

ARLINGTON COUNTY

PURCHASING RESOLUTION

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APPENDIX B OF THE ARLINGTON COUNTY PURCHASING MANUAL

ARLINGTON COUNTY PURCHASING RESOLUTION

TABLE OF CONTENTS

PREAMBLE 7

ARTICLE 1 - GENERAL PROVISIONS 8

1-101 Application 8

1-102 Effective Date 8

1-103 Severability 8

1-104 Gender References 8

1-201 Definitions 8

 (1) Best Value 8

 (2) Brand Name Specification 8

 (3) Brand Name or Equal Specification 8

 (4) Change order (Unilateral) 8

 (5) Confidential Information 9

 (6) Construction 9

 (7) Construction Management Contract 9

 (8) Contract Modification 9

 (9) Cost-reimbursement Contract 9

 (10) Goods 9

 (11) Governing Body 9

 (12) Informality 9

 (13) Multiphase Professional Service Contracts 9

 (14) Nominal Value 9

 (15) Nonprofessional Services 9

 (16) Professional Services 9

 (17) Public Body 9

 (18) Request for Proposals 10

 (19) Responsible Bidder or Offeror 10

 (20) Responsive Bidder 10

 (21) Services 10

 (22) Sheltered Workshop 10

ARTICLE 2 - OFFICE OF THE PURCHASING AGENT 11

2-101	Establishment and Appointment	11
2-102	Authority and Duties of the Purchasing Agent	11
	(1) Authority	11
	(2) Duties	11
2-103	Delegation	12
2-104	Revisory Authority	12
2-105	Rules and Regulations	12
ARTICLE 3 - COOPERATIVE PROCUREMENT		13
3-101	Conditions for Use	13
ARTICLE 4 - CONTRACT FORMATION AND METHODS OF SOURCE SELECTION		14
4-101	Competitive Sealed Bidding	14
	(1) Conditions for Use	14
	(2) Prequalification of Bidders	14
	(3) Notice of Invitation to Bid	16
	(4) Use of Brand Names	16
	(5) Bid Bonds on Construction Contracts	16
	(6) Bonds for other than Construction Contracts	16
	(7) Rejection of Bids	16
	(8) Bid Opening	17
	(9) Withdrawal of Bid Due to Error	18
	(10) Bid Evaluation	19
	(11) Bid Award	19
	(12) Tie Bids	19
	(13) Multi-Step Sealed Bidding	20
	(14) Contract Pricing Arrangement	20
	(15) Multi-Term Contracts	20
	A. Specified Period	20
	B. Cancellation Due to Unavailability	20
	(16) Retainage on Construction Contracts	21
	(17) Performance and Payment Bonds For Construction Contracts	21
	(18) Action on Performance Bond	22
	(19) Actions on Payment Bonds	22
	(20) Alternative Forms of Security	23
4-102	Competitive Negotiation	23
	(1) Competitive Negotiation For Goods or Services Other Than Professional Services	23

	A. Conditions for Use:	23
	B. Request for Proposal	23
	C. Public Notice	23
	D. Receipt of Proposals:	24
	E. Selection and Award:	24
(2)	Competitive Negotiation for Professional Services	24
	A. Conditions for Use	24
	B. Multiphase Professional Service Contracts	24
	C. Request for Proposals	25
	D. Public Notice	25
	E. Selection and Award	25
(3)	Purchase of Insurance	25
4-103	Service Contract Wages	26
	(1) Required Wage Rate	26
	(2) Covered Service Contracts	26
	(3) Contractor Responsibilities	26
	(4) Limits on Applicability	27
	(5) Enforcement	27
	(6) Administrative Procedures	28
4-104	Sole Source Procurement	29
4-105	Emergency Purchases	29
4-106	Small Purchases.	29
4-107	Interest in More Than One Bid and Collusion	30
4-108	Capital Improvement Projects and Professional Services Contracts	30
4-109	Unauthorized Purchases	30
4-110	Competitive Bidding or Competitive Negotiation on State-aid Projects	31
4-111	Public Access to Procurement Information	31
4-112	Employment Discrimination by Contractor Prohibited	31
4-113	Exemptions	32
4-114	Escrow Deposits on Certain Retained Funds	33
4-115	Fees for Construction Documents and Solicitation Documents.	33
	(1) Construction Documents	33
	A. Definition	34
	B. Fees and Charges	34
	C. Refunds	34
	(2) Solicitation Documents for Non-construction Projects	34
	A. Definition	34
	B. Fees and Charges	34
	(3) Exceptions	35

(4) Procedures	35
4-116 Purchase of Owner-Controlled Insurance in Construction Projects	36
4-117 Drug-Free Workplace to be Maintained by Contractor	36
ARTICLE 5 - DISPOSAL OF SURPLUS PROPERTY	37
5-101 Procedure	37
ARTICLE 6 - DEBARMENT	38
6-101 Authority to Debar or Suspend	38
6-102 Decision to Debar or Suspend	38
6-103 Notice of Decision	38
6-104 Finality of Decision	38
ARTICLE 7 - APPEALS AND REMEDIES FOR BID PROTESTS.	40
7-101 Ineligibility of Bidder, Offeror or Contractor	40
7-102 Appeal of Denial of Withdrawal of Bid	40
7-103 Determination of Nonresponsibility	40
7-105 Effect of Appeal upon Contract	41
7-106 Stay or Award during Protest	41
7-107 Contractual Disputes	41
7-108 Legal Actions	42
ARTICLE 8 - ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES	43
8-101 Establishment of Programs to Expand Participation	43
8-102 Discrimination Prohibited	43
ARTICLE 9 - ETHICS IN PUBLIC CONTRACTING	44
9-101 Purpose	44
9-102 Definitions	44
9-103 Proscribed Participation by Public Employees in Procurement Transactions	44
9-104 Solicitation or Acceptance of Gifts	45
9-105 Disclosure of Subsequent Employment	45
9-106 Gifts by Bidders, Offerors, Contractors or Subcontractors	45
9-107 Kickbacks	45
9-108 Purchase of Building Materials, etc., from Architect or Engineer Prohibited	45
9-108.1 Participation in Bid Preparation.	46
9-109 Penalty for Violation	46

ARLINGTON COUNTY

PURCHASING RESOLUTION

PREAMBLE

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

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

ARTICLE 1 - GENERAL PROVISIONS

1-101 Application

This resolution applies to all contracts for goods, services, insurance, construction, and intellectual property entered into by this County. All public bodies in Arlington County, as defined in section 1-201 (17) of this Resolution, that are funded in whole or in part by Arlington County, except the Arlington County School Board, are required to comply with the provisions of this Resolution and purchase goods, services, insurance, construction, and intellectual property through the central purchasing system established under this Resolution.

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

1-102 Effective Date

This resolution shall become effective June 1, 1985. The provisions of this resolution shall not apply to those contracts entered into prior to passage which shall continue to be governed by the procurement policies and regulations of the County and State in effect at the time those contracts were executed.

1-103 Severability

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

1-104 Gender References

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

1-201 Definitions

(1) Best Value As predetermined in the solicitation, means the overall combination of quality, price and various elements of required services that in total are optimal relative to the County's needs.

(2) Brand Name Specification A specification by manufacturers' names or catalogue numbers.

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

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

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

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

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

(8) Contract Modification Any written alteration of a contract signed by the parties bound by the modification.

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

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

(11) Governing Body The County Board of Arlington County.

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

(13) Intellectual Property All trademarks, trade names, domain names, corporate or business names or identifiers, patents, inventions, copyrights, computer software programs, applications, systems, source and object codes, including all registrations and recordings of such intellectual property and all legal interests and rights therein.

(14) Multiphase Professional Service Contracts A contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

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

(16) Nonprofessional Services Any services not specifically identified as professional services in section 1-201 (16) of this Resolution.

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

(18) Public Body Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this resolution.

(19) Request for Proposals All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(20) Responsible Bidder or Offeror A bidder or offeror that has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

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

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

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

ARTICLE 2 - OFFICE OF THE PURCHASING AGENT

2-101 Establishment and Appointment

The purchasing system shall operate under the direction and supervision of the Purchasing Agent who shall be appointed, supervised and subject to the direction of the County Manager or his designee.

2-102 Authority and Duties of the Purchasing Agent

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

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

- A. Contract for all goods, services, insurance, construction, and intellectual property 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, construction, and intellectual property at the lowest cost and, when applicable, consistent with the best value concept;
- G. Endeavor to obtain maximum feasible competition for all purchases and sales;
- H. Keep informed of current developments in the field of purchasing, prices, market conditions and new products;
- I. Secure for the County the benefits of research done in the field of purchasing by other governmental jurisdictions, national societies, national trade associations, and private businesses and organizations;
- J. Prepare and adopt standard purchase definitions and forms;
- K. Prepare, adopt, and maintain a contract file containing descriptions of commodities, prices and discounts of goods and services available for purchase under term contracts established by the Purchasing Agent;

- L. Maintain a current file of sources of goods, services, insurance, construction, and intellectual property to be known as a "bidder list" on which vendors can request to be included;
- M. Assure that sufficient money has been appropriated to cover the cost of all purchases or contracts; and
- N. Perform other functions and duties as required by this Resolution or as the County Manager or his designee may assign.
- O. Incentive Contracting: The Purchasing Agent shall, after review and approval as to legal form by the County Attorney, adopt and amend from time to time as may be required, a policy that provides for the inclusion of incentive contracting in those County construction projects where such inclusion is considered by the Purchasing Agent to be in the best interest of the County. The policy shall offer a contractor whose bid is accepted the opportunity to share in any cost savings realized by the County when project costs are reduced by such contractor, without affecting project quality, during construction of the project. Such policy shall provide that the fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.
- P. Implement, administer and enforce the service contract wage provisions of this Resolution.
- Q. Apply for and obtain, on behalf of the County, patent, trademark and copyright protections as the County Manager or his designee may direct.

2-103 Delegation

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

2-104 Revisory Authority

The Purchasing Agent shall have the authority to disapprove any purchase as to the quantity or quality of the commodity requested, and shall have the authority to change specifications. Decisions under this section may be appealed to the County Manager.

2-105 Rules and Regulations

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

ARTICLE 3 - COOPERATIVE PROCUREMENT

3-101 Conditions for Use

The County may enter into a cooperative agreement under Section 11-40 of the Virginia Code for the purpose of combining requirements to increase efficiency or reduce administrative expenses.

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

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

The County may purchase services through or participate in contracts awarded by one or more utility operators which are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of services under this subsection may deviate from the procurement procedures set forth in this Resolution 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, and the contract is awarded based on competitive principles.

ARTICLE 4 - CONTRACT FORMATION AND METHODS OF SOURCE SELECTION

4-101 Competitive Sealed Bidding

(1) Conditions for Use: All public contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction in excess of \$50,000 shall be awarded after competitive sealed bidding, or by such other procedures required or authorized by this resolution.

(2) Prequalification of Bidders

- A. The Purchasing Agent is authorized to prequalify bidders prior to any solicitation of bids, whether for goods, services, insurance, construction, or intellectual property.
- B. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. Such form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor shall be considered a trade secret or proprietary information pursuant to §4-110 of the Arlington County Purchasing Resolution.
- C. In all instances in which the Purchasing Agent requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.
- D. At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Purchasing Agent shall advise in writing each contractor which submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to such contractor shall state the reasons for such denial of prequalification and the factual basis of such reasons.
- E. A decision by the Purchasing Agent denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in §7-101 of this Resolution.
- F. The County may deny prequalification to any contractor only if the County finds one of the following:
 - 1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a

surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of such contractor to perform the contract resulting from such procurement:

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

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

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

5. The contractor or any owner, officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to a violation of Article 9 of the Arlington County Purchasing Resolution, the Virginia Governmental Frauds Act (§ 18.2-498 et seq.), Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or any substantially similar law of the United States or another state;

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

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

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

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

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

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

The Purchasing Agent also shall post all pending purchases or sales by notice in the Purchasing Office.

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

(5) Bid Bonds on Construction Contracts Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$100,000 or transportation-related projects authorized under Va. Code §33.1-12 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth 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 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under Va. Code §33.1-12 and partially or wholly funded by the Commonwealth.

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

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

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

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

do so. The reasons therefore shall be made a part of the record in the matter.

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

(9) Withdrawal of Bid Due to Error

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

The Purchasing Agent shall select one of these procedures:

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

2. The bidder shall submit to the Purchasing Agent his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, such work papers, documents and materials shall be deemed a trade secret pursuant to subdivision B 55 of § 2.1-342 of the Virginia Code. 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. Whether the bidder provides goods or services that are the best value for the County, if applicable;
- D. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- E. The quality of performance of previous contracts or services;
- F. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- G. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- H. 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;
- I. Whether the bidder complies with Article 4-103, if applicable.

(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 produced in Virginia, or goods, services or construction provided by a bidder domiciled in Arlington County. Like preference shall be given to bidders domiciled in Virginia when tied with bidders not domiciled in Virginia.
- B. Whenever any bidder is domiciled in any other state and such state under its laws allows a resident contractor of that state a

preference, a like preference may be allowed to the lowest responsible bidder domiciled in 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 Arlington County or provided by persons, firms or corporations having principal places of business in Arlington 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 therefor.

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

(16) Retainage on Construction Contracts

A. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more than five percent being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

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

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

(17) Performance and Payment Bonds For Construction Contracts

A. Upon the award of any (i) public construction contract exceeding \$100,000 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, structures or other improvements to real property owned or leased by the County; (iii) construction contract exceeding \$100,000 in which 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. For transportation-related projects authorized under Va. Code §33.1-12, such bond shall be in a form and amount satisfactory to the County.

2. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. For transportation-related projects authorized under Va. Code §33.1-12 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the County. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

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

C. Bonds shall be made payable to the County.

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

E. Nothing in this section shall preclude the Purchasing Agent from requiring payment or performance bonds for construction contracts below \$100,000 for nontransportation-related projects, or \$250,000 for transportation-related projects authorized under Va. Code §33.1-12 and partially or wholly funded by the Commonwealth.

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

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

(19) Actions on Payment Bonds

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

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

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

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

(20) Alternative Forms of Security

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

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

4-102 Competitive Negotiation

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

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

Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Purchasing Agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

i. for the construction, alteration, repair, renovation or demolition of buildings or structures when the contract is not expected to cost more than \$1,000,000; or

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

B. Request for Proposal: The Purchasing Agent shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.

C. Public Notice: Public notice of the Request for Proposal shall be given at least ten days prior to the date set for receipt of proposals by 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.

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. 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 County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

(2) Competitive Negotiation for Professional Services

A. Conditions for Use: Contracts for professional services, as defined in section 1-201 (16) of this Resolution, the cost of which is expected to exceed \$30,000 in the aggregate or for the sum of all phases of a contract or project, shall be entered into by use of the Competitive Negotiations For Professional Services method. Services estimated to cost less than \$30,000 may be procured in accordance with the procedures for Competitive Sealed Bidding, Competitive Negotiation for Goods and Services Other Than Professional Services, Competitive Negotiation for Professional Services or any other method that is authorized by this Resolution, at the discretion of the Purchasing Agent.

B. Professional Service Contracts For Multiple Projects: A contract for professional architectural or engineering services relating to construction projects may be negotiated by the County, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year or when the cumulative 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 five million dollars (\$5,000,000); and (c) the project fee of any single project shall not exceed one million dollars (\$1,000,000). 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.

C. Multiphase Professional Services Contracts: Multiphase Professional Services Contracts satisfactory and advantageous to

the County for environmental, location, study, 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 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.

D. 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.

E. 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.

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

- (3) Purchase of Insurance. Upon a written determination made in advance by the Purchasing Agent that competitive negotiation for

the purchase of insurance is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker who shall be selected in the same manner provided for in Section 4-102 (1), above.

4-103 Service Contract Wages

(1) Required Wage Rate. Except as otherwise provided in this Article, each public contract for the provision of services in excess of \$100,000, awarded after competitive sealed bidding or competitive negotiation, shall require that the contractor pay each employee assigned to perform such services under such public contract an hourly rate to be determined as follows:

A. The initial Required Wage Rate shall be \$10.98. The Required Wage Rate may be adjusted annually, as proposed by the County Manager and adopted by the County Board during the Budget adoption process. The annual adjustment shall be no less than that approved as the living wage for County employees. The Required Wage Rate, as adjusted, shall be effective July 1 of each year. The Purchasing Agent shall post the Rate in the Office of the Purchasing Agent and on the County's website. The adjusted Rate shall be applicable to any contract, to which this Article 4-103 applies, in effect at the time of the adjustment, or any applicable contract awarded during the twelve month period following the adjustment.

(2) Covered Service Contracts

A. The Purchasing Agent, in consultation with the County Manager, shall have the authority to determine those County contracts that are covered by the wage requirements of this Article, including the discretion to expand the limits set forth in 4-103(4)(A) consistent with Virginia law and with the concept and definition of best value.

B. The Purchasing Agent shall maintain at all times an updated list of covered service contracts in the Office of the Purchasing Agent and on the County website.

(3) Contractor Responsibilities

A. In addition to applying the Required Wage Rate to its own employees pursuant to the terms of its contract with the County, the contractor under each such public contract shall include the provisions of Article 4-103 in every subcontract so that such provisions will be binding upon each subcontractor. When a contractor undertakes a public contract subject to this Article 4-103, the contractor agrees to assume the obligation that this section's wage requirements will be observed in fulfilling the requirements of the public contract. The appropriate enforcement sanctions under Article 4-103 may be invoked against the contractor and any such subcontractor in the event of such subcontractor's failure to comply with any of the provisions of Article 4-103.

B. The Required Wage Rate shall be paid without contemporaneous or subsequent deduction or rebate of any nature, except such payroll deductions as are required or permitted by law, by a collective bargaining agreement, or by specific written authorization from an employee.

C. Publication and Notice

1. As soon as possible after the annual determination of the

Required Wage Rate, the contractor shall post the rate, in English and Spanish, on a form supplied by the Purchasing Agent, in a prominent place at its offices and at each location where its employees perform services under a County contract.

2. Within five days of an employee's request, a contractor shall provide to such employee a written statement, in English and Spanish, on a form supplied by the Purchasing Agent, setting forth the prevailing Required Wage Rate.

3. Notice of the Required Wage Rate shall be stated in the procurement solicitation.

D. Records and Reports. Each contractor and its subcontractors subject to the provisions of this Article 4-103, shall:

1. for a period of three years after the expiration or earlier termination of the applicable public contract, keep and preserve records which show wages and benefits provided by such contractor and its subcontractors to each employee assigned to perform services under such public contract. The Purchasing Agent, or his designee, shall have the authority to examine such records at reasonable times for the purpose of administering and enforcing the provisions of this Article, and to make copies of all or any parts thereof; and

2. on a quarterly basis during the term of the applicable public contract, submit to the Purchasing Agent a report, in a form acceptable to the Purchasing Agent, which shows hourly wage rates, wages and benefits provided by such contractor and its subcontractors to each employee assigned to perform services under any such public contract, and such other information as may be required by the Purchasing Agent.

E. Anti-Retaliation. No contractor or subcontractor shall discharge, reduce the compensation of, or otherwise retaliate against any employee who files a complaint with the Purchasing Agent as described below, or takes any other action to enforce the provisions of this Article.

(4) Limits on Applicability

A. Subject to the authority conferred in 4-103(2)(A) to expand the limits of applicability, the provisions of Article 4-103 shall apply only to public contracts with a value greater than \$100,000 performed on County-owned or controlled property, and shall not apply to contracts for professional services, contracts for construction, construction management contracts, design build contracts, contracts for goods, or contracts procured by emergency or by sole source. The Required Wage Rate shall not be applicable to jail inmates.

B. Article 4-103 shall not have retroactive application or effect. The wage rates in effect at the time a public contract is awarded to a contractor by the County shall remain in effect under the contract during its original term. At the time of the exercise by the County of any renewal option under a public contract, the Required Wage Rate shall be adjusted as provided above, and as adjusted, shall remain in effect during the renewal term and shall become a material provision of the renewal.

(5) Enforcement

A. Any contractor or subcontractor that fails to pay an employee the

prevailing Required Wage Rate shall be liable to the affected employee in the amount of the unpaid wage, plus interest at the judgment rate from the date originally due, and less any deductions required or permitted by law.

B. Within six months of a contractor's or subcontractor's failure to comply with the wage requirements of a public contract, an aggrieved employee may file a complaint with the Purchasing Agent. The Purchasing Agent shall investigate the complaint and in the event that the complaint has merit, the Purchasing Agent shall direct the contractor or subcontractor to make restitution forthwith. The failure of the contractor or subcontractor to comply with the directive of the Purchasing Agent shall be grounds for termination of such public contract and for debarment of the contractor or subcontractor, in accordance with Article 6.

(6) Administrative Procedures. The Purchasing Agent, in consultation with the County Manager, shall have the authority to promulgate additional departmental procedures, not inconsistent with the provisions of this Article, designed to administer and enforcement this Article.

4-104 Sole Source Procurement

A contract may be awarded without competitive bidding or competitive negotiation 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 that which is to be procured. The Purchasing Agent shall conduct negotiations, as appropriate, to obtain the best price, delivery, and terms. A record of sole source procurements shall be maintained that lists each contractor's name, the type of each contract, the item(s) procured and the identification number of each contract file.

4-105 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.

Monthly, the Purchasing Agent shall submit a list of all emergency purchases in excess of \$1,000 to the County Manager.

4-106 Small Purchases.

(1) Any contract not expected to exceed \$50,000 may be awarded, at the discretion of the Purchasing Agent, in accordance with small purchase procedures approved by the County Manager and included in the Arlington County Purchasing Manual.

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

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

B. Insofar as it is practical, no less than three businesses shall be solicited to submit quotations for purchases under \$25,000 and no less than six businesses shall be solicited to submit written quotations for purchases between \$25,000 and \$50,000.

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

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

E. All quotations solicited which are expected to exceed \$5,000 shall be submitted in writing by the businesses.

F. Purchases under \$5,000 may be made without competitive quotations.

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.

4-107 Interest in More Than One Bid and Collusion

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

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

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

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

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

4-108 Capital Improvement Projects and Professional Services Contracts

(1) No contract for a capital improvement project that exceeds \$250,000 shall be awarded without the approval of the County Board.

(2) Capital improvement projects are defined as work on real property or its improvements other than normal maintenance in excess of \$15,000, 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, which contract is performed as part of a capital improvement project and which professional services contract exceeds \$50,000, shall be awarded without the approval of the County Board.

4-109 Unauthorized Purchases

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

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

4-110 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 \$30,000 in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under Section 4-102 (1) A of this resolution. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to the Virginia Public Procurement Act, Sections 11-35 et seq.

4-111 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 the evaluation and negotiations of proposals are completed, except in the event that the County decides not to accept any of the proposals and to reopen the contract.

Bid and 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 subsection 4-101(2) shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

4-112 Employment Discrimination by Contractor Prohibited

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

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

A. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an Equal Opportunity Employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

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

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

4-113 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 Visually Handicapped or other nonprofit organizations which offer transitional or supported employment services serving the handicapped, legal services, provided that pertinent provisions of Chapter 11, (2.1-117 et seq.) of Title 2.1 of the Virginia Code remain applicable and expert witnesses and other services associated with litigation or regulatory proceedings

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.

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.

The County and the Arlington County Community Service Board, in administering public assistance programs as defined in section 37.1-1 of the Code of Virginia (aid to dependent children, auxiliary grants to the aged, blind and disabled, medical assistance, food stamps, general relief, fuel assistance, and social services) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients are not exempt from the competitive process.

4-114 Escrow Deposits on Certain Retained Funds

(1) The County, when contracting directly with contractors for public contracts of \$200,000 or more for the construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the bid document an option for the contractor to use an escrow account procedure for utilization of the County's retainage funds by so indicating in the space provided in the bid form. In the event the contractor elects to use the escrow account procedure, the "Escrow Agreement" form included in the bid document shall be executed and submitted to the County within fifteen calendar days after notification. If the "Escrow Agreement" form is not submitted within the fifteen day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

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

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

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

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

4-115 Fees for Construction Documents and Solicitation Documents.

(1) Construction Documents. A fee, as set forth below, shall be

charged to each person or entity purchasing a set of Construction Documents issued by the Office of the Purchasing Agent.

A. Definition. Construction Documents include construction drawings, technical specifications, project manuals, sketches, instructions to bidders, special and general terms and conditions, exhibits, agreement forms, escrow forms, bid forms, and related solicitation documents for construction projects.

B. Fees and Charges. The variable fee for purchase of each set of Construction Documents issued by the Office of the Purchasing Agent shall be the total of \$1.00 for each sheet of blueprints 11" X 17" or larger plus \$0.10 for each sheet of technical specifications, project manuals, sketches, instructions to bidders, special and general terms and conditions, exhibits, bid forms, and related material up to 8-1/2 x 14" included as part of the Construction Documents. A minimum of \$25.00 shall apply for the purchase of each set of Construction Documents. Any cost of shipping each set of Construction Documents shall be borne by the purchaser. No fee will be charged for producing and mailing copies of amendments or addenda to Construction Documents sent to purchasers of Construction Documents or for the initial notices advising potential bidders of the availability of Construction Documents.

C. Refunds. When the fee for each set of Construction Documents is greater than \$25.00, the cost of up to two sets is refundable upon return of those sets in useable, undamaged condition, as determined by the Purchasing Agent.

(2) Solicitation Documents for Non-construction Projects. A fixed, nonrefundable fee, as set forth below, shall be charged to each person or entity purchasing a set of Solicitation Documents issued by the Office of the Purchasing Agent.

A. Definition. Solicitation Documents include technical specifications, project manuals, sketches, instructions to bidders, special and general terms and conditions, exhibits, agreement forms, bid forms, and related material included as part of the Solicitation Documents for non-construction projects.

B. Fees and Charges. The fixed nonrefundable fee for each set of Solicitation Documents issued by the Office of the Purchasing Agent shall be \$5.00. The cost of shipping such Solicitation Documents via U.S. Mail shall be borne by the County. No fee will be charged for production and mailing amendments or addenda to Solicitation Documents sent to holders of the Solicitation Documents or for the initial notices advising potential bidders or offerors of Solicitation Documents available from the County.

(3) Exceptions. A fee for Construction or Solicitation Documents 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.

(4) Procedures. Procedures for collection of all fees and refund of variable fees, where applicable, shall be established by the Comptroller of the Department of Management and Finance.

4-116 Purchase of owner-controlled insurance in construction projects.

A. Notwithstanding any other provision of law to the contrary, the County may purchase at its expense an owner-controlled insurance program in connection with any public construction contract where the amount of the contract or combination of contracts is more than \$100 million, provided that no single contract valued at less than \$50 million shall be combined pursuant to this section. The County shall provide notice if it intends to use an owner-controlled insurance program, including the specific coverages of such program, in any request for proposal, invitation to bid, or other applicable procurement documents.

B. The County shall not require a provider of architecture or professional engineering services to participate in the owner-controlled insurance program, except to the extent that the County may elect to secure excess coverage. No contractor or subcontractor shall be required to provide insurance coverage for a construction project if that specified coverage is included in an owner-controlled insurance program in which the contractor or subcontractor is enrolled.

C. For the purposes of this section, "owner-controlled insurance program" means a consolidated insurance program or series of insurance policies issued to the County that may provide for some or all of the following types of insurance coverage for any contractor or subcontractor working on or at a public construction contract or combination of such contracts: general liability, property damage, workers' compensation, employer's liability,

pollution or environmental liability, excess or umbrella liability, builder's risk, and excess or contingent professional liability.

4-117 Drug-Free Workplace to be Maintained by Contractor

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

During the performance of this contract, 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.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Arlington County Resolution, 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.

ARTICLE 5 - DISPOSAL OF SURPLUS PROPERTY

5-101 Procedure

(1) 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 wherever practicable. The Purchasing Agent may specifically authorize, in writing, the Department of Environmental Services to sell, transfer, trade or otherwise dispose of specified surplus County motor vehicles, trailers and related equipment under his responsibility and control, provided that such sale, transfer, trade or disposal shall be conducted in accordance with the procedures in this Article. No County agency shall permit any obsolete, surplus or damaged equipment, supplies or materials to be sold, transferred, traded, loaned or otherwise disposed of except as the Purchasing Agent shall specifically authorize.

(2) County employees are not eligible to buy surplus County personal property that is disposed of in accordance with this section.

ARTICLE 6 - DEBARMENT

6-101 Authority to Debar or Suspend

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

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

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

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

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

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

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

6-102 Decision to Debar or Suspend

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

6-103 Notice of Decision

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

6-104 Finality of Decision

A decision under 6-102 (Decision to Debar or Suspend) shall be final and conclusive, unless the debarred or suspended person within 10 days after receipt of the decision protests the decision in writing to the County Manager. The County Manager shall issue a decision in writing within ten days after receipt of the protest stating the reasons for the action taken. This decision shall be final unless legal action as provided for in 7-108 of this Resolution is taken within ten days of the County Manager's decision.

ARTICLE 7 - APPEALS AND REMEDIES FOR BID PROTESTS.

7-101 Ineligibility of Bidder, Offeror or Contractor

Any bidder, offeror or contractor refused permission to participate, or disqualified from participating in public 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 ten days of receipt by instituting legal action as provided in 7-108 of this resolution.

If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief shall be restoration of eligibility.

7-102 Appeal of Denial of Withdrawal of Bid

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

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

If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

7-103 Determination of Nonresponsibility

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

If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious, 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. 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 section 7-104 of this Resolution.

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

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

7-104 Protest of Award or Decision to Award

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 Manager, 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 Manager 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 section 7-108 of this Resolution.

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 Manager 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.

When the County Manager 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 Resolution, the County Manager may enjoin the award of the contract to a particular bidder and authorize either cancellation or re-bid.

7-105 Effect of Appeal upon Contract

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

7-106 Stay or Award during Protest

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

7-107 Contractual Disputes

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

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

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 Manager.

The decision of the County Manager shall be final and conclusive unless the contractor appeals within six months of the date of the decision on the claim by the County Manager to the County Board in accordance with the requirements of sections 15.1-550 through 554 of the Virginia Code.

A contractor may not institute legal action as provided in section 7-108 of this Resolution prior to receipt of the County Board's decision on the claim.

7-108 Legal Actions

A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding on any competitive procurement, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action only in the Circuit Court of Arlington County, and in no other Court, challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious or, in the case of denial of prequalification, that the decision to deny prequalification was not based upon the criteria for denial of prequalification set forth in subsection 4-101(2).

A bidder denied withdrawal of a bid under section 7-102 of this Resolution may bring an action only in the Circuit Court of Arlington County, and in no other Court, challenging that decision, which shall be reversed only if the bidder establishes that the decision of the County was clearly erroneous.

A bidder, offeror or contractor may bring an action only in the Circuit Court of Arlington County, and in no other Court, challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, this Resolution or the terms and conditions of the Invitation to Bid or Request for Proposal.

If injunctive relief is granted, the court, upon request of the County shall require the posting of reasonable security to protect the County.

Subject to procedures in Section 7-107 of this resolution, a contractor may bring an action involving a contract dispute with the County only in the Circuit Court of Arlington County, and in no other Court. Nothing herein shall be construed to prevent the County from instituting legal action against a contractor.

**ARTICLE 8 - ASSISTANCE TO SMALL AND DISADVANTAGED
BUSINESSES**

8-101 Establishment of Programs to Expand Participation

The Purchasing Agent shall establish programs consistent with all provisions of this resolution to facilitate the participation of small businesses owned by women and minorities in procurement transactions. Such programs shall be in writing, and shall include cooperation with the State Office of Minority Business Enterprise, the United States Small Business Administration and other public or private agencies.

8-102 Discrimination Prohibited

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

ARTICLE 9 - ETHICS IN PUBLIC CONTRACTING

9-101 Purpose

The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the Comprehensive Conflict of Interests Act (sections 2.1-599 et seq.), the Virginia Governmental Frauds Act (section 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia as amended. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the Comprehensive Conflict of Interests Act.

9-102 Definitions

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

"Immediate family" shall mean 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 material financial interest as defined in the Comprehensive Conflict of Interests Act.

"Procurement transaction" shall mean all functions that pertain to the obtaining of any goods, services, insurance, construction, or intellectual property, 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.

9-103 Proscribed Participation by Public Employees in Procurement Transactions

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.

9-104 Solicitation or Acceptance of Gifts

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

9-105 Disclosure of Subsequent Employment

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

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

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

9-107 Kickbacks

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

No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the County and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

9-108 Purchase of Building Materials, etc., from Architect or Engineer Prohibited

A. 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 Virginia Code §2.1-639.2.

B. 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 entity 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 entity has a personal interest as defined in Virginia Code §2.1-639.2.

C. The provisions of subsections A and B shall not apply in case of an emergency.

9-108.1 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 County shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, the Purchasing Agent may 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 County.

9-109 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.