



**PITTSYLVANIA COUNTY
BOARD OF SUPERVISORS**

PROCUREMENT POLICY

**APPROVED BY THE PITTSYLVANIA COUNTY
BOARD OF SUPERVISORS:**

May 20, 2014

**SUPERCEDES CHAPTER 25 – PITTSYLVANIA COUNTY CODE
CENTRALIZED PURCHASING – ADOPTED BY THE PITTSYLVANIA COUNTY BOARD OF
SUPERVISORS: DECEMBER 6, 1982**

UPDATES:

May 2015

May 2018

November 2018

December 2023

PITTSYLVANIA COUNTY
BOARD OF SUPERVISORS
PROCUREMENT POLICY

I. INTRODUCTION:

This policy sets forth the legal authority and responsibility for the purchasing process.

II. PURPOSE:

The purpose of this policy is to ensure that:

- (a) The “County” obtains high quality goods and services at reasonable costs;
- (b) All procurement procedures are conducted in a fair and impartial manner without impropriety or appearance of impropriety;
- (c) All qualified vendors are given access to County business;
- (d) No offeror is arbitrarily or capriciously excluded;
- (e) Competition is maximized and specifications reflect the procurement needs of the County rather than being drafted to favor a particular vendor;
- (f) The rules governing procurement are made clear in advance of the competition; and
- (g) The County and vendors freely exchange information concerning what is sought to be procured and what is offered.

Public purchasing has a responsibility to the general public to ensure that procurements are accomplished in accordance with the intent of the laws enacted by the appropriate legislative body. The intent of the Virginia General Assembly is set forth in the Virginia Public Procurement Act (Code of Virginia, §2.2-4300 *et seq.*, 1950, as amended). The County intends, through this policy, to assure the best quality and price for products and services; to protect the assets and funds of the County; and to maintain above-board relations with all suppliers within the Procurement Laws and Business Ethics as dictated by federal, state, and county governments. Therefore, the following Policy for purchasing is hereby adopted by the Pittsylvania County Board of Supervisors on May 20, 2014 and shall take effect immediately.

III. GENERAL PROVISIONS:

A. Application.

This Policy applies to all contracts for goods, services, insurance and construction entered into by the County. This Policy is established by official action of the Pittsylvania County Board of Supervisors. All provisions of this Policy are in conformance with Chapter 43, §2.2-4300 *et seq.* of the Virginia Code, 1950, as amended.

When the procurement involves the expenditure of state or federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal laws and regulations which are not reflected in this Policy.

When this Policy does not specifically address a procurement issue, the issue may be resolved in accordance with the applicable section of the Commonwealth of Virginia's law and current policy.

B. Effective Date.

Contracts entered into prior to passage of this Policy shall continue to be governed by the purchasing ordinance and regulations of the County and Commonwealth of Virginia in effect at the time those contracts were executed.

C. Severability.

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

D. Definitions.

1. Brand Name Specification. A specification by manufacturers' names and catalog numbers.
2. Brand Name or Equal Specification. A brand name specification to describe the standard of quality, performance, and other characteristics needed to meet the County's requirements and which provides for the submission of equivalent products.
3. Capital Asset. Land, improvements to land, easements, buildings, building improvements, machinery, equipment, works of art and historical treasures, infrastructure, and all other tangible or intangible assets that are used in operations and that have initial useful lives extending beyond one year.
4. Capital Improvement Projects. Acquisitions or construction of major equipment or facilities with a useful life of 10 or more years.
5. Confidential Information. Any information which is available to an employee only because of the employee's status as an employee of the County and which is not a matter of public knowledge or available to the public on request.
6. Construction. Building, altering, repairing, improving or demolishing any structure, building, and any draining, dredging, excavation, grading, or similar work upon real property.
7. Goods. All material, equipment, supplies, printing and automated data processing hardware and software.
8. Governing Body. Pittsylvania County Board of Supervisors.
9. 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, or delivery schedule for the goods, services or construction being procured.
10. Invitation for Bid. All documents, whether attached or incorporated by reference, used

for solicitation of competitive sealed bids. Also referred to as “IFB.”

11. Nonprofessional Services. Any services not specifically identified as professional services within this policy, or by the Virginia Public Procurement Act, as amended.
12. Professional Services. Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering.
13. 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 policy.
14. Purchasing Agent. The official in charge of procurement as designated by the Pittsylvania County Board of Supervisors, presently the County Administrator.
15. Request for Proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals. Also referred to as “RFP.”
16. 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 pre-qualified, if required.
17. Responsive Bidder. A bidder that has submitted a bid which conforms in all material respects to the Invitation for Bid.
18. Services. Any work performed by an independent contractor which does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
19. Supplies, Materials, Equipment and Commodities. Any goods or articles which will be used by or furnished to any department of the County.
20. The County. Refers to Pittsylvania County Board of Supervisors.
21. Using Departments. All departments, agencies, boards and commissions of the County, including unified support services, and offices supported from funds approved by the County.

IV. PURCHASING AUTHORITY:

A. Establishment and Appointment.

All purchasing activities shall be taken under the direction and supervision of the Purchasing Agent in accordance with the provisions in this policy. The County Administrator shall be the Purchasing Agent for the County and shall serve as such at the pleasure of the Pittsylvania County Board of Supervisors.

B. Authority of the Purchasing Agent.

The Purchasing Agent, as authorized by the Pittsylvania County Board of Supervisors,

shall have administrative responsibility for all purchasing for the County and shall serve as the principal public purchasing official for the County. This individual shall be responsible for the procurement of goods, services, insurance, and construction in accordance with this Policy, and the establishment of regulations providing a foundation for an efficient and compliant procurement system to meet the needs of the County. The Purchasing Agent may delegate the responsibilities, to meet the needs of the County, to responsible employees, in order to facilitate the work of the Purchasing Agent and the operation of the various agencies and departments of the County's government.

C. Delegation.

The Purchasing Agent, as authorized by the Pittsylvania County Board of Supervisors, may delegate purchasing authority to the Purchasing Manager, to purchase supplies, equipment, services, or construction items.

D. Revisory Authority.

The Purchasing Manager will work with the originating Department to revise any purchase specifications which, in the Purchasing Manager's and/or Purchasing Agent's professional opinion, appear to restrict competition, in order to avoid any potential bid protests and maximize competition.

V. COOPERATIVE PROCUREMENT

Conditions for Use.

Pursuant to the authority granted by § 2.2-4304 of the Virginia Code, 1950, as amended. The County may enter into cooperative procurement agreements for the purpose of combining requirements to increase efficiency or reduce administrative expenses in the procurement process.

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

Except as otherwise prohibited in § 2.2-4304 of the Virginia Code, 1950, as amended, the County may participate in or purchase goods and services through contracts awarded by other governmental bodies when it is determined that: (i) the cooperative procurement is in the best interest of the County; (ii) the cooperative procurement is based on competitive procurement principles, and (iii) the cooperative procurement includes cooperative language within the original solicitation inclusive of addenda.

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION

A. Competitive Sealed Bidding.

1. Conditions for Use. All contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services (other than professional services),

insurance, or construction in excess of One Hundred Thousand Dollars (\$100,000) shall be awarded after competitive sealed bidding, or by such other procedures required or authorized by this Policy.

The competitive sealed bidding dollar amount level shall automatically change pursuant to future lawful and active State levels.

2. Pre-Qualification of Bidders. Bidders may be pre-qualified prior to any solicitation of bids, whether for goods, services, insurance or construction. The pre-qualification process shall be consistent with the provisions of § 2.2-4317 of the Virginia Code, 1950, as amended. 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 pre-qualification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor be considered a trade secret or proprietary information subject to the requirements of § 2.2-4342 of the Virginia Code, 1950, as amended. In all instances in which pre-qualification of potential contractors is required for construction projects, advance notice shall be given of the deadline for the submission of pre-qualification 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 the provisions of § 2.2-4317 of the Virginia Code, 1950, as amended, to be accomplished.
3. Public Notice of Invitation for Bid (IFB). Public notice of the Invitation for Bid shall be posted in a public area in the County Administration Building and on the County's website (www.pittgov.org), at least ten (10) days prior to the last day set for the receipt of bids. The County may choose to publish the Invitation to Bid in a newspaper of general circulation. The posting shall include a general description of the proposed purchase or sale and where solicitation documents may be obtained.

Sealed bids shall also be solicited from prospective suppliers who have requested their names to be added to a "vendor bidders list" which the Purchasing Department shall maintain. Invitations sent to vendors on the "vendor bidders list" shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent. Placement on the "vendor bidders list" is no guarantee of solicitation for bids and/or quotes. It is the vendor's responsibility to notify the County of changes that need to be noted on the vendor bidder's list, such as mailing or physical address, phone numbers, email addresses, contact person, etc.

4. Use of Brand Names. Unless otherwise provided in the Invitation for Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand name, make or manufacturer, but rather conveys the general style, type, character, and quality of the articles desired, and any article which is determined to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The County has the sole authority in

deciding what is accepted as an equal.

5. Cancellation, Rejection of Bids, and Waiver of Informalities. An Invitation for Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals may be canceled or rejected in whole or in part. The reasons for cancellation shall be made part of the contract file. Informalities may be waived when the determination is made that it is in the best interest of the County to do so.
6. Bid Opening. All bids must be opened in public.
7. Negotiation with Lowest Responsible Bidder. Unless canceled or rejected, 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, negotiation may commence with the apparent low bidder to obtain a contract price within available funds; however, such negotiation may be undertaken only under conditions and procedures described in writing prior to issuance of the Invitation for Bid and summarized therein.
8. Withdrawal of Bid Due to Error.
 - a. A bidder for a construction contract 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.

The following procedure for bid withdrawal must be stated in the Invitation for Bids. The bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice. The work papers, documents and materials may be considered trade secrets or proprietary information subject to the conditions of § 2.2-4342(F) of the Virginia Code, 1950, as amended. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

- b. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%).
- c. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
- d. 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.

- e. The County shall notify the bidder in writing within five (5) business days of its decision regarding the bidder's request to withdraw its bid. If withdrawal of a bid is denied under the provisions of this section, the bidder shall be notified in writing stating the reasons for the decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, The County shall return all work papers and copies thereof that have been submitted by the bidder.

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

Unless canceled or rejected in accordance with Section VI (A.5) of this policy, a responsive bid from the lowest responsible bidder shall be accepted as submitted except as provided in Section VI (A.7) of this policy.

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 and filed with the other papers relating to the transaction.

- 10. 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, if such a choice is available.
- b. Except as provided in subsection (a.) above, in the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms, or corporations, if such a choice is available.
- c. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.
- d. Notwithstanding the provisions of subsections (b.) and (c.), in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.
- e. In the event that none of the foregoing provisions of this section resolve the tie, the tie is decided by lot, or the solicitation is cancelled and rebid.

- 11. Authority to Transact Business in Virginia. If required by law, any awarded bidder or

offeror shall maintain a valid certificate of authority or registration to transact business in Virginia with the Virginia State Corporation Commission as required by Title 13.1 or Title 50 of the Virginia Code, 1950, as amended, during the term of the contract or any contract renewal. The contractor as awarded shall not allow registration to lapse at or its certificate of authority or registration to transact business in the Commonwealth of Virginia to be revoked or cancelled at any time during the term(s) of the contract. If the awarded contractor fails to remain in compliance with the provisions of this section, the contract may be voided at the sole discretion of the County.

12. Contract Pricing Arrangement. Except in case of an emergency affecting the public health, safety, or welfare, no 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 carrier's 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 contracts.

13. 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.
- 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.

14. Modification of the Contract.

- a. A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the contract or \$50,000, whichever is greater, without the advance written approval of the Pittsylvania County Board of Supervisors. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.
- b. Nothing in this section shall prevent the County from placing greater restrictions on contract modifications.

15. Retainage on Construction Contracts.

- a. In any 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 (95%) of the earned sum when payment is due, with not more than five (5%) 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 establishment of retention for contracts other than construction.
16. **A. Bid Bonds on Construction Contracts.** Except in cases of emergency, all bids or proposals for non-transportation- related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 that are in excess of \$250,000 and partially or wholly funded by the The County shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.
- B. (Effective until July 1, 2021)** For non-transportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317. However, the County may waive the requirement for prequalification of a bidder with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the local governing body that waiving the requirement is in the best interests of the locality. The County shall not enter into more than 10 such contracts per year.
- C.** 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.
- D.** Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for non-transportation-related projects or \$250,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.
- E.** No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bids for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

17. Performance and Payment Bonds for Construction Contracts.

Except as provided in subsection H, upon the award of any (i) public construction contract exceeding \$500,000 awarded to any prime contractor; (ii) construction contract exceeding \$500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by a public body; (iii) construction contract exceeding \$500,000 in which the performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding \$350,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds:

- i. 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. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2, such bond shall be in a form and amount satisfactory to the public body.
- ii. A payment bond in the sum of the contract amount. The 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 furtherance of the work provided for in the contract and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the County, such bond shall be in a form and amount satisfactory to the public body.

As used in this subdivision, “labor or materials” includes public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

- b. For non-transportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the performance and payment bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317. However, a locality may waive the requirement for prequalification of a contractor with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the local governing body that waiving the requirement is in the best interests of the locality. A locality shall not enter into more than 10 such contracts per year.

- c. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.
- d. Bonds shall be payable to Pittsylvania County.
- e. Each of the bonds shall be filed with the public body that awarded the contract, or a designated office or official thereof.
- f. Nothing in this section shall preclude Pittsylvania County from requiring payment or performance bonds for construction contracts below \$500,000 for non-transportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.
- g. Nothing in this section shall preclude the 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 that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.
- h. The performance and payment bond requirements of subsection A for transportation-related projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by a public body if the bidder provides evidence, satisfactory to the public body, that a surety company has declined an application from the contractor for a performance or payment bond.
 - i. Alternative Forms of Security.
 - 1. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check, or cash escrow in the face amount required for the bond.
 - 2. If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment 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.
 - ii. Bonds for Other than Construction Contracts. At the discretion of the County, bidders may be required to submit with their bid, a bid bond in an amount previously determined 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 mentioned in the bid. Additionally, The County may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation for Bid or Request for Proposal.

iii. Insurance. Vendors providing services will be required to carry adequate insurance to protect Pittsylvania County from loss in case of accident, fire, theft, etc. throughout the term of the service contract. Proof of adequate insurance shall be furnished prior to acceptance of an award. The specific insurance requirements will be included in the Request for Proposal or Invitation for Bid.

MINIMUM INSURANCE COVERAGES AND LIMITS:

1. Workers’ Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the County of increases in the number of employees that change their workers’ compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer’s Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. Pittsylvania County shall be added as an additional insured to the policy by an endorsement.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the County is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

<u>Profession/Service</u>	<u>Limits</u>
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)	\$2,150,000 per occurrence, \$4,250,000 aggregate
(Limits increase each July 1 through fiscal year 2031per <i>Code of Virginia</i> § 8.01-581.15.)	
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

B. Competitive Negotiation for Goods or Services Other Than Professional Services.

a) Conditions for Use

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this chapter shall condition a successful offeror's eligibility on having a specified experience modification factor;
2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Pittsylvania County website other appropriate websites. Additionally, Pittsylvania County shall publish in a newspaper 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. procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and
3. For goods, nonprofessional services, and insurance, 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. In the case of a proposal for information technology, as defined in § 2.2-2006, Pittsylvania County shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body 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; or

C. Competitive Negotiation for Professional Services.

1. For professional services, Pittsylvania County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. 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. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. 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 nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132, until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, outlined in this subdivision, 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 most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the public body, 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.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, the County may award contracts to more than one offeror.

Should the County determine in writing and in its sole discretion that

only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the 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 entering into any such contract, the County shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract.

For the purposes of subdivision A 1, “experience modification factor” means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.

2. The County has established purchase procedures, in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for:
 - a. Goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$100,000; and
 - b. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000.

However, such small purchase procedures shall provide for competition wherever practicable. (see J. Small Purchases)

- c. Such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$80,000.

Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of the discussions, and upon the basis of evaluation factors published in the request for proposal and all information developed in the selection process, 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.

The dollar amount level for competitive negotiation for professional services shall automatically change pursuant to future lawful and active State levels.

D. PPEA (Public Private Education Infrastructure Act of 2002)

The County shall be authorized to enter into public-private partnerships pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code Section 56-575.1 *et seq.*, as amended, and in accordance with County adopted regulations related hereto. See exhibit A

E. Design and Build

The County shall be authorized to enter into a contract for construction on a fixed or not to exceed price design-build basis, Virginia Code 2.2-4308, as amended, and in accordance with County adopted regulations related hereto. RESOLUTION 2015-10-1 Procedures/Guidelines updated 10/20/2015. See exhibit B.

F. Federal Grants Awards

The County must adhere to the procedures outlined in exhibit C documents and related guidance from the grantor for contracts funded through federal direct aid, federal pass-through aid, state categorical aid and other grants. The County must also follow any applicable Federal policies and procedures for such procurement transactions. The County will follow 2 C.F.R. § 200.318 (General Procurement Standards) through 2 C.F.R. § 200.326 (Contract Provisions) and will ensure that every purchase order or other contract includes any clauses required by section 200.326 Contract Provisions, in accordance to Virginia Code 2.2-4343B. See exhibit C. 5/2018.

Revised 11/2018-

G. Sole Source Procurement.

A contract may be awarded without competition when it is determined 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. Negotiations shall be conducted, as appropriate, to obtain the best price, delivery, and terms. A written notice shall be issued stating that only one source was determined to be practicably available, identify that which is being procured, the contractor selected and the date on which the contract will be awarded. For purchases exceeding One Hundred Thousand Dollars (\$100,000), a notice of sole source shall be posted on the Public Notice Board in the County Administration Building and on the County's website (www.pittgov.org) on the day of award or the decision to award is announced, whichever

occurs first.

H. Emergency Purchases.

An emergency may arise in order to protect personal safety, life or property, such as, an occurrence of a serious, urgent and threatening nature that demands immediate action to avoid termination of essential services or a dangerous condition. In such cases, a Purchase Order or contract may be awarded by the Purchasing Agent without competitive bidding or competitive negotiation, however, such procurement shall be made with as much competition as is practicable under the circumstances. A written determination and justification establishing the basis for the emergency and for the selection of the particular contractor/vendor must be submitted by the requesting department to the Purchasing Department prior to creating an obligation. The Purchasing Agent will approve or disapprove the purchase as an emergency procurement. The approved written determination shall become part of the procurement file. For purchases with a total cost in excess of One Hundred Thousand Dollars (\$100,000), a written notice, stating that the contract is being awarded, or has been awarded on an emergency basis shall be publicly posted on the Public Notice Board in the County Administration Building, and on the County's website for ten (10) calendar days, beginning on the day of the award or the decision to award is announced, whichever occurs first, or as soon thereafter as is practicable.

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

I. Joint and cooperative procurement.

The County may participate in, sponsor, conduct, or administer a joint procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction.

In addition, the County may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies, except for:

- a. Contracts for architectural or engineering services; or
- b. Construction. This subdivision shall not be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303. Subdivision 2 shall not apply to (i) the installation of artificial turf and track surfaces, (ii) stream restoration, or (iii) stormwater management practices, including all associated and necessary construction and maintenance.

J. Small Purchases.

- a. Purchases where the estimated total cost of the materials, equipment, supplies, shipping, insurance, construction, or service are not expected to exceed One Hundred Thousand Dollars (\$100,000) may be awarded in accordance with procedures delineated in the most recently approved Purchasing Procedures/Regulations.

Small purchase procedures shall include but are not limited to the following provisions:

- i. Purchases from nongovernmental sources where the estimated total cost of the goods or services are \$25,000 or greater but less than \$100,000 may be made after soliciting a minimum of three (3) written quotations.
- ii. Purchases from nongovernmental sources where the estimated total cost of the goods or services is \$10,000 or greater but less than \$25,000 may be made after soliciting a minimum of three (3) written or documented verbal or telephonic quotations.
- iii. Purchases where the estimated total cost of the goods or services is less than \$10,000 may be made upon receipt of one (1) fair and reasonable price.
- iv. Purchase of used equipment, defined as equipment which has been previously owned and used where the estimated total cost is \$5,000 or greater but less than \$100,000, may be made after soliciting a minimum of two (2) written quotations; award shall be based on the offer deemed to be in the best interest of Pittsylvania County. Prior to the award of a contract for used equipment, a person technically knowledgeable of the type of equipment sought shall document the condition of the equipment stating that this purchase would be in the best interest of the County as part of the purchase documentation; price reasonableness shall be considered in determining award.

- v. Nothing in this section shall preclude requiring more stringent procedures for purchases made under the small purchase method.

K. Use of County Credit Cards for Small Purchases.

Small purchase may be made with a County credit card, when necessary, if authorized by the Purchasing Manager. The County's Credit Card Policy shall be adhered to.

L. Exemptions and Exceptions.

The County may not enter into contracts without competition, except those exemptions outlined in §§2.2-4344 and 2.2-4346, Virginia Code, 1950, as amended. The County may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which Pittsylvania 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 a determination is made 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.

Exemptions to Competitive Procurement Requirements

- Dues and Professional Licenses: Professional organization membership dues and fees to maintain professional licenses.
- Honoraria/Entertainment: Payment for a service, such as authors, speakers, lecturers, musicians, and performing artists.
- License Agreements: License agreements with the owner of the source code for existing software and/or manufacturer of sophisticated scientific equipment.
- Perpetual Software Support: Competitively purchased software that requires annual support including upgrades to keep the product current, is considered both proprietary and perpetual, as support cannot be provided by anyone other than the source code or current program/software holder. For that reason, software support does not require the same competitive justification as other purchases so long as the original purchase is competitive and the same company provides the support, until that product/software is no longer utilized. Using Departments must verify that the pricing is fair and reasonable and that the product/software is still available through the current provider with each purchase.
- Media Purchases: Advertisements and legal notices such as in newspapers, magazines, journals, radio, and television.
- Other Agencies: purchases from the federal government, other states and their agencies or

institutions, and public bodies. Care must be exercised to verify pricing as fair and reasonable.

- Training:
 - (a) Training provided by professional organization: Classes, workshops, or conferences provided by a professional organization rather than a training vendor or individual. This exemption is limited to organizations that are associated with professional accreditation or certification.
 - (b) Specialized training: Training that is specialized, proprietary, and not typically available to the general public for which competition is generally unavailable. Specialized technical training provided by a vendor for their equipment is included in this category. Justification must be prepared to document verification of exclusivity.
- Books, printed materials, reprints and subscriptions: Books, printed materials, reprints, and subscriptions, pre-recorded audio and video material, when only available from the publisher/producer.

M. Collusion Among Bidders.

More than one (1) bid from an individual, firm, partnership, corporation, or association under the same or different name will be rejected. Reasonable grounds for believing that a bidder is interested in more than one bid for the work contemplated will cause rejection of all bids in which the bidder is interested. Any or all bids may be rejected if there is any reason for believing that collusion exists among the bidders. Participants in such collusion may not be considered in future bids for the same work. Each bidder, as a condition of submitting a bid, shall certify that he is not a party to any collusive action as herein defined.

N. Contract Award Approval.

No contract resulting from a formally issued IFB or RFP that exceeds One Hundred Thousand Dollars (\$100,000) shall be awarded without the approval of the Pittsylvania County Board of Supervisors.

O. Unauthorized Purchases.

- i. Whenever any officer or employee of the County purchases or contracts for any supplies or services contrary to the provisions of this Policy, such purchases or contract shall be void and shall not be considered to be an obligation of the County.
- ii. Any County officer or employee making or approving a purchase contrary to the provisions of this Policy, shall be personally liable for the costs of such purchases or contract. If already paid out of County funds, the amount thereof in the name of the County, may be recovered by deduction from that person's compensation or an appropriate legal action instituted.

P. 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 (§2.2-3700 *et seq.*, Virginia Code, 1950, as amended). 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 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.

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 the County decides not to accept any of the proposals or decides to reopen the contract. Subject to the provisions of this section, proposal records shall be open to public inspection after award of the contract.

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

Pursuant to §2.2-4342 of the Virginia Code, 1950, as amended, trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or pre-qualification application shall not be subject to public disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 *et seq.*, Virginia Code, 1950, as amended); however, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

Q. Employment Discrimination by Contractor Prohibited.

Every contract of over \$10,000 shall include the provisions contained in subsections (1) and (2) below:

- i. 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 or federal 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.

- ii. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

b. Drug-Free Workplace

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

VII. DEBARMENT:

A. Authority to Debar or Suspend.

After ten (10) days written notice as provided for in VII (B) to the person involved and with no legal action taken by that person per VIII (H) of this Policy, a person may be debarred for cause from consideration for award of contracts. The debarment shall be and remain effective for a period commensurate with the seriousness of the cause as determined. A person may be suspended 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 (6) 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 shall 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 (1) 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; and
6. Any other cause determined 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 Policy; and for violation of the ethical standards set forth in this Policy.

B. Decision to Debar or Suspend.

A written decision to debar or suspend shall be issued. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial review.

C. Notice of Decision.

A copy of the decision required by VII (B) shall be final and conclusive unless legal action is taken by the debarred or suspended person as provided for in VIII (H) of this Policy.

VIII. APPEALS AND REMEDIES FOR BID PROTESTS:

A. Ineligibility of Bidder, Offeror or Contractor.

As provided for in §2.2-4357 of the Virginia Code, 1950, as amended, any bidder, offeror or contractor refused permission to participate, or disqualified from participating, in contracts 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 thirty (30) days of receipt by instituting legal action as provided in VIII (H) of this Policy.

If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in

accordance with the Constitution of Virginia, applicable state law or regulations, 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 Section VI (A.8) of this Policy shall be final and conclusive, unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in Section VIII (H.2) of this Policy.

If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of Section VI (A.8) of this Policy, prior to appealing, shall deliver to the Purchasing Department 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.

If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, the sole relief shall be withdrawal of the bid.

C. Determination of Non-Responsibility.

As provided for in §2.2-4359 of the Virginia Code, 1950, as amended, any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless legal action is taken within ten (10) days by the bidder as provided in Section VIII (H.1) of this Policy.

If, upon appeal, it is determined that the decision was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulation or the terms and conditions of the Invitation for Bid, and 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 directed award as outlined in the Invitation for Bid. If it is determined that the decision was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation or the terms and conditions of the Invitation for Bid, and the award has been made, the relief shall be as set forth in Section VIII (D) of this Policy. 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 Section VIII (D) of this Policy.

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.

1. Any bidder or offeror who desires to protest the award or decision to award of a contract shall submit such protest in writing to the County Administrator as defined in

the Terms and Conditions of the IFB or RFP, as applicable, no later than ten (10) 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 (10) days stating the reasons for

the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of the written decision by instituting legal action as provided in Section VIII (H.3) of this Policy.

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 proposed award shall be cancelled or revised 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 contract may be declared 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. When it is determined, 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 X of this Policy, award of the contract to a particular bidder may be enjoined.

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 Policy shall not be affected by the fact that a protest or appeal has been filed.

F. Stay of 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 sixty (60) days after final payment, however, written notice of the contractor's intention to file such claim shall 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 completion and acceptance of the work or acceptance of the goods. Pendency of claim 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 initiates legal action as provided in § 2.2-4364 of the Virginia Code, 1950, as amended, within six (6) months of the date of the final decision on a claim.

A contractor may not institute legal action as provided in Section VIII (H) (5) of this Policy prior to receipt of the County's decision on the claim.

H. Legal Actions.

1. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the Circuit Court of Pittsylvania County challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulation or the terms and conditions of the Invitation for Bid, or in the case of pre-qualification denial, that such decision was not based upon the criteria for denial of pre-qualification set forth in subsection VI (A.2).
2. A bidder denied withdrawal of a bid under Section VIII (B), of this Policy may bring an action in the Circuit Court of Pittsylvania County challenging that decision, which shall be reversed only if the bidder establishes that the decision was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulation or the terms and conditions of the Invitation for Bid.
3. A bidder, offeror or contractor may bring an action in the Circuit Court of Pittsylvania 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, applicable state law or regulation, or the terms and conditions of the Invitation for Bid or Request for Proposal.
4. If injunctive relief is granted, the court, upon request of the County, shall require the posting of reasonable security to protect the County.
5. Subject to procedures in Section VIII of this Policy, a contractor may bring an action involving a contract dispute with the County in the Circuit Court of Pittsylvania County.
6. Nothing herein shall be construed to prevent the County from instituting legal action against a contractor.

IX. ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES:

A. Small, Women-, Minority-, and Service Disabled Veteran-Owned Business Participation.

The Purchasing Department will try to facilitate the participation of small, women-, minority-, and service disabled veteran-owned businesses in the procurement transactions of the County. The County grants no preferences or set-asides to such businesses. The Purchasing Department shall assist any such business in understanding bids or proposals.

B. Discrimination Prohibited.

In the solicitation of awarding of contracts, The County shall not discriminate against any bidder or offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or other basis prohibited by state or federal law relating to discrimination in employment.

Pittsylvania County shall not discriminate against any faith-based organizations.

X. ETHICS IN PUBLIC CONTRACTING

A. Purpose.

The provisions of this Article supplements, but does not supersede, other provisions of law including, but not limited to the following acts contained within the Virginia Code, 1950, as amended, the State and Local Government Conflict of Interests Act (§2.2-3100 *et seq.*), the Virginia Governmental Frauds Act (§18.2-498.1 *et seq.*), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Virginia Code, 1950, as amended. 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 policy section.

"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, and disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"Pecuniary interest arising from the procurement" shall mean a personal interest as defined in the State and Local Government Conflict of Interests Act (§ 2.2-3100 *et seq.*, Virginia Code, 1950, as amended).

"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.

"Employee" shall mean any person employed by Pittsylvania County, including elected officials or appointed members of governing bodies.

C. Prohibited Participation by Employees in Procurement Transactions.

No employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body, except as noted in §2.2-3112 of the Virginia Code, 1950, as amended, 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 (5%); 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.

D. Solicitation or Acceptance of Gifts.

No 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 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 section.

E. Disclosure of Subsequent Employment.

No employee or former 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 (1) year from the cessation of employment by the County, unless the employee or former employee provides written notification to the County 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 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 shall demand or receive from any of his supplies 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 or money services or anything of value in return for an agreement not to compete on a 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 County and will be recoverable from both the maker and the recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

H. Participation in Bid Preparation.

No person who is compensated to prepare an Invitation for Bid or Request for Proposal for or on behalf of the County shall submit a bid or proposal for that procurement or any portion thereof, or, disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, the County may permit such person to submit a bid or proposal for that procurement or any portion thereof if the County determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner prior to the best interests of the County.

I. Misrepresentations Prohibited.

No 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.

J. Penalty for Violation.

Any person convicted of a willful violation of any provision of Section X of this policy 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/her employment.

LEGAL REFERENCE: Code of Virginia, 1950 as amended, § 2.2-4300 *et seq.*, see also 22.1-68, 22.1- 70, 22.1-92 (A), 22.1-296.1, Virginia Code, 1950, as amended.

XI. SALE OF SURPLUS PROPERTY

All using departments and/or agencies shall, upon request, submit to the Purchasing Agent a report of all surplus, worn out, or obsolete items which should be disposed of. The Purchasing Agent shall have the authority to transfer such surplus to other using departments and/or agencies. All property not so transferred shall be exchanged, traded in on new items, salvaged, or sold as deemed appropriate by the Purchasing Agent.

All sales of surplus property shall be made through an auction, either public or through the internet, or by solicitation of a sealed bid. Public Auctions require a minimum of ten (10) calendar days prior advertisement in a newspaper of general circulation in the County. If the County chooses to dispose of surplus property through a solicitation of sealed bids, then a public notice shall be advertised at least once in a newspaper having County wide circulation, at least ten (10) calendar days prior to the final date for the submission of sealed bids.

Individual items may be scrapped, if in the opinion of the Purchasing Agent, the cost of storage and sale exceeds the value of the item.