leased by a public body; (iii) construction contract exceeding \$100,000 in which the performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding \$250,000 that are partially or wholly funded by the Commonwealth, the 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 execution 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 King George 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 any payment or performance bonds for construction contracts below \$100,000.00.
- f. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for 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 that gave rise to the action.

(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 for which a payment bond has been given, and who has not been paid in full therein before the expiration of 90 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 Code of Virginia, §2.2-4337(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 Code of Virginia, § 2.2-4337 but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as 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.

(21) *Design-build or construction management contracts.*

While the competitive sealed bid process remains the preferred method of construction procurement for public bodies in the commonwealth, the public body may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis as provided in the Code of Virginia, 1950, § 2.2-4308.

(b) *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 purchasing agent shall document the basis for this determination in writing. 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 construction, alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$1 million;
 2. On a fixed price design-build basis or construction management basis under §2.2-4308 when the contract is not expected to cost more than \$1 million;
 3. For the construction of highways and any draining, dredging, excavation, grading or similar work upon real property;
 4. As provided in Code of Virginia, §2.2-4308.
- 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 reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. In addition, proposals may be solicited directly from potential contractors. The Agent may also use other lawful methods of advertisement as he

deems appropriate to aid in increased competition.

- 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 herein of this article, the cost of which is expected to exceed \$30,000.00 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 \$30,000.00 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 or competitive negotiation for professional services.
- 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 publication in a newspaper of general circulation in the area in which the contract is to be performed. In addition, proposals may be solicited directly from potential contractors. The Agent may also use other lawful methods of public advertising he deems appropriate to aid in increased competition.
- d. *Selection and award.* King George 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.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by the county, for multiple projects provided: (1) the projects require similar experience and expertise; (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the county. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall not exceed \$500,000, and (c) the project fee of any single project shall not exceed \$100,000. 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 (1) the Request for Proposal so states and (2) the county has established procedures for distributing multiple projects among the selected contractors during the contract term. Multiphase professional services contracts satisfactory and advantageous to the county for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the county shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of the county require awarding the contract.

- (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 above.

(c) *Sole source procurement.* A contract may be awarded without competition when the purchasing agent determines in writing, 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.

(d) *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 \$1,000.00 to the county administrator.

(e) *Small purchases.*

- (1) Any contract not expected to exceed \$30,000.00 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 King George County Purchasing Manual.
- (2) Small purchase procedures include but are not limited to the following provisions:
 - a. Purchasing thresholds apply to the entire order, including shipping and handling, not an individual item price.
 - b. Contract requirements shall not be artificially divided so as to constitute a small purchase.
 - c. For purchases in the amount of \$500.00 or less, including shipping and handling, prices are to be compared by telephone, catalogue, or by other appropriate means.

No permanent documentation of price comparison is required.

- d. For purchases in excess of \$500.00 and not greater than \$3,500.00, including shipping and handling, telephone calls may be placed to at least two suppliers of the items. At a minimum, oral quotes shall be obtained and written documentation of the telephone solicitation shall be made, showing the item requested, date, time, company name, price quoted, and individual making quote. Written requests for quotation may also be used.
 - e. For purchases in excess of \$3,500.00 but not greater than \$30,000, including shipping and handling, written quotes are required and, at least three suppliers shall be contacted. Telephone quotes may be obtained; however, a written quote from the supplier is required within two (2) business days.
 - f. If required by the purchasing agent, quotations shall be selected from a list prepared by the purchasing agent.
 - g. 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.
- (f) *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 subsection (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.
- (g) *Capital improvement projects and professional services contracts.*
- (1) No contract for a capital improvement project that exceeds \$50,000.00 shall be awarded

without the approval of the board of supervisors.

- (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 of this article, 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 \$50,000.00 performed as part of a capital improvement project shall be awarded without the approval of the board of supervisors.
- (h) *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 article, such purchases or contract shall be void and shall not be considered to be an obligation of the county.
 - (2) Any county officer or employee making or approving the original purchase contrary to the provisions of the purchasing manual or this article 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.

(i) *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 \$30,000.00 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 the Code of Virginia, 1950, subsection D of § 2.2-4303. 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.

(j) *Public access to procurement information.* 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. Cost estimates relating to a proposed transaction prepared by or for the county shall not be open to public inspection.

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 except in the event that the county decides not to accept any of the bids and to reopen the contract.

Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after contract award, except in the event that the county decides not to accept any of the proposals and to reopen the contract. Proposal records shall be open to public inspection after award of the contract, subject to the provisions of this section.

Any inspection of procurement transaction records under this section shall be subject to

reasonable restrictions to ensure the security and integrity of the records.

Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to this article 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.

(k) *Employment discrimination by contractor prohibited.* Every contract over \$10,000.00 shall include the following provision:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (2) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- (3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- (4) 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.
- (5) The contractor will include the provisions of the foregoing subsections in every subcontract or purchase order over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

(l) *Drug-free workplace to be maintained by contractor.* All public bodies shall include in every contract over \$10,000.00 the following provisions:

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

- (1) Provide a drug-free workplace for the contractor's employees;
- (2) Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees

for violations of such prohibition;

- (3) State in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and
- (4) Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of the article, "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 article, 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 contract.

(m) *Exemptions.* Purchases exempted from competitive procurement include 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, cooperative purchases as defined herein, 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 Blind and Vision Impaired, or other nonprofit organizations which offer transitional or supported employment services serving the handicapped, legal services, provided that pertinent provisions of Code of Virginia, title 2.2, ch. 11 (Code of Virginia, §2.2-1100 et seq.) remain applicable and expert witnesses and other services associated with litigation or regulatory proceedings, and those purchases exempted as provided by state law.

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.

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.

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.

- (n) *Escrow deposits on certain retained funds.*
- (1) The county, when contracting directly with contractors for public contracts of \$200,000.00 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 15 calendar days after notification. If the "escrow agreement" form is not submitted within the 15-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". 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.
- (o) *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 of this article.
 - (2) *Exceptions.* Once a schedule of fees for construction or solicitation documents has been established 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 for collection of all fees and refund of variable fees, where applicable, shall be established by the finance director.

(Ord. of 3-5-2002)

Sec. 2-25. Disposal of surplus property.

(a) *Policy.*

- (1) All property taken out of service by any county department and owned by the county shall first be made available to other departments of the county for their use as may be determined by the county administrator.
- (2) If such surplus property is not needed by any county department, it shall be offered to county agencies, such as the school division and the department of social services, on a first-come, first-served basis.
- (3) If such surplus property is not needed 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 this article.
- (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.

(b) *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 on competitive bidding requirements whenever practicable. 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.

- (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.

(Ord. of 3-5-2002)

Sec. 2-26. Debarment.

(a) *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 article; and for violation of the ethical standards set forth in this article.

(b) *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.

(c) *Notice of decision.* A copy of the decision required by Code of Virginia, §2.2-4357 shall be mailed or otherwise furnished immediately to the debarred or suspended person, with a copy to the county administrator.

(d) *Finality of decision.* A decision under [Code of Virginia,] § 2-26-102 (Decision to debar or suspend) shall be final and conclusive, unless the debarred or suspended person within five 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 this article is taken within thirty days of the county administrator's decision.
(Ord. of 3-5-2002)

Sec. 2-27. Appeals and remedies for bid protests.

(a) *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 this article.

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.

(b) *Appeal of denial of withdrawal of bid.* A decision denying withdrawal of bid under the provisions of this article 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 this article.

If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of this article 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.

(c) *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 this article.

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. 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 this article.

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 this article.

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.

(d) *Protest of award or decision to award.* 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 the award or the announcement of the decision to award, whichever occurs first. 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 this article.

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.

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 9 of this ordinance [2-29], the county administrator may enjoin the award of the contract to a particular bidder and authorize either cancellation or re-bid.

(e) *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 article shall not be affected by the fact that a protest or appeal has been filed.

(f) *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.

(g) *Contractual disputes.* Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment, however, written notice of the contractor's intention to file a 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.

A procedure for consideration of contractual claims shall be included in each contract. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for a final decision in writing by the county administrator.

The decision of the county administrator shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the county administrator to the board of supervisors in accordance with the requirements of the Code of Virginia.

A contractor may not institute legal action as provided in this article prior to receipt of the board of supervisors decision on the claim.
(Ord. of 3-5-2002)

Sec. 2-28. Participation of small and disadvantaged businesses.

(a) *Establishment of policy to expand participation.* The purchasing agent shall actively solicit the participation of small businesses owned by women and minorities in procurement transactions.

(b) *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.
(Ord. of 3-5-2002)

Sec. ___ Immigration Reform and Control Act of 1986

- (a) By submitting their proposal, Contractor certifies that they do not and will not during the performance of the Agreement employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986; and/or Virginia Code Section §2.2-4311.1, and any other provision of state or federal law pertaining to illegal aliens.
- (b) Every written contract must contain a statement that the contractor does not and shall not knowingly employ any unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

Sec. 2-29. Ethics in public contracting.

(a) *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 (Code of Virginia, § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia, § 18.2-498.1 et seq.), and Code of Virginia, title 18.2, ch. 10 art.2 (Code of Virginia, § 18.2-438 et seq.) and art. 3 (Code of Virginia, § 18.2-446 et seq.). The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

(b) *Definitions.* The words defined in this section shall have the meanings set forth below throughout this article.

Immediate family shall mean a 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.

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, including elected officials or appointed members of governing bodies.

(c) *Proscribed participation by public employees in procurement transactions.* Except as may be specifically allowed by Code of Virginia, §2.2-3112(A.2—A.4), no public employee having official responsibility for a procurement transaction shall participate in that transaction on 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 a bidder, offeror or contractor.

(d) *Solicitation or acceptance of gifts.* No public employee having official responsibility for a procurement transactions shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The county may recover the value of anything conveyed in violation of this provision.

(e) *Disclosure of subsequent employment.* No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the

public body unless the employee or former employee, provides written notification to the public body, or a public official if designated by the public body, prior to commencement of employment by that bidder, offeror or contractor.

(f) *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.

(g) *Kickbacks.* No contractor or subcontractor or county official 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 the public body and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

(h) *Purchase of building materials, etc., from architect or engineer prohibited.*

(1) No building materials, supplies or equipment for any building or structure constructed by or for the county shall be sold by or purchased from any person employed as an independent contractor by the county to furnish architectural or engineering services, but not construction for such building or structure; or from any partnership, association, or corporation in which such architect or engineer has a personal interest as defined in Code of Virginia, §2.2-3101.

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

(3) The provisions of subsections (1) and (2) shall not apply in case of an emergency.

(i) *Participation in bid preparation, limitation on submitting bid for same procurement.* No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of the 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 which is not available to the public. However, the public body will permit such person to submit a bid or proposal for that

procurement or any portion thereof if the purchasing agent determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

(j) *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 it to contain any false, fictitious or fraudulent statement or entry.

(k) *Penalty for violation.* Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.
(Ord. of 3-5-2002)

Secs. 2-30--2-40. Reserved.