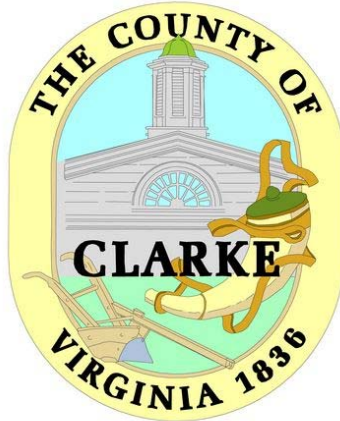


CLARKE COUNTY DEPARTMENT OF JOINT ADMINISTRATIVE SERVICES

PURCHASING DEPARTMENT

PROCUREMENT POLICIES AND PROCEDURES



CLARKE COUNTY PURCHASING DEPARTMENT

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APPENDIX
GENERAL TERMS AND CONDITIONS

ARTICLE 1: PURPOSE AND BACKGROUND

SUMMARY

- IDENTIFYING PURPOSE OF THE POLICIES AND PROCEDURES
- INTENT TO PROMOTE FAIR AND IMPARTIAL PROCURMENT WITH THE MAXIMUM DEGREE OF APPLICABLE COMPETITION
- IDENTIFYING THOSE THAT MUST FOLLOW THE POLICIES AND PROCEDURES

KEY REFERENCES OF THE VPPA: § 2.2-4300

- 1.1. Purpose. The purpose of this resolution is to establish policies and procedures that will be used in the procurement of all goods and services for Clarke County Government and Schools, herein known as “County.” By establishing clear polices and procedures, the County is embracing the fundamental obligation to ensure the general public that all procurement is being done in accordance with applicable laws and specifically, the Virginia Public Procurement Act of the Code of Virginia, herein known as “VPPA.”
- 1.2. Intent. The intent of the Virginia General Assembly is set forth in the VPPA: “To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business, and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered". Since competition is sought to the maximum feasible degree, when conducted fairly and honestly, competitive procurement does not guarantee that a preferred brand or vendor will be selected; instead, that the most favorable prices will be obtained for that quality level which is specified.
- 1.3. Who Must Follow. The VPPA applies to every “public body” in the Commonwealth. Therefore, regardless of the source of funds by which the contract is to be paid, the VPPA, Joint Administrative Board Policy, and the following polices and procedures will apply to the procurement of all goods and services by all agencies, boards, departments, authorities, and schools for Clarke County with both appropriated and activity funds. These procedures do not apply to PTA, PTO, Booster Clubs, or any other association or organization when the purchase is made directly by such organization.
- 1.4. Severability Clause. Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction of the State of Virginia, such invalidation of such part or portion of this Agreement should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

It is further agreed that if part of the Agreement is determined invalid, either party may open negotiations solely with respect to a substitute for such Article, Section, or portion.

1.5. Federal/State Laws and County Ordinances. Any Federal and State Laws and County Ordinances that are not referenced or stated in this Resolution or the County's General Terms and Conditions shall apply to all contracts/orders.

1.6 Definitions.

Blind Trust. An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

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

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

Contract. All types of County agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.

Contractor. Any person having a contract with the County or a using agency thereof.

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 fee or profit, if any.

County. The Board of Supervisors and General Government, the School Board and School System, and all other agencies, boards, and commissions under the fiscal direction of the Board of Supervisors.

County Attorney. The designated attorney contracted by the County.

Design-build contract means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

Employee. An individual drawing a salary or wages from the County, whether elected or not; any noncompensated individual performing personal services for the County or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the County; and any noncompensated individual serving as an elected official of the County.

End-User. Employee requesting the goods or services being procured.

Executive. Clarke County Board of Supervisors, Clarke County Administrator, Clarke County School Board, and the Superintendent of Clarke County Public Schools.

Financial Interest.

- a. Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$500 per year, or its equivalent;
- b. Ownership of 5% of any property or business; or
- c. Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

Gratuity. A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate Family. Defined to include natural parents, foster parents, step-mother, step-father, wife, husband, children, brother, sister, daughter-in-law, son-in-law, father-in-law, mother-in-law, sister-in-law, brother-in-law, grandparents, grandchildren, or any relative living in the household of the employee.

Incidental Expenses. GSA defines incidental expenses as (a) fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards or stewardesses and others on ships, and hotel servants in foreign countries, (b) transportation between places of lodging or business and places where meals are taken, if suitable meals cannot be obtained at the temporary duty site, (c) mailing cost associated with filing travel vouchers and payment of Government charge card billings.

Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Responsive bidder. A person who has submitted a bid that conforms in all material respects to the procurement solicitation.

Responsible bidder. A person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.”

Specification. Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

ARTICLE 2: PROCUREMENT AUTHORITY AND RESPONSIBILITY

SUMMARY

- DELEGATION OF PROCUREMENT AUTHORITY
- TEMPORARY PROCUREMENT AUTHORITY

2.1. Joint Administrative Services Board. The authority and responsibility to sign and issue Purchase Orders, contracts, payment vouchers, and/or to commit the County is vested with the Joint Administrative Services Board.

2.2. Purchasing Agent. The Joint Administrative Board recognizes the Department of Joint Administrative Services as the centralized purchasing agency of Clarke County. Therefore, the Director of Joint Administrative Services is recognized as the Purchasing Agent.

Except as otherwise provided herein, the purchasing agent shall serve as the principal public purchasing official for the County, and shall be responsible for the procurement of supplies, services, and construction in accordance with this Resolution, as well as the management and disposal of supplies.

In accordance with this Resolution, and subject to the supervision of the Joint Administrative Services Board, the Purchasing Agent shall:

- Procure or supervise the procurement of all supplies, services, and construction needed by the County;
- Exercise direct supervision over the County's central stores and general supervision over all other inventories of supplies belonging to the County;
- Sell, trade, or otherwise dispose of surplus supplies belonging to the County; and
- Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services, and construction.
- The respective Board has final authority over all procurement requests. Though, in many instances that authority is delegated, specific procurement shall be presented to the respective Board upon request.

2.3. Account Managers. The Purchasing Agent is authorized to delegate specific levels of purchasing authority and/or authorize exceptions from its procedures to specific Account Managers for specified goods and/or services. This delegation ensures that proper procurement policies and procedures are followed and the interests of the County are protected. A list of Account Managers and those who are authorized to sign is on file at the Department of Joint Administrative Services and the Purchasing Office.

The Purchasing Agent delegates the authority to all Account Managers to sign Delegated Purchase Orders and Payment Vouchers no higher than \$800 for the procurement of goods and services in accordance with the procedures identified herein. This delegated authority shall not apply to signing vendor contracts or agreements. When exercising this delegated authority, the Account Manager signs and certifies that goods and/or services are budgeted, appropriate, and necessary. Signatures shall be original and in ink. Failure to comply with procurement policies, regulations, and procedures may result in a reduction or loss of the Account Manager's delegated authority.

Account Managers are authorized to sign the following contracts within their delegated purchasing authority: Interscholastic Athletic Contests, Institutional Membership Applications, and Sports Officials Agreements. Upon request from the Account Manager, the Purchasing Agent may delegate specific authority to sign pre-approved contracts. Account Managers do not have further authority to sign vendor contracts and agreements. Only Executives, the Purchasing Agent, and the Purchasing Office have the authority to sign vendor contracts and agreements not mentioned in this Section.

The Account Manager has the authority to delegate temporary purchasing authority in circumstances where he/she may be unavailable (professional leave, annual leave, sick leave, etc...). Such delegated authority must be reflected on the Account Manager listing maintained in the Administrative Services Department. Any employee receiving temporary purchasing authority shall be responsible for ensuring that all purchases are done in accordance with the policies and procedures stated in this regulation. The Account Manager is responsible for immediately notifying the Purchasing Agent of any misuse of purchasing authority. The Purchasing Agent will determine the consequences of any misuse of purchasing authority.

An Executive or the Purchasing Agent reserve the right to limit, take away, and/or restore purchasing authority, including small and large dollar procurements, to any and all Account Managers at any time.

ARTICLE 3: PLANNING AND PREPARATION STAGE

SUMMARY

- IMPORANTANCE OF PROPER PLANNING
- SPECIFICATIONS: DEFINITION AND THEIR IMPORTANCE
- WARRANTIES AND PLANNING FOR MAINTENANCE AND REPAIRS
- ORDER SPLITTING NOT ALLOWED
- IMPORTANCE OF DELIVERY DATES

3.1. **Planning.** Proper planning is an essential element of good procurement. The primary mission of the purchasing function is to provide goods and/or services for the end-user in the proper quantity, of the proper quality, at the right time and placed needed, and at the lowest possible cost. It is therefore imperative that customers thoroughly plan for their needs. Determining in advance what is needed, how much, where, and when will assist the Purchasing Office in effectively and efficiently satisfying the end-user's needs and allow the Purchasing Office to obtain quantity discounts and possibly better service and/or pricing. It will also help the end-user understand what to include in their specifications when the ordering process begins.

3.2. **Specifications.** Once an end-user determines that there is a need to purchase an item or service, the first step is to prepare a specification. A specification is set of requirements to be satisfied by a good/service that indicates the procedure that will be used to determine whether the requirements have been satisfied.

Specifications for goods and services can either enhance or inhibit competition. So, it is important that the end-user take the time to evaluate the characteristics/performance that are absolutely required in order to fully maximize the level of available competition. Specifications should be written in clear, simple language, free of vague terms or those that could easily be misinterpreted.

Since it is legally mandated that competition be sought to the maximum feasible degree, the Purchasing Office will review end-users' specifications, for all procurements that are purchased through the Purchasing Office, to ensure that the description of the goods/services are done in a manner that will not only meet the end-user's needs, but also encourage competition.

The types of preferred specifications are:

- Performance specification – describes what and how the end product/service must function to meet a desired outcome. This is the preferred specification.
- Design specification – details the physical characteristics (appearance, size, weight, etc)
- Qualified Products List (OPL) and Samples – Products/Services are evaluated in advance through lab testing, inspections, and trials with the intent to ensure compliance with specifications or standards.
- Combination specification – A combination of any of the aforementioned specifications.
- Brand Name or Approved Equal - A brand name may be used to convey the general style, type, character, and quality of the goods desired. Any good determined to be the equal of that specified by the requester, considering quality, workmanship, economy of operation and suitability for the purpose intended, shall be accepted. A brand name cannot be considered restrictive to exclude other manufacturer's products from consideration.

Brand name or approved equal specifications may be used when the purchasing agent determines in writing that:

- a. no other design or performance specification or qualified products list is available;
- b. time does not permit the preparation of another form of purchase description, not including a brand name specification;
- c. the nature of the product or the nature of the County's requirements makes use of a brand name or equal specification suitable for the procurement; or
- d. use of a brand name or equal specification is in the County's best interests.

Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award. Unless the purchasing agent determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

If a brand name or approved equal solicitation is used, the purchasing agent shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made using the Sole Source Policies and Procedures stated in Article 9.

A proprietary specification can be used, but is not recommended and should only be used when absolutely necessary. A proprietary specification restricts the acceptable product(s) to those of one manufacturer; eliminating acceptance of "approved equals". It is therefore only appropriate to use a proprietary specification when the desired product(s) must be compatible with or is an integral component of existing equipment or products, or where pre-qualification of products is necessary. The determination for the use of a proprietary specification should be made in advance in writing and submitted along with the Purchase Requisition. In situations where a proprietary specification is justifiable, the Purchasing Office or Account Manager within delegated authority shall seek competition among distributors that carry the manufacturer's product to the fullest degree feasible.

3.3. Specification Assistance/Review: The Account Manager may find it beneficial to receive advice and/or assistance in defining requirements for specific purchase commodities. Assistance may be needed for standards which typically relate to safety and building code requirements, compatibility with existing equipment, and availability of support. For example, building renovations usually require building permits in accordance with state and local codes in order to ensure compliance with electrical and building standards. Failure to comply with such standards may result in removal of structural changes and restoration to original condition at Account Manager's expense. The following offices are available to provide input and assistance:

<u>PURCHASE TYPE</u>	<u>APPROPRIATE OFFICE</u>
Building Modifications	Maintenance
Computer Hardware & Software & Networking Components	Technology Services
Furniture	Purchasing or Maintenance
Copiers	Purchasing

All technology equipment, software, and maintenance contracts should be reviewed and approved by the IT Department before the end user submits a requisition or delegated purchase order. It is recommended that the IT Department and/or the end user contact the Purchasing Department to discuss toner cartridge inventory, pricing, and demands before purchasing any printers or fax machines.

3.4. Specification Assistance from Vendor: When the Account Manager receives advice or assistance from a vendor in preparing specifications for a purchase, the name of the sales representative and the name of the vendor providing assistance must be submitted with the Purchase Requisition. This will assist the Purchasing Office in identifying restrictive and proprietary features which could be challenged by other vendors, resulting in either delays or cancellations of the procurement process. Vendor assistance in evaluating available products and preparing specifications shall not imply or infer that such vendor will receive a Purchase Order or contract award. The Account Manager may be personally responsible for any misrepresentations of this nature.

3.5. Maintenance Services. Warranties often come with new equipment. Therefore, prior to contracting for maintenance or repair service, the Account Manager should ensure that full advantage is taken of the new equipment warranty provisions. In addition, prior to contracting for maintenance or repair service, the Account Manager is responsible for determining whether the services are currently available from departmental sources within Clarke County.

There are two types of maintenance services that can be procured. Regardless of type desired, they are both “non-professional” services and therefore, must be competitively procured. The two types of maintenance services are:

- Full Service Maintenance: This type of maintenance requires the contractor to provide scheduled services, preventive maintenance, necessary repair parts and additional service calls as required, under an annual contract. Normally, full service maintenance contracts should be used only on an exceptional basis, or when experience with a particular item or type of equipment indicates that maintenance/repair on an as-needed basis is not practical. In providing full service maintenance, contractors include in their costs all possible

contingencies that might occur during the contract period, which usually results in an unneeded expense to the County.

- “Maintenance/Repair As Needed”: This type of service is usually more cost effective, especially on newer equipment which needs few or no repairs for a considerable amount of time. The service is normally provided on a time and material cost basis. Account Managers are not authorized to execute any proposed maintenance agreement or give the contractor’s representative the impression that a contract exists. Account Managers shall forward all maintenance agreements to the Purchasing Office for execution. To ensure that there will be no lapse in coverage, Account Managers shall submit their requests to the Purchasing Office a minimum of ninety (90) days prior to the expiration of the current agreement.
- 3.6. Energy Conservation. Energy is a critical part of all County operations. The overuse of energy has resulted in many societal costs, ranging from reducing our national security to large and growing environmental stresses. Therefore, all County personnel are expected to utilize the County’s Energy and Resource Management Plan when preparing specifications for solicitations.
- 3.7. Order Splitting. The intentional splitting of a known purchase requirement into smaller lots with the intention of spreading the purchases over time or job subcomponents in order to circumvent bidding requirements is illegal and strictly prohibited. If the Purchasing Agent finds orders being intentionally split, these separate orders will be canceled and consolidated, causing further delays in the procurement process. Furthermore, delegated purchasing authority may be terminated and the Account Manager held responsible if splitting of orders is detected.
- 3.8. Delivery Dates. The intentional recording of incorrect delivery dates with the intention of receiving and paying for goods/services in a different fiscal year than when the goods/services were actually received is illegal and strictly prohibited.

GOODS/SERVICES MUST BE RECEIVED IN THE FISCAL YEAR FOR WHICH THEY ARE TO BE PAID.

Example 1: An Account Manager orders a desk and chair in the middle of June 2009 with the idea of paying for it out Fiscal Year 2009 Funds. The items arrive on July 1, 2009. Although the order was placed in June 2009, the items will have to be paid for out of Fiscal Year 2010 Funds because they were received in Fiscal Year 2010.

To add to example #1, if the company delivers the chair on June 30, 2009 and delivers the desk on July 1, 2009, the Account Manager would have to pay for the chair out of Fiscal Year 2009 Funds and the desk out of Fiscal Year 2010 Funds.

Example 2: An Account Manager hires a company to install carpet for a particular room. The Account Manager agrees to pay the company upon completion of the project in one payment. The company finishes the project on July 1, 2009. The Account Manager would have to pay for the work using Fiscal Year 2010 Funds because that was when the job was completed.

To add to example #2, an Account Manager hires a company to install carpet for a particular room. The Account Manager agrees to a progress payment system in which the company invoices the County for work as it is completed. The Company completes half of the job in June 2009 and the other half in July 2010. The Company sends the County two invoices, one for June and one for July. The Account Manager would pay the June invoice out of Fiscal Year 2009 Funds and the July

invoice out of Fiscal Year 2010 Funds because the Account Manager agreed to a progress payment system and is paying for services when they were rendered out of the appropriate Fiscal Year.

- These examples show the importance of proper planning. The Account Manager is responsible for notifying vendors and the Purchasing Office of (1) delivery time requirements and (2) invoice requirements (progress payments vs. payment upon satisfactory completion).

ARTICLE 4: PROCUREMENT METHODS - SMALL DOLLAR PURCHASES

SUMMARY

- SMALL DOLLAR PURCHASES – IDENTIFYING THRESHOLDS, AUTHORITY, AND PROCEDURES FOR DELEGATED PURCHASE ORDERS AND PURCHASE ORDERS.
- INDIVIDUAL SERVICES/HONORARIUMS

KEY REFERENCES OF THE VPPA: § 2.2-4301

4.1. Staffing and Responsibility of Purchasing Office. The Purchasing Office consists of a Purchasing Manager and an Administrative Assistant, both of whom have been provided with specific levels of authority by the Purchasing Agent. They have been assigned the responsibility of assisting all County employees in the procurement of goods and services and ensure that all procurement is done in accordance with all applicable procurement policies and procedures. Procurement of goods/services can be done through many different methods. A description of each method and when it is to be used is seen in this section.

4.2. Small-Dollar Purchases. Purchases where the estimated total cost of the goods and/or non professional services is less than \$25,000 shall be handled by the Purchasing Office or an Account Manager as stated below:

- **\$0-\$800.**

Purchase of Goods: Purchases where the total cost is estimated to be \$800 or less can be made upon determination of one fair and reasonable price. Vendor catalogs, literature, and web sites may be used as a source for this pricing. Account Managers who exercise this authority are responsible for issuing the Delegated Purchase Order, performing the receiving function by checking over the delivery and logging the date when it was received, and approving payment of the invoice by signing it and forwarding it to Accounts Payable in a timely manner with the packing slip, receipt, or any other applicable paperwork.

Account Managers may choose to have the Purchasing Office handle this type of procurement; however, a set of clear specifications must be forwarded to the Purchasing Office before the procurement process will begin. The administrative lead-time for the Purchasing Office to order at this level is approximately 3-5 days.

Purchase of Non-Professional Services*:

**According to the VPPA, non-professional services means any services not specifically identified as professional services in the definition of professional services. Professional services means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.*

Some examples of non-professional services, as defined by the VPPA, include: transportation bus charter services, security personnel, athletic officials, physical therapists, custodial services, electricians, and plumbers.

Estimated one-time or annual contracts amounting to \$800 or less may be made without competitive bidding; however, competitive negotiation is encouraged. Contracts for these services should be rotated among available sources to maintain a competitive base, as applicable. Account Managers who exercise this authority are responsible for issuing the Delegated Purchase Order, overseeing/directing the vendor to ensure the performance and end-product is acceptable, performing the receiving function by logging the dates the service was done and completed, and approving payment of the invoice by signing it and forwarding it to Accounts Payable in a timely manner along with the packing slip, invoice, or any other applicable paperwork.

Account Managers may choose to have the Purchasing Office handle this type of procurement, but must be prepared to forward a set of clear specifications to the Purchasing Office. The administrative lead-time for the Purchasing Office to order at this level is approximately 3-5 days.

Account Managers that order goods or non-professional services that total \$800 or less are responsible for following all procurement policies and procedures. An account manager found to be not following procurement policies and procedures will be held responsible and may lose his/her delegated purchasing authority.

- **\$800.01-\$25,000.00.**

Purchase of Goods: Purchases where the estimated total cost of the goods is greater than \$800 but less than or equal to \$25,000 must be made by the Purchasing Office through unsealed competitive bidding.

The Account Manager shall prepare a Purchase Requisition that includes a clear and thorough description of the goods and a date when the goods are needed. The Account Manager and an Executive must sign the requisition before forwarding it to the Purchasing Office. The Account Manager should also suggest sources where the goods/services can be procured.

The Purchasing Office, upon receipt of a signed Purchase Requisition, will solicit a minimum of three (3) competitive written or telephonic bids. The administrative lead-time may take up to fifteen (15) days. It is recommended that the Account Manager attempt to obtain three quotes and complete a Bid/Quote Tabulation Form to expedite the process. The Account Manager is also encouraged to provide the Purchasing Office with a Purchase Order number from a previous order if the item/service has been ordered in the past.

The Purchasing Office may still choose to seek additional quotes if, for example, a known low-cost source is overlooked, or the supplied comparison is not “apples to apples.”

*Purchase of Non-Professional Services**: Estimated one-time or annual contracts with a total cost of more than \$800 but less than or equal to \$25,000 must be made by the Purchasing Office through unsealed competitive bidding.

The Account Manager shall prepare a Purchase Requisition that includes a clear and thorough description of the service(s) and a date when the service(s) is needed. The Account Manager and an Executive must sign the requisition before forwarding it to the Purchasing Office.

The Purchasing Office will solicit written competitive bids from a minimum of three (3) qualified sources. Administrative lead-time to establish a service contract is approximately 2-4 weeks. It is recommended that the Account Manager attempt to obtain three (3) quotes and complete a Bid/Quote Tabulation Form to expedite the process. However, the Purchasing Office may still choose to seek additional quotes if, for example, a known low-cost source is overlooked, or the supplied comparison is not “apples to apples.”

- 4.3. Honorariums. An honorarium is a payment made to a person for their services in a volunteer capacity or for services for which fees are not traditionally required. An example of an honorarium is a guest speaker at a high school graduation. An honorarium is usually considered a thank you and a gesture of good will and appreciation. An honorarium shall not be based on an agreed upon amount. If payment is agreed upon before the services are provided, it constitutes a contractual agreement, not an honorarium.

Minor Honorarium- Any honorarium that is valued at \$50 or less shall be considered a minor honorarium. Account Managers have the authority to distribute minor honorariums.

Major Honorarium- Any honorarium that is valued over \$50 shall be considered a major honorarium. The County Board of Supervisors, the County Administrator, the School Board, and the School Superintendent are the only groups/individuals authorized to award a major honorarium.

A County employee may not accept or request a major or minor honorarium for speaking at a meeting or participating in a panel regarding a matter related to that employee’s job responsibilities or activities. However, an employee may accept reimbursement for reasonable expenses for food, travel, and lodging in return for speaking at a meeting or panel.

- 4.4. School Activity Funds. The above procedures generally apply to student activity funds except that the school retains the paperwork and issues the check.

**ARTICLE 5: PROCUREMENT METHODS -
LARGE-DOLLAR PURCHASES FOR GOODS AND NON-PROFESSIONAL SERVICES**

SUMMARY

- IDENTIFY THRESHOLD FOR IFB AND RFP REQUIREMENTS
- PROCEDURES FOR CREATING, ADVERTISING, EVALUATING, AND AWARDING AN IFB AND/OR RFP

KEY REFERENCES OF THE VPPA: §2.2-4301, §2.2-4336, §2.2-4337

- 5.1. Competitive Sealed Bidding Using an Invitation for Bids (IFB). When there is a need to procure a good or non-professional service that is expected to cost more than \$25,000 and the item/service can be clearly defined in a set of specifications, the procurement will be made by the Purchasing Office using an Invitation for Bids, herein referred to as “IFB.”

For example, the Maintenance Department is in need of a vendor to provide lawn mowing services for County property. An IFB would be used because the specifications can be clearly defined and an “apples to apples” comparison is expected.

- 5.2. Competitive Negotiations Using a Request for Proposals (RFP). When there is a need to procure a good or non-professional service that is expected to cost more than \$25,000 and the item/service can not be clearly defined in a set of specifications, the procurement will be made by the Purchasing Office using a Request for Proposals, herein referred to as “RFP.” An RFP is also recommended when the County wants vendors to offer suggestions/pricing for a product/service that will perform to meet an end-result.

For example, the Parks and Recreation Department knows that they want to offer a trip to New England, but wants the vendor to offer a specific agenda that includes specific lodging, eating, and entertainment locations. An RFP would be used because the specifications are not clear and the vendor is being asked to offer a suggestion or proposal that would meet the County’s desired end result. Another example would be the School System recognizing a need for the installation of a new security camera system at a particular school. The School System may choose to use an RFP over an IFB so that they can benefit from the knowledge and expertise of the vendors by getting a variety of suggestions/proposals that offer different pricing and functionality options through different cameras, wiring, electronics, camera locations, warranties, etc. In other words, an RFP is used when an “apples to apples” comparison is not expected, a best value evaluation process is likely to be used, and/or negotiation is needed.

CREATING AN IFB/RFP

- 5.3. Notifying Executive. When an Account Manager recognizes a need for an item or service that is expected to exceed \$25,000, the end-user will be required to discuss the need with their Executive Supervisor: the County Administrator (for items/services using government funds), the School Superintendent (for item/services using School funds), or the Sanitary Authority Board (for item/services using Sanitary Authority funds).

- 5.4. Prepare Specifications. If the Account Manager and their respective supervisor deem that there is a need and there is money budgeted for an item or service, the Account Manager will attempt to prepare specifications that clearly define the good or service that is needed and when it is needed. If

the specifications can not be easily defined, specifications that indicate a required end-result will be prepared.

The Account Manager shall include criteria that will be used in determining how the award of the bid will be made (ie. Pricing, experience, life-cycle cost, delivery schedule, workmanship, references). The request for proposals shall state the relative importance of price and other evaluation factors. The Account Manager should also include any permitting/licensing requirements for the good/service and a list of vendors that may be interested in bidding, if known. The Purchasing Office may assist the Account Manager in preparing the specifications, if needed.

5.5. Cost Estimates of Projects. Generally, the County does not publish or release cost estimates associated with an IFB/RFP. A copy of the County's capital improvement budget can be downloaded from the County's website, www.clarkecounty.gov.

5.6. Pre-Bid/Proposal Conferences. When an Account Manager feels that a meeting of vendors is needed to discuss specific areas of an IFB or RFP or to allow vendors to view a job-site in order to accurately prepare their responses, the Account Manager may request that pre-bid/proposal conference be scheduled and advertised with the IFB/RFP. The conference may be mandatory or non-mandatory at the discretion of the Account Manager and the Purchasing Office. If the Account Manager and Purchasing Office decide that no late arrivals will be permitted at pre-bid/proposal conference, it will be stated in the public notice.

A representative of the County shall be responsible for attending the conference and providing a sign-in sheet for the vendors in attendance. If the public notice stated that no late arrivals are permitted, it will be the responsibility of the County representative to ensure that no vendors arriving late are allowed to sign-in and participate in the conference.

The Account Manager or the County representative may answer questions from vendors during the conference. However, the County reserves the right to request that vendors submit questions pertaining to the documents or the proposed work in writing at the pre-bid conference. If so, answers to the questions will be distributed in an addendum no later than one calendar week after the conference.

The Purchasing Office may assist the Account Manager or the County representative with the conference, if it is requested or deemed necessary.

5.7. Drafting IFB/RFP. Once the Purchasing Office receives the specifications, it will work on preparing an IFB and will establish dates with the end-user for advertising, pre-bid conferences (if applicable), the IFB due date, awarding of the bid, and completion dates for milestones and the entire completion of the procurement. The Account Manager should suggest sources where the good/services can be procured.

All IFB and RFP solicitations will include the County's General Terms and Conditions, which can be seen in the Appendix.

5.8. Cost or Pricing Data. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$100,000 and is to be awarded by competitive sealed proposals or by sole source procurement authority. Cost or pricing data is not required when:

- the contract price is based on adequate price competition;
- the contract price is based on established catalogue prices or market prices;

- the contract price is set by law or regulation; or
- it is determined in writing by the Purchasing Agent that the cost or pricing data is not required and the determination states the reasons for such waiver.

5.9. Bid Bonds. As stated in §2.2-4336 of the VPPA, 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 § 33.1-12 of the Code of Virginia 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 that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

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.

The County reserves the right to require bond security for projects estimated to cost less than \$100,000, if the County deems it necessary. Any such bonding requirements shall be set forth in the solicitation. Bid bonds shall not be used as a substitute for a determination of a vendor's responsibility.

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

If a bid bond is required and stated in an invitation for bid and a bidder submits a bid without a bid bond, the bid will be disqualified.

5.10. Payment and Performance Bonds. As stated in §2.2-4337 of the VPPA, upon the award of any (a) public construction contract exceeding \$100,000 awarded to any prime contractor; (b) 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 a public body; (c) construction contract exceeding \$100,000 in which the performance of labor or the furnishing of materials will be paid with public funds; or (d) transportation-related projects exceeding \$250,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds:

- 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 § 33.1-12 of the Code of Virginia, such bond shall be in a form and amount satisfactory to the public body.
- A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. For transportation-related projects authorized under § 33.1-12 of the Code of Virginia and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body. "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.

One or more surety companies authorized to do business in Virginia shall execute each of the bonds and the contractor shall select the surety company. Required bonds shall be payable to the County.

The County reserves the right to require bond security and/or additional security for any project no matter what the cost, if the County deems it necessary. Any such bonding requirements shall be set forth in the solicitation. Payment and performance bonds shall not be used as a substitute for a determination of a vendor's responsibility.

After notice to the Board of Supervisors, the purchasing agent is authorized to reduce the amount of performance and payment bonds for each bond if:

- a. the contract is not a construction contract exceeding \$100,000 or a transportation-related project exceeding \$250,000 that is partially or wholly funded by the Commonwealth and;
- b. a written determination is made that states that the reduction of the bond amount is in the best interests of the County.

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

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

- 5.11. Approval of Draft. Once completing a draft of the IFB/ RFP, the Account Manager and/or end-user will be responsible for reviewing the draft to ensure that the time schedule, description of the item or service, and the evaluation criteria are acceptable.
- 5.12. 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 to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

ADVERTISING AN IFB/RFP

- 5.13. Public Notice. The public notice shall state the place, date, and time of the bid/proposal opening. All times will be local prevailing time.
- 5.14. Advertising Time and Location. Upon the final review and acceptance of the IFB/RFP, the Purchasing Office will solicit bids and proposals in accordance of §2.2-4301 of the VPPA, which states that bids will be solicited:
 - “By Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of general circulation, or both.” Note that the County Web site is considered a designated public area.

- “Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices **and** by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request.” Note that the County Web site is considered a designated public area.
- Maximum public notice is always preferred to foster accurate bids and proposals from the largest number of vendors.

In addition to soliciting the IFB/RFP in a public area or newspaper, the Purchasing Office may search the Internet, phone books, the County’s vendor list, and any other available and applicable sources in an effort to solicit vendors directly.

5.15. Vendors List. The Central Purchasing Office will maintain a vendors list that will include a list of companies and a brief description of the respective services they provide and/or the items that they sell. The County may utilize this list to notify companies of upcoming or current solicitations. However, the County is under no obligation to notify vendors of solicitations and vendors shall have no recourse for not being notified.

ADDENDA

5.16. Issuance of Addenda. Addenda will be posted on line at www.clarkecounty.gov and mailed or delivered to all that are known by the issuing office to have received a complete set of Bid Documents or to all those in attendance at a mandatory pre-bid conference, if applicable. Copies of Addenda will be made available for inspection wherever Bid Documents are on file for that purpose.

No Addenda will be issued later than two days prior to the date of receipt for Bids except an Addendum withdrawing the Invitation for Bids or one that includes postponement of the date of receipt for Bids.

Each Bidder shall ascertain before submitting a Bid how many Addenda, if any, were issued. Each Bidder shall certify on the Bid Response Form the number of additional Addenda received.

RECEIVING/RECORDING AN IFB/RFP

5.17. Recording Bids/Proposals Received. The Purchasing Office will receive all bids/proposals up to the due date stated in the respective IFB/RFP. The Purchasing Office will log the date and the time each bid/proposal was received. Bid responses to any formal IFB/RFP sent via fax or email will NOT be accepted. Quote responses may be received via fax or email providing the requesting department authorizes this in the Request for Quote.

5.18. Withdrawing a Bid/Proposal Before the IFB/RFP Due Date. Correction or withdrawal of inadvertently erroneous bids before a bid/proposal opening, or cancellation of awards or contracts based on such mistakes, may be permitted where appropriate. Mistakes discovered before the opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the IFB/RFP prior to the time set for the opening.

- 5.19. Official Time of Bid/Proposal Receipt. The clock on the Purchasing Office's wall will be used to log the time each bid/proposal is received. If a bid/proposal is received after the due date time, that bid/proposal will not be accepted.
- 5.20. Bid/Proposal Opening. Bids/Proposals shall be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB/RFP. Relevant information, as the purchasing agent deems appropriate, with the name of each bidder shall be recorded. After reading and recording the information, the public opening will be considered complete and finished. No questions will be permitted until after the County has had to time to evaluate the bids/proposals.
- 5.21. Withdrawing a Bid/Proposal After the IFB/RFP Due Date. After bid/proposal opening, corrections shall be permitted only to the extent that the vendor can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the price actually intended. After the opening, no changes in prices or other provisions of bids/proposals prejudicial to the interest of the County or fair competition shall be permitted. In lieu of bid correction, a low bidder/offeror alleging a material mistake of fact may be permitted to withdraw its bid/proposal if:
- a. the mistake is clearly evident on the face of the bid/proposal document but the intended correct bid/proposal is not similarly evident; or
 - b. the vendor submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Agent.

For public construction contracts, the bidder shall give notice in writing of his claim of right to withdraw a bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

- 5.22. Tabulation Sheet. A bid/proposal tabulation sheet containing information that was publicly read and recorded at the opening may be released to the public and the media before an award is made; however, the public and the media will not be allowed access to the actual bids/proposals until an award has been made. Questions pertaining to information contained in the bids/proposals will not be answered until after the award has been made and a purchase order is sent to the selected vendor.

EVALUATING AN IFB/RFP

- 5.23. Informalities. The County may waive informalities in bids. Informality means 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. The Purchasing Agent has the authority to make informality determinations.
- 5.24. Responsible and Responsive Vendors. The Purchasing Office will use the instructions listed in the respective IFB/RFP to determine which vendors are responsible and responsive. The Purchasing Office will then forward all pertinent information to the end-user.

§ 2.2-4301 of the VPPA defines a responsive bidder as "a person who has submitted a bid that conforms in all material respects to the Invitation to Bid" and a responsible bidder as "a person who has the capability, in all respects, to perform fully the contract requirements and the moral and

business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.”

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsive, the County will follow the procedures stated in Article 14 of this Resolution.

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsive, the County will eliminate the respective bidder or offeror from the evaluation process. When a vendor is declared non-responsive, the County will attempt to notify the vendor of the decision to eliminate them from consideration and the reasoning behind the decision.

- 5.25. IFB Evaluation Criteria. Bids shall be evaluated based on the requirements set forth in the IFB, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The IFB shall set forth the evaluation criteria to be used. No criteria may be used in an evaluation process that is not set forth in the IFB. The Purchasing Office may assist the end-user in the evaluation process, if needed.
- 5.26. RFP Evaluation Criteria. Proposals shall be evaluated based on the requirements set for the RFP. Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the negotiations of competing offerors or of any information derived from proposals submitted by competing offerors. The Purchasing Office may assist the end-user in the evaluation process, if needed.
- 5.27. Failure to meet insurance requirements. In the event that a selected vendor does not have the minimum insurance requirements, the Director of Joint Administrative Services reserves the right to reduce the insurance requirements if he/she deems that it is in the best interest of the County.
- 5.28. Preference for Virginia Products with Recycled Content and for Virginia Firms.
- Tie bids. In the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.
 - Reciprocal preference. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.
 - Recycled content. Notwithstanding the provisions of subsections 1 and 2, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.
- 5.29. Cancellation of Invitations for Bids or Requests for Proposals. An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the County. The justification shall be made part of the contract file. Each solicitation issued by the County

shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the County. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

AWARDING AN IFB/RFP

- 5.30. Purchase Requisition. After a vendor has been chosen, the Purchasing Office or the Account Manager will prepare a purchase requisition. Then, the Account Manager and the Executive Supervisor must sign the requisition.
- 5.31. Purchase Order. The Account Manager or Supervisor shall forward the requisition to the Purchasing Office. For procurements resulting from Request for Proposals, the Account Manager or Executive shall forward an evaluation/score sheet that explains why the selected vendor was chosen. After receiving a requisition with the required signatures, the Purchasing Office will prepare a Purchase Order and will forward it to the selected vendor. The forwarding of the Purchase Order will mark the official start of the contract.
- 5.32. Notifying Vendors. An attempt to notify vendors not chosen for the bid/proposal will be made either by posting a notice of award on-line or by notifying the vendors directly. Any applicable bid security will be returned to vendors that were not awarded the bid/proposal.
- 5.33. Freedom of Information Act. As stated in § 2.2-4342 of the VPPA, “except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the *Virginia Freedom of Information Act* (§ 2.2-3700 et seq.).

Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

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

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

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 B of § 2.2-4317 of the VPPA shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (a) invoke the protections of this section prior to or upon submission of the data or other materials, (b) identify the data or other materials to be protected, and (c) state the reasons why protection is necessary.

- 5.34. Reporting of Anticompetitive Practices. When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General and the County Attorney.
- 5.35. Administrative Lead Time. End-users and Account Managers should plan on an administrative lead time of 30-60 days for procurement requiring an IFB or RFP.
- 5.36. Vehicle Dollar-Threshold Exception: The County reserves the right to purchase a vehicle without using a sealed bid if the vehicle costs \$35,000 or less. However, an attempt to ensure that the vehicle is being purchased at a fair and reasonable price shall be made.

**ARTICLE 6: PROCUREMENT METHODS –
PROCURING PROFESSIONAL SERVICES**

SUMMARY

- DEFINE PROFESSIONAL SERVICES
- PROCEDURES FOR PROCURING PROFESSIONAL SERVICES
- IDENTIFY KEY DIFFERENCES BETWEEN PROCUREMENT OF PROFESSIONAL SERVICES AND NON-PROFESSIONAL SERVICES.

KEY REFERENCES OF THE VPPA: §2.2-4301

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

- 6.1. Professional Services. For the purpose of procuring professional services as defined by §11-37 of the Code of Virginia, any using agency requiring such services may procure them on its own behalf, in accordance with the selection procedures specified in this Section.
- 6.2. Legal Services. No contract for the services of legal counsel may be awarded without the approval of the County Administrator or the School Superintendent.

SCHOOL SYSTEM

As stated in § 22.1-82 of the Code of Virginia, “Notwithstanding any other provision of law, the attorney for the Commonwealth or other counsel may be employed by a school board to advise it concerning any legal matter or to represent it, any member thereof or any school official in any legal proceeding to which the school board, member or official may be a party, when such proceeding is instituted by or against it or against the member or official by virtue of his actions in connection with his duties as such member or official. All costs and expenses of such advice and all costs, expenses and liabilities of such proceedings shall be paid out of funds appropriated to the school board.”

“A school board shall, prior to instituting any legal action or proceeding against any other governmental agency in Virginia or expending any funds therefore, first secure the authorization of the governing body of the county, city or town constituting the school division or the governing bodies of the counties or cities in the school division if the division is composed of more than one county or city except as to legal actions or proceedings arising between the school board and the governing body or bodies.”

GOVERNMENT DEPARTMENTS

As stated in § 15.2-1520 of the Code of Virginia, “Notwithstanding any provision of law to the contrary, general or special, a locality, or political subdivision of such locality may employ the county, city or town attorney, or the attorney for the Commonwealth, if there be no county, city or town attorney, or other counsel approved by the governing body to defend it, or any member thereof, or any officer of the locality, or political subdivision or employee thereof, or any trustee or member of any board or commission appointed by the governing body in any legal proceeding to which the governing body, or any member thereof, or any of the foregoing named persons may be a defendant, when such proceeding is instituted against it, or them by virtue of any actions in furtherance of their duties in serving the locality or political subdivision as its governing body or as members thereof or the duties or service of any officer or employee of the locality or political subdivision or any trustee or any member of any board or commission appointed by the governing body.”

“All costs and expenses of such proceedings so defended shall be charged against the treasury of the locality, or political subdivision and shall be paid out of funds provided therefore by the governing body thereof. Further, in the event any settlement is agreed upon or judgment is rendered against any of the foregoing persons or governing body, the governing body may, in its discretion, pay such settlement or judgment from public funds or other funds or in connection with all of the foregoing may expend public or other funds for insurance or to establish and maintain a self-insurance program to cover such risks or liability.”

- 6.3. Dollar Thresholds. If the aggregate or the sum of all phases of a proposed professional service is expected to be \$25,000 or less, the procurement may be made by using a Request for Quotes. However, before procuring the services, the professional competency of the selected vendor must be checked through a request for qualifications and/or a reference check. The Purchasing Agent reserves the right to request an RFP be used for professional services estimated to cost \$25,000 or less, if he/she feels that it would be in the best interest of the County.

If the aggregate or the sum of all phases of a proposed professional service is expected to cost more than \$25,000, the procurement will be made by the Purchasing Office using a Request for Proposals, herein referred to as “RFP.”

- 6.4. Professional Services using an RFP. If an Account Manager feels that there is a need to procure a professional service in which an RFP is required, the procedures established in Article Five of this resolution will apply, with the following exceptions:
- a. The RFP shall only request vendors to submit their qualifications, performance, experience, background, and staff expertise pertinent to the proposed project. § 2.2-4301 of the VPPA states that “The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services.
 - b. In accordance with § 2.2-4301 of the VPPA, the County “shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts.”
 - c. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services.”

- d. At the conclusion of discussion, on the basis of evaluation factors published in the RFP and all information developed in the selection process to this point, the public body shall complete a score sheet or evaluation matrix to select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.
- e. The County reserves the right to use a two-envelope RFP system in which the County can ask vendors to submit a second sealed envelope containing non-binding pricing information with their proposals. However, only after a vendor has been invited to engage in individual discussions/interviews with the County can that respective vendor's second non-binding pricing envelope be opened and reviewed.

ARTICLE 7: PROCUREMENT METHODS – CONSTRUCTION AND CONSTRUCTION MANAGEMENT

SUMMARY

- DEFINE CONSTRUCTION AND CONSTRUCTION MANAGEMENT
- PROCEDURES FOR PROCURING CONSTRUCTION SERVICES
- IDENTIFYING CASES WHERE COMPETITIVE NEGOTIATION CAN BE USED

KEY REFERENCES OF THE VPPA: §2.2-4301, § 2.2-4303, § 2.2-4332

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

“Construction management contract” means 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.

7.1. Procurement of Construction Services. In accordance with § 2.2-4303 of the VPPA, construction may be procured only by competitive sealed bidding (IFB), except that competitive negotiation, through a request for proposals, may be used in the following instances upon a determination made in advance by the County and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

- For the construction, alteration, repair, renovation or demolition of buildings or structures (a) when the contract is not expected to cost more than \$1 million and (b) local governing body

selects a fixed price design-build basis or construction management basis under § 2.2-4308 of the VPPA when the contract is not expected to cost more than \$1 million.

- By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.

7.2. Dollar Thresholds. The Purchasing Agent shall have discretion to use competitive negotiation methods, such as a Request for Quotes or a Request for Qualifications, when procuring construction services estimated to cost \$25,000 or less.

7.3. Construction Management. The Purchasing Agent shall have discretion to select the appropriate method of construction management contract for a particular project. In determining which method to use, the Purchasing Agent shall consider the County's requirements, its resources, and the potential contractor's capabilities. The Purchasing Agent shall execute, and include in the contract file a written statement setting forth the facts that led to the selection of a particular method of construction management for each project. Construction contracting management methods include, but are not limited to:

- A single prime contractor, including turnkey arrangements, or
- Multiple prime contractors managed by a designated general contractor, a contracted construction manager, and/or an authorized representative or employee of the County.

7.4. Engineering Services for Construction. A contract for architectural or professional engineering services relating to construction projects may be negotiated by the County, for multiple projects provided (a) the projects require similar experience and expertise, (b) the nature of the projects is clearly identified in the Request for Proposal, and (c) 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.

7.5. Retainage on Construction Contracts. In accordance with § 2.2-4333 of the VPPA, in any public contract for construction that 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 no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

7.6. Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the purchasing agent, the Purchasing Agent is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

7.7. Insurance. In accordance with § 2.2-4332 of the VPPA, no contractor shall perform any work on a construction project for the County unless the contractor (a) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (b) provides prior to the award of contract, on a form furnished by the County, evidence of such coverage. The contractor must also provide evidence that he/she meets all the insurance requirements stated in the General Terms and Conditions of the IFB or RFP.

7.8. Prequalification. If the County decides that a prequalification of vendors is needed for a construction project, the County will follow the procedures established in Article 13 of this Resolution.

**ARTICLE 8: PROCUREMENT METHODS –
DESIGN-BUILD CONTRACTS**

SUMMARY

- REVIEW BOARD REQUIREMENTS AND EXCEPTIONS
- LICENSED ARCHITECT OR ENGINEER MUST DETERMINE THAT A DESIGN-BUILD CONTRACT IS NEEDED AND MUST PARTICIPATE IN THE DESIGN OF THE RFP.
- MUST DOCUMENT JUSTIFICATION FOR PROCURING CONSTRUCTION SERVICES THROUGH A DESIGN-BUILD CONTRACT

KEY REFERENCES OF THE VPPA: § 2.2-4308

Design-build contract” means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

8.1. Authority and Approval to use Design-Build Procurement. Although the competitive sealed bid process is the preferred method of construction procurement, the County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the County complies with the requirements of § 2.2-4308 of the VPPA and has obtained the approval of the Design-Build/Construction Management Review Board pursuant to § 2.2-2406 of the State Code of Virginia.

Approval of the Design-Build/Construction Management Review Board is not needed in cases where:

- Construction, alteration, repair, renovation, or demolition of a building or structure is not expected to cost more than \$1,000,000.

8.2. Licensed Architect or Engineer Requirement. Prior to making a determination as to the use of design-build or construction management for a specific construction project, the County shall have in its employment or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the County regarding the use of design-build or construction management for the project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals.

8.3. RFP Requirements. Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the County shall:

- Prepare a Request for Proposal that is in accordance with the policies and procedures used in preparing an RFP for non-professional services that are established in Article Five of this Resolution. The RFP shall also include and define the criteria of the construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the County determines appropriate for that particular construction project.

Except as may otherwise be approved by the Review Board, such procedures for design-build construction projects shall include a two-step competitive negotiation process. Construction management projects shall include selection procedures and required construction management contract terms consistent with the Review Board's regulations.

- Have documented in writing that for a specific construction project (a) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (b) there is a benefit to the public body by using a design-build or construction management contract; and (c) competitive sealed bidding is not practical or fiscally advantageous.
- Unless otherwise specified in the Request for Proposal, award the contract shall to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the Request for Proposal.
- The County shall provide information as requested by the Review Board to allow post-project evaluation by the Review Board, when applicable.

ARTICLE 9: OTHER PROCUREMENT METHODS

SUMMARY

- PROCEDURES FOR:
 - SOLE SOURCE PROCUREMENT
 - ORDERS REQUIRING DEPOSIT OR PREPAYMENT
 - ORDERING WITH A CREDIT CARD
 - ORDERING WITH A STORE ACCOUNT CARD
 - PURCHASING USED EQUIPMENT
 - LEASE/PURCHASE, INSTALLMENT PURCHASES
 - PURCHASING SURPLUS
 - FUND RAISERS
 - EMERGENCY SURPLUS
 - REQUIREMENT CONTRACTS
 - CENTRAL STORE
 - PROCURING CHARTER BUS SERVICES
 - PURCHASING TEXTBOOKS
 - PURCHASING CLASS RINGS, CAP AND GOWNS, YEARBOOKS, ETC.
 - TRIAL PERIODS AND VENDOR GRANTS/DISCOUNTS
 - INDIVIDUAL SERVICES
 - COMPUTER SOFTWARE UPGRADES/RENEWALS
- POOR PLANNING IS NOT A JUSTIFIABLE EXPLANATION FOR SOLE SOURCE OR EMERGENCY PROCUREMENT

KEY REFERENCES OF THE VPPA: § 2.2-4303, § 2.2-4346

9.1. Sole Source. When the Account Manager determines that only one source exists for a specific good or service with an estimated dollar value greater than \$800, a signed statement to that effect supported by factual data must be submitted to the Purchasing Agent along with the purchase requisition. Upon review of all factual information, the Purchasing Agent will approve or disapprove the purchase as a sole source procurement.

Upon a determination in writing from the Purchasing Agent that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The County shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the County awards or announces its decision to award the contract, whichever occurs first.

9.2. Orders Requiring Deposit or Prepayment. There are instances when the procurement of a good or service requires a deposit or a prepayment. For example, a deposit or prepayment may be required to procure a software agreement or magazine subscription for an upcoming school year.

In these instances, the Account Manager must receive written Executive Approval before ordering the item/service. The Executive must sign a Delegated Purchase Order or a Purchase Requisition before the order is placed.

Unless approved in advance by the Director of Joint Administrative Services, all deposits and prepayment amounts will be processed in the estimated Fiscal Year in which the goods/services are to be delivered or completed.

9.3. Credit Cards. The Purchasing Agent is authorized to distribute County Credit Cards to Account Managers. Account Managers that receive County Credit Cards shall adhere to all policies and procedures stated in the County and School Credit Card Policy and this Resolution, with specific attention to §4.2 of this Resolution. Account Managers are permitted to use their County Credit Card to procure goods/services that total \$800 or less. For goods/services that total over \$800, an Executive must approve the purchase before it is made.

Any Account Manager who has been issued a credit card for his/her department is responsible for ensuring the following:

- All transactions are for County use only;
- All transactions are logged and all receipts are kept and filed;
- The card is kept secure at all times;
- Statements are processed and forwarded to the Accounts Payable Office in a timely manner to ensure that payment is made before the due date.
- Any card that is lost or misused is reported to the Purchasing Agent immediately.

9.4. Store Account Cards and Credit Accounts. The Purchasing Office maintains charge cards with specific vendors for small-dollar purchases that are needed frequently. The Purchasing Office currently has charge cards with Costco, Staples, and Wal-Mart. The County also has credit accounts established with some local vendors, such as Berryville Auto Parts and Fisher Auto Parts. Please contact the Accounts Payable Office for a complete list of established credit accounts.

If the need to purchase goods that are available from one of these locations that total \$800 or less, the Account Manager may use one of the store account cards or an established credit account.

If using a store account card, the Account Manager shall be responsible for returning the card, receipt, and any other applicable paperwork to the Purchasing Office soon after making the purchase. The Account Manager must sign the receipt and include the account code(s) that will be used to fund the

purchase. The Purchasing Office is responsible for ensuring that employees sign for the card when it is removed and returned. The Purchasing Office will also be responsible for processing payment by forwarding the invoice along with the applicable receipts and paperwork to the Accounts Payable Office.

If using an established credit account with a local vendor, the Account Manager shall be responsible for attaching the receipt and any other applicable paperwork to a completed payment voucher and forwarding it to the Accounts Payable Office in a timely manner.

An Account Manager may purchase orders totaling \$800 or less with his/her own money and submit a request for reimbursement. However, this is highly discouraged and should only be done when the item/service cannot be purchased from an existing account and time constraints make it necessary.

- 9.5. Purchase of Used Equipment. The purchase of used furniture, supplies, and/or equipment may be negotiated by the Purchasing Office, after receipt of a written statement from a person who is technically knowledgeable of the type of equipment to be purchased. In such documentation, the Account Manager shall verify the condition of the equipment, its future usefulness, that there is only one (1) source practicably available from which the used equipment can be procured, and justification as to why the purchase would be in the best interest of Clarke County. If the estimated total purchase price exceeds \$25,000, the Purchasing Office shall publicly post a notice of intent to award a sole source procurement for used equipment for ten calendar days prior to the date of actual award. The Account Manager may be responsible for obtaining all future maintenance support.
- 9.6. Lease/Purchase, Installment Purchase. The procurement process for rental with the option to buy, lease/purchase, or installment purchase of any materials or equipment shall be performed by the Purchasing Office in the same manner as the competitive procurement of goods. **Account Managers are not authorized to sign leases or make installment purchases.**
- 9.7. Purchase of Surplus. Property no longer needed by a governmental (public) agency or jurisdiction is considered surplus. The Purchasing Office, and Account Managers within delegated authority, may purchase state or federal surplus property without competitive bidding. However, efforts, including visual and physical inspection, shall be completed to ensure that the surplus is needed and is being purchased at a fair and reasonable price. The Account Manager may be responsible for obtaining all future maintenance support.
- 9.8. Fund Raisers. The Account Manager and/or the Executive will have final discretion on all fund raising events. The Account Manager and/or the Executive are encouraged to utilize the fund raising event that is in the best interest of the County and utilize the vendor that will provide the County with the best value.
- 9.9. Emergency Purchase. An emergency may arise in order to protect personal safety, life or property, i.e., an occurrence of a serious, urgent, and threatening nature that demands immediate action to avoid termination of essential services or a dangerous situation. As § 2.2-4303 of the VPPA states, "In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The County shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs

first, or as soon thereafter as is practicable.” Note that the County Web site is considered a designated public area.

The Account Manager shall attempt to inform his/her Supervisor of the emergency before creating an obligation or contract. When possible, the Account Manager shall issue a written determination and justification establishing the basis for the emergency and the selection of the particular contractor/vendor to the Purchasing Agent or the Purchasing Office prior to creating an obligation or contract. The Purchasing Agent will approve or disapprove the purchase as an emergency procurement.

The potential loss of budgeted funds at the end of a fiscal year and/or poor planning are not considered adequate justification for an emergency purchase and will not be approved as such.

9.10. Requirement Contracts. The Purchasing Office, conjunction with Account Managers, will cooperatively define and standardize requirements in satisfaction of County needs for recurring items (e.g.; supplies, equipment, services, etc.) As a result of competition, a requirements contract will be awarded to one or more vendor sources, on a term basis, who completely satisfy the established quality and service requirements. Benefits the County will receive from consolidating and standardizing similar quality requirements include more favorable prices through volume purchasing; a reduction in procurement lead time and administrative effort; and receipt of consistent quality and service levels. If an item is available from one of these mandatory vendor sources, Clarke County should not purchase the item elsewhere except in cases of an emergency. The Purchasing Agent may approve exceptions to these mandatory sources on a case-by-case basis when customer requirements differ and/or can not be satisfied through an existing contract. Account Managers may obtain copies of any and all contracts by contacting the Purchasing Office. All Purchase Requisitions must be reviewed by the Account Manager and/or the Purchasing Office to determine whether any desired item(s) is available from one of the following mandatory sources of supply:

- Clarke County Requirements Contracts. Contracts established by the Clarke County Purchasing Office as a result of identifying and standardizing repetitive requirements.
- Commonwealth of Virginia Requirements Contracts. Contracts established by agencies of the State as a result of identifying and standardizing repetitive purchase requirements.

9.11. Central Store. In an effort to obtain better prices by buying in bulk, the Purchasing Office will maintain an inventory of frequently used office items. If an end-user requires any office supplies, equipment, or furniture that is not part of the Central Store inventory, the end-user will notify the Purchasing Office of the needed item and the Purchasing Office will solicit vendors to ensure that the end-user requirements are met and the County receives a fair and reasonable price.

To purchase an item available in the Central Store, the end user shall complete a Central Store Requisition and forward it to the Purchasing Office. The Central Store Requisition must have an account code, must be signed by an Account Manager, and must total \$800 or less. The requisition must be signed by an Executive if the order totals more than \$800. Splitting orders in order to avoid the Executive signature requirement is not allowed. Most orders are filled in one to two days.

At the end of each month or soon thereafter, the Purchasing Office will forward a Central Store Catalog to each Account Manager. The Catalog will include a list of all of the items available, the quantity of each item, and the price of each item.

At the end of each month or soon thereafter, the Purchasing Office will also forward a spreadsheet notifying each Account Manager of their department's charges for the month. Each Account Manager is responsible for analyzing the spreadsheet to ensure that all of their department's charges are accurate.

- 9.12. Licensing Agreements. In circumstances where a licensing agreement needs to be upgraded and/or renewed, the County reserves the right to renew or upgrade the licensing agreement with the current vendor if the total price of the licensing agreement is below \$25,000 and the County IT Department determines that continuing the agreement is in the best interest of the County.
- 9.13. Vendor Territorial Boundaries/Rights. In the event that a specific vendor holds a territorial boundary/right to be the only vendor that is permitted to sell or service a particular brand in our region/area, the County reserves the right to procure goods or services from the specific vendor without getting additional quotes if the total expenditure is not over \$25,000. However, the County and the Purchasing Office shall attempt to purchase items that can be replaced, upgraded, and/or serviced by a range of vendors, not one specific vendor, when possible.
- 9.14. Procuring Charter Bus Services. When there is a need to hire a vendor to provide charter bus services that are expected to cost \$25,000 or less, the employee shall solicit three vendors for availability/timing schedules and pricing options. The employee shall notify his/her account manager of the pricing options and the Account Manager shall determine which option provides the best value for the County. The Account Manager shall prepare a requisition and have an Executive sign it to ensure that funds are available and that the trip is needed and appropriate. The requisition will then be forwarded to the Purchasing Office. The Purchasing Office will ensure that a Certificate of Insurance is on file and that a Company Certification Form is completed before forwarding a Purchase Order to the selected vendor.

In rare situations where a charter bus is needed and there is not enough time to receive written quotes (example: a sports team qualifying for a Regional or State Tournament game), the County reserves the right to ask for quotes or use a vendor that has been used during the current school year. However, the employee scheduling the bus trip in this situation shall be responsible for ensuring that a Certificate of Insurance and a Company Certification Form is completed before the bus is reserved.

- 9.15. Purchasing Textbooks. In accordance with § 22.1-241 of the Code of Virginia, the County shall either enter into written term contracts or issue purchase orders on an as-needed basis with publishers of textbooks approved by the Board of Education for use in the public schools. Such written contracts or purchase orders for textbooks approved by the Board of Education shall be exempt from the Virginia Public Procurement Act.

The contract price shall not exceed the lowest wholesale price at which the book or books involved in the contract are currently bid under contract anywhere in the United States.

- 9.16. Purchasing Class Rings, Cap and Gowns, Yearbooks, Etc. In accordance with § 2.2-4346 of the VPPA, the County may authorize any of its public schools or its school division to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of a competitive negotiation, such as a Request for Quotes; competitive sealed bidding is not necessarily required for such contracts.

- 9.17. Trial Periods and Vendor “Grants”/Discounts. A vendor offering a “grant” is a new selling practice that has surfaced recently. This is when a vendor offers a grant or major discount on an item/service for a specific period of time with the hope that the end-user will put enough training and/or money into the item/service that they become reliant on the item/service and pay the full price to maintain the item/service in the future.

Due to the fact that the County encourages and is required to seek competition, accepting a vendor grant or trial period can potentially limit competition if not handled correctly.

Therefore, the following steps must be taken before any employee accepts a trial period or vendor grant for any item/service.

- a. At least three quotes must be obtained for comparable items/services, preferably an items/services with the same specifications.
- b. An Account Manager must evaluate the quotes and determine that the vendor offering the grant or trial period is offering the best value of all the vendors solicited. The Account Manager shall also consider the expected life cost of the item/service. In other words, the cost of the item/service to the County beyond the trail period or life of the grant will be considered.
- c. The Account Manager must sign a Delegated Purchase Order (for orders \$800 or less) or a Purchase Requisition (for orders totaling over \$800) and forward it, along with all quotes, to their Executive.
- d. The Executive shall certify approval of the trial period or grant by signing the respective form and forwarding it to the Purchasing Office.

By following this procedure, the County will be assured of not investing additional funds and time into an item/service that can be procured from another source at a more competitive price.

The County will not be obligated to purchase an item/service or continue using an item/service once the trial period time or vendor grant has expired.

- 9.18. Individual Services. Individual Services are services that are provided to benefit individuals (generally children) with specific needs including: counseling, psychological therapy, speech therapy, special education, interpreting services, sign-language services, and other similar services, as approved.

Every effort shall be made to ensure that best value is received for such services. However, it is recognized that continuity of service, timeliness of service, staff qualifications, and other intangibles may create a preference for a firm, even if that firm cannot be shown empirically to be best value. Therefore, such services may be contracted without quotes, bids, or proposals if:

1. They receive the standard requisition approvals.
2. The contracts for such services conform to Clarke County standard terms and conditions.
3. The Account Manager shows reasonable effort to locate best value.

9.19. Computer Software Upgrades/Renewals. When there is a need to renew or upgrade an existing computer software package or system, the County reserves the right to purchase the renewal or upgrade from the current vendor being used if the County deems the price is fair and reasonable and it is in the best interest of the County to continue using that specific type of software. The County also reserves the right to solicit quotes or bids for alternate software packages when the time for renewal or upgrade arrives.

**ARTICLE 10: PROCUREMENT METHODS –
COOPERATIVE PROCUREMENT AND PUBLIC PROCUREMENT UNIT CONTRACTS**

SUMMARY

- AUTHORIZATION FOR COUNTY TO PARTICIPATE IN COOPERATIVE PURCHASING AGREEMENTS.
- TO UTILIZE OR “RIDE” A PUBLIC BODY’S CONTRACT, THE CONTRACT MUST SPECIFY THAT THE PROCUREMENT WAS BEING CONDUCTED ON BEHALF OF OTHER PUBLIC BODIES.
- POOR PLANNING IS NOT A JUSTIFIABLE EXPLANATION FOR SOLE SOURCE OR EMERGENCY PROCUREMENT

KEY REFERENCES OF THE VPPA: § 2.2-4304

10.1. Definitions used in this Article:

- Cooperative Purchasing means procurement conducted by, or on behalf of, more than one Public Procurement Unit, or by a Public Procurement Unit with an External Procurement Activity.
- External Procurement Activity means any buying organization not located in this State which, if located in this State, would qualify as a Public Procurement Unit. An agency of the United States is an External Procurement Activity.
- Local Public Procurement Unit means any county, city, town, and any other subdivision of the State or public agency of any such subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, and any nonprofit corporation operating a charitable hospital.
- Public Procurement Unit means either a Local Public Procurement Unit or a State Public Procurement Unit.
- State Public Procurement Unit means the Office of the Chief Procurement Officer and any other Purchasing Agency of this State.

10.2. Cooperative Procurement. The purchasing agent is authorized to participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more Public Procurement Units or External Procurement Activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended State Public Procurement Unit contracts that are made available to Local Public

Procurement Units. The purchasing agent is authorized to participate in National Public Procurement Units, such as U.S. Communities.

- 10.3. Authority Provided by the VPPA. The County is granted cooperative procurement authority under §2.2-4304 of the VPPA, which states “any public body may participate in, sponsor, conduct, or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, or the U.S. General Services Administration, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for architectural and engineering services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies.”
- 10.4. Authority to Purchase from Sources other than State Contract Vendor. In instances where a particular good or non-professional service can be procured through State Contract, the Purchasing Agent and the Purchasing Office reserve the right to solicit other sources to determine if better pricing and service options are available. The Purchasing Agent and Purchasing Office reserve the right to purchase an item/service from a source other than the State Contract Vendor, without getting additional quotes, if the item/service is less expensive and deemed to be in the best interest of the County.

ARTICLE 11: CONTRACT ADMINISTRATION

SUMMARY

- TYPES OF CONTRACTS PERMITTED
- PROCEDURES FOR CREATING AND ESTABLISH CHANGE ORDER
- A FIXED-PRICE CONTRACT MAY NOT BE INCREASED BY MORE THAN \$25,000 WITHOUT BOARD APPROVAL.

- 11.1. Contract Clauses and Their Administration. All County contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The purchasing agent, after consultation with the County Attorney, may issue clauses appropriate for supply, service, or construction contracts, addressing among others the following subjects:
- the unilateral right of the County to order in writing changes in the work within the scope of the contract;
 - the unilateral right of the County to order in writing temporary stopping of the work within the scope of the contract;
 - variations occurring between estimated quantities of work in contract and actual quantities;
 - defective pricing;
 - liquidated damages;
 - specified excuses for delay or nonperformance;
 - termination of the contract for default;
 - termination of the contract in whole or in part for the convenience of the County;
 - suspension of work on a construction project ordered by the County; and

- site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract (a) when the contract is negotiated, (b) when the contractor provides the site or design, (c) or when the parties have otherwise agreed with respect to the risk of differing site conditions.

The purchasing agent, after consultation with the County Attorney, may establish standard contract clauses for use in County contracts. If the purchasing agent establishes any standard clauses addressing the subjects set forth in this Section, such clauses may be varied provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

11.2. Types of Contracts.

General Authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interests of the County may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the County than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

Multi-Term Contracts. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests 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.

Prior to the utilization of a multi-term contract, it shall be determined in writing that (a) estimated requirements cover the period of the contract and are reasonably firm and continuing and (b) such a contract will serve the best interests of the County by encouraging effective competition or otherwise promoting economies in County procurement.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

Multiple Source Contracting. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the County's actual requirements is limited by the provision of Uniform Commercial Code Section 2-306(1).

A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the policies and procedures stated in this Resolution. Multiple source awards shall not be made when a single award will meet the County's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to

utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:

- the County shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and
- the County shall reserve the right to take bids separately if the purchasing agent approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the County.

If a multiple source award is anticipated prior to issuing a solicitation, the County shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation. The purchasing agent shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

11.3. Types of Contract Clauses that County shall attempt to remove from Vendor Contracts. Some, but not all, examples of clauses that may delay or stop a contract from being signed are shown below:

- a. The County shall attempt to remove late fee clauses.
- b. The County shall attempt to remove one-time fee clauses, such as administrative, restocking, and documentation fees.
- c. The County shall attempt to remove clauses involving the adjustment of payments due on a fixed-price contract (without prior County approval).
- d. The County shall attempt to remove clauses that provide the vendor with an automatic renewal of a contract unless County notification is provided within a particular time frame.
- e. The County shall attempt to remove clauses where the County is asked to reimburse a vendor for its expenses to refurbish equipment or materials that have been leased by the County to ensure that the vendor can resell or release the item.
- f. The County shall attempt to remove clauses where the County is asked to provide a security deposit.
- g. The County shall attempt to remove any clauses that disclaim warranties.
- h. The County shall attempt to remove any clauses that put time constraints on the County's right to file legal action.
- i. The County shall attempt to remove indemnity clauses from all contracts. If the complete removal of an indemnity clause can not be agreed upon, the County shall ensure that the maximum amount of liability is satisfactory. The County also may

attempt to include its own indemnity clause in which the County's maximum amount of liability is clearly stated.

- j. The Clarke County Treasurer must approve any contract that allows a vendor to directly debit/charge the County's bank account.
- k. All Court proceedings shall be held in the Commonwealth of Virginia.
- l. The Clarke County Treasurer must approve any contract that allows a vendor to directly debit/charge the County's bank account.
- m. All Court proceedings shall be held in the Commonwealth of Virginia.

When a specific contract clause can not be agreed upon, the County reserves the right to end negotiations with the respective vendor and begin negotiations with another vendor.

11.4. Company Certification. Before any vendor conducts work on School Property, the vendor must complete a Company Certification Form that certifies that:

- a. any employee of the company who will have direct contact with students on school property during regular school hours or during school-sponsored activities while providing services called for in the contract have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and
- b. the contractor does not, and shall not during the performance of the contract for goods and services, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

A copy of the Company Certification Form can be found in the Appendix.

11.5. Accounting System. The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated. The proposed contractor's accounting system shall be adequate to allocate costs in accordance with generally accepted cost accounting principles.

11.6. Price Adjustments. Adjustments in price resulting from the use of contract clauses required by 11.1 of this Section shall be computed in one or more of the following ways:

- by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- by unit prices specified in the contract or subsequently agreed upon;
- by the costs attributable to the events or saturations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- in such other manner as the contracting parties may mutually agree; or
- in the absence of agreement by the parties, by a unilateral determination by the County of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the County, and subject to the provisions of Article 12.

11.7. Change Orders. A change order is a document used to make additions, deletions or cancellations to Delegated Purchase Orders and Purchase Orders. The change order form can be found in the Appendix.

Change Orders are required, regardless of cost, to decrease or increase encumbered funds, or to notify the company and/or warehouse of additional or canceled items.

Account Managers are responsible for preparation and distribution of Change Orders on Delegated Purchase Orders.

The Purchasing Office is responsible for preparation and distribution of Change Orders on Purchase Orders. Changes to Purchase Orders are initiated by the Account Manager. The Account Manager shall prepare a change order that clearly describes the change, the reason for the change, and the cost of the change. After preparing the change order, the Account Manager will sign the change order and have an Executive sign it as well. Then, the Account Manager will forward the completed change order to the Purchasing Office.

Note that unit price changes are not allowed if the item(s) purchased are on contract or were obtained as a result of telephonic or written competitive bids, unless the Purchasing Agent approves of the change and documents the reason for approving such change. A fixed-price contract may not be increased by more than twenty-five percent of the amount of the contract or \$25,000, whichever is greater, without Board approval.

11.8. Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed \$100,000. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

- unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
- it is determined in writing by the purchasing agent that the cost or pricing data is not required, above, may be waived, and the determination states the reasons for such waiver.

A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the County and the contractor.

- 11.9. Contract Monitoring. The Account Manager of the department/school receiving the good or service shall be responsible for ensuring that the good or service is delivered or performed in accordance with the terms and conditions of the contract. The Account Manager shall also be responsible for ensuring that all invoices are correct and in accordance with the terms and conditions of the contract before approving any invoice to be paid.
- 11.10. Right to Inspect Plant. The County may, at reasonable times, inspect the part of the plant, place of business, or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the County.
- 11.11. Right to Audit Records. The County may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to Section 5.7 of this Resolution to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for 3 years from the date of final payment under the contract.

The County shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the prime contract and by the subcontractor for a period of 3 years from the date of final payment under the subcontract.

ARTICLE 12: FEDERAL PROVISIONS

SUMMARY

- CONTRACT CLAUSES TO INCLUDE WHEN A CONTRACT IS BEING FUNDED BY OR IN PART BY ASSISTANCE FROM A FEDERAL AGENCY.

- 12.1. Contractor Records. If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:
- a. requiring the contractor and subcontractors at any tier to maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
 - b. requiring the contractor and subcontractor at any tier to provide to the County, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.
- 12.2. Patents. If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

- a. giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to any discovery or invention arising out of the contract; and
- b. requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

12.3. Copyrights and Rights in Data. If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

12.4. Notice of Federal Public Policy Requirements. If the contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as:

- a. equal employment opportunity;
- b. the Davis-Bacon Act;
- c. fair labor standards;
- d. energy conservation;
- e. drug-free work places;
- f. environmental protection; or
- g. other similar socioeconomic programs,

then, the purchasing agent shall include contract provisions giving the contractor notice of these requirements, and where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

12.5. Buy-American Clause. If a contract is being funded in whole or in part by assistance from a federal agency, then the County shall adhere to the appropriate "Buy American" requirements of the federal agency providing the assistance.

12.6. Energy Conservation. If a contract is being funded in whole or in part by assistance from a federal agency, then the County's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163).

12.7. Small, Women-Owned, and Minority Business Enterprises. If a contract is being funded in whole or in part by assistance from a federal agency, the purchasing agent shall take affirmative steps to assure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items.

Some Examples of Affirmative Steps:

- a. including qualified small, women-owned, and minority businesses on solicitation lists;
- b. assuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
- c. when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, women-owned, and minority business participation;

- d. where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
- e. using the services and assistance of the Small Business Administration, or the Office of Minority Business Enterprise of the Department of Commerce, as required.

ARTICLE 13: PREQUALIFICATION

SUMMARY

- PROCEDURES FOR PREQUALIFYING PROSPECTIVE CONTRACTORS FOR PARTICULAR TYPES OF SUPPLIES, SERVICES, INSURANCE, OR CONSTRUCTION.

KEY REFERENCES OF THE VPPA: §2.2-4317

- 13.1 Prequalification. In accordance with § 2.2-4317 of the VPPA, the County reserves the right to request prospective contractors prequalify for particular types of supplies, services, insurance or construction. The County may require that consideration of bids or proposals be limited to prequalified contractors.
- 13.2 Application Form. 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. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of the VPPA.
- 13.3 Advance Notice of Deadline. In all instances in which the County 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.
- 13.4 Notice of Prequalification Determination. 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 County shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

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

- a. 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 the contractor to perform the contract resulting from such procurement;

- b. The contractor does not have appropriate experience to perform the construction project in question;
- c. The contractor or any officer, director or owner thereof has had judgments entered against him/her 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;
- d. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the County has not contracted with a contractor in any prior construction contracts, the County 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 prequalification 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;
- e. The contractor or any 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.
- f. 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;
- g. The contractor failed to provide to the public body in a timely manner any information requested by the public body relevant to subdivisions a through f of this subsection.

ARTICLE 14: APPEALS AND REMEDIES

SUMMARY

- A VENDOR HAS NO LATER THAN TEN CALENDAR DAYS AFTER THE AWARD OR THE ANNOUNCEMENT OF THE DECISION TO AWARD, WHICHEVER OCCURS FIRST, TO SUBMIT A PROTEST.
- PROCEDURES FOR SUSPENDING, DEBARRING, AND/OR DECLARING A VENDOR INELIGIBLE.

KEY REFERENCES OF THE VPPA: §2.2-4357, § 2.2-4358, § 2.2-4359

14.1 **Ineligibility.** In accordance with §2.2-4357 of the VPPA, any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the County shall (a) notify the bidder in writing of the results of the evaluation, (b) disclose the factual support for the determination, and (c) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the vendor may submit rebuttal information challenging the evaluation. The County shall issue its written determination of disqualification or

ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the County shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the County shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten calendar days after receipt of the notice by invoking administrative procedures meeting the standards of the VPPA or by instituting legal action as provided in the VPPA.

- 14.2. Appeal of denial of withdrawal of bid. In accordance with §2.2-4358 of the VPPA, a decision denying withdrawal of bid shall be final and conclusive unless the bidder appeals the decision within ten calendar days after receipt of the decision by invoking administrative procedures meeting the standards of the VPPA or by instituting legal action as provided in the VPPA.

If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of the VPPA, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low 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 not (a) an honest exercise of discretion, but rather was arbitrary or capricious or (b) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

- 14.3. Determination of nonresponsibility. In accordance with § 2.2-4359 of the VPPA, following public opening and announcement of bids received on an Invitation to Bid, the County shall evaluate the bids based upon the requirements set forth in the invitation. At the same time, the County shall determine whether the apparent low bidder is responsible. If the County, so determines, then it may proceed with an award to the lowest responsive and responsible bidder. If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:

- Prior to the issuance of a written determination of nonresponsibility, the County shall (a) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.
- Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The County shall issue its written determination of responsibility based on all information in the possession of the County, including any rebuttal information, within five business days of the date the public body received the rebuttal information. At the same time, the County shall notify, with return receipt requested, the bidder in writing of its determination.
- Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten calendar days after receipt of the notice by invoking administrative procedures meeting the standards of the VPPA or by instituting legal action as provided in the VPPA.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

The unreasonable failure of a bidder or offeror to supply promptly information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. The final determination shall be made part of the contract file.

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

- 14.4. 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 Director of Joint Administrative Services, no later than ten (10) calendar days after the award announcement or decision to award, whichever occurs first.

Protestors are urged to seek resolution of their complaints by initially informing the purchasing agent in writing of the protest. The purchasing agent is authorized to settle any protest regarding the solicitation or award of a County contract, or any claim arising out of the performance of a County contract, prior to an appeal to the Board of Supervisors or the School Board, as the case may be, or the commencement of an action in a court of competent jurisdiction.

Public notice of the award or the announcement of the decision to award shall be given by the County in the manner prescribed in the terms or conditions of the IFB or RFP. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten calendar days after posting or publication of the notice of such contract. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection, then the time within which the protest shall be submitted shall expire ten calendar days after those records are available for inspection by such bidder or offeror or at such later time as provided in this section.

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 or designated official shall issue a decision in writing within ten calendar days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten calendar days of receipt of the written decision by invoking administrative procedures meeting the standards of the VPPA or by instituting legal action as provided in VPPA. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

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 County 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 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.

Where the County, an official designated by the County, or an appeals board 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 other unethical act, the County, designated official or appeals board may enjoin the award of the contract to a particular bidder.

In addition to any other relief, when a protest is sustained and the protesting bidder of offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder of offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

14.5. Stay of award during protest. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest or the filing of a timely legal action as provided in the VPPA, no further action to award the contract shall 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.

14.6. Contract Claims. All claims by a contractor against the County relating to a contract, except bid protests, shall be submitted in writing to the purchasing agent for a decision. The contractor may request a conference with the purchasing agent on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or revision.

The decision of the purchasing agent shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights.

The purchasing agent's decision shall be final and conclusive unless, within 10 calendar days from the date of the receipt of the decision, the contractor mails or otherwise delivers a written appeal to the County or commences an action in a court of competent jurisdiction.

If the purchasing agent does not issue a written decision regarding any contract controversy within 10 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

14.7. Suits on Payment Bonds-Right to Institute. Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material, shall have the right to sue on the payment bond for any amount due that person. However, any person having a contract with any subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the County or district in which the construction contract was to be performed.

Any person may request and obtain from the County a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

14.8. Debarment. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing agent, after consulting with the County Attorney, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. After consultation with the County Attorney, the purchasing agent is authorized to 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 be for a period not to exceed three months. The causes for debarment or suspension include:

- a. conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- b. conviction under state or federal statutes of 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 which currently, seriously, and directly affects responsibility as a County contractor;
- f. conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- g. violation of contract provisions, as set forth below, of a character which is regarded by the purchasing agent to be so serious as to justify debarment action:
 1. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 2. 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;
- e. any other cause the purchasing agent determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for any cause listed in this Resolution; and
- f. for violation of the ethical standards set forth in Article 16 of this Resolution;
- g. For violation of the Federal Immigration Reform and Control Act of 1986.
- h. For having any employee on School Property that has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of any person.

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 its rights concerning judicial or administrative review. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

A decision under to debar or suspend shall be final and conclusive, unless fraudulent, or the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the Board of Supervisors or the School Board as the case may be, or commences a timely action in court in accordance with applicable law.

- 14.9. After Award: Violation of Applicable Law. If, after an award, the purchasing agent, after consultation with the County Attorney, determines that a solicitation or award of a contract was in violation of applicable law, then:
- a. if the person awarded the contract has not acted fraudulently or in bad faith:
 1. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the County; or
 2. the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
 - b. if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interests of the County.

ARTICLE 15: RECEIVING

SUMMARY

- PROCEDURES FOR ACCEPTING A DELIVERY
- PROCEDURES FOR INSPECTING A DELIVERY
- VENDOR/PRODUCT COMPLAINTS.

15.1. Delivery. Most goods and packages are delivered to the Central Purchasing Office. However, there are some instances, where goods and packages are delivered to specific Schools or Government Departments in order to reduce the amount of moving of a large or delicate item and/or to meet space or time requirements.

Regardless of where the good or package is delivered, it is the responsibility of the person accepting the delivery to:

- Visually inspect the goods/packages and inform the deliverer of any defects or problems.
- Log the following information: date the item was delivered, how many cartons were delivered, the name of the delivery carrier.

15.2. Inspection. For orders received at Purchasing, Purchasing staff will open the packages to determine if the order is complete or partial, and to ensure that the items are not damaged. For orders received at a School or Government Office, the Account Manager will be responsible for ensuring that the order is evaluated to determine if it is complete and whether the goods are in acceptable condition. Information regarding the completeness and quality of the order will be documented on the packing slip or appropriate purchasing form.

15.3. Vendor/Product Complaints. When a vendor delivers goods or performs services that are unsuitable or inferior to the needs and expectations of the end-user, the Purchasing Office should be promptly notified so that appropriate action can be taken to rectify/cure the situation. The Purchasing Office will work with the end-user to resolve the issue and will document all results.

ARTICLE 16: PAYMENT AND FILING

SUMMARY

- PROCEDURES FOR PROCESSING PAYMENT FOR AN INVOICE
- ACCOUNTS PAYABLE DEADLINES.

16.1. Orders Totaling \$800 or less. When an Account Manager or the Purchasing Office receives an invoice for an order/contract that totals \$800 or less, the invoice will be paid by forwarding one of the following items to the Accounts Payable Office:

- (1) A copy of the Delegated Purchase Order stapled behind the original invoice. The following information shall be documented on the Delegated Purchase Order: Invoice Number, Amount of the Invoice, Account Code, and whether the invoice is a partial or complete payment. Account Managers should also attach a packing slip that documents when the order was received, how many cartons were received, if applicable, and who made the delivery.
- (2) A payment voucher stapled in front of the original invoice. The payment voucher shall include an account code and the dollar amount to be paid. An Account Manager must sign and date the payment voucher for it to be valid. Payment vouchers will not be valid over \$800.00.

16.2. Orders Totaling Over \$800. Invoices, packing slips, and other applicable paperwork for goods totaling more than \$800.00 shall be forwarded to the Purchasing Office.

For services totaling over \$800.00, the Account Manager shall indicate approval for the invoice by signing his/her name on the invoice and dating it before forwarding it to the Purchasing Office.

The Purchasing Office will process the invoice by stapling a copy of the Purchase Order behind the invoice and forwarding it to the Accounts Payable Office. The Purchase Order shall include the date the invoice was processed for payment, the invoice number, a clear labeling of the amounts to be charged to each account code, and whether the order is complete or partial.

16.3. Accounts Payable Office. The Accounts Payable Office processes payments twice a month. Please check with the Accounts Payable Specialist to determine the deadlines for your respective department/school.

Account Managers with credit cards are responsible for ensuring that their credit card statements are processed and forwarded to the Accounts Payable Office in a timely manner to ensure that payment is made before the due date.

16.4. Late Fees. The County does not pay late fees. The County shall attempt to negotiate with vendors to have all late fee clauses removed from all contracts.

- 16.5. Tax-Exempt. The County is a tax-exempt organization. Therefore, the County should not pay sales tax on any goods or services. Tax-exempt forms can be obtained from the Accounts Payable Office or the Purchasing Office.
- 16.6. Contract File. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the County in a contract file by the purchasing agent.
- 16.7. Retention of Procurement Records. All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules promulgated by the Library of the Commonwealth of Virginia.

ARTICLE 17: SURPLUS REMOVAL AND SURPLUS AUCTION

SUMMARY

- PROCEDURES FOR REMOVING, SELLING, AND DISPOSING OF SURPLUS
- NO EMPLOYEES OR IMMEDIATE FAMILY MEMBERS MAY PARTICIPATE IN A SURPLUS AUCTION
- PROFIT FROM SURPLUS

- 17.1. Notifying Account Manager. When an employee recognizes that an item no longer functions properly or is no longer needed, he/she will notify their Account Manager.
- 17.2. Account Manager Evaluates Item. The Account Manager will evaluate the item to determine its condition and usefulness.
- 17.3. Notification by Account Manager. If the Account Manager feels that the item may be able to be repaired, he/she will contact the Maintenance Department. If the Account Manager feels that the item is beyond repair and/or is no longer needed, he/she will fill out a Surplus Disposal Form and forward it to the Purchasing Office.
- 17.4. Purchasing Office Evaluates Storage Capacity. The Purchasing Office will determine the amount of storage space required for the item(s) and will make the appropriate steps to ensure that space is available and reserved for the item. The Purchasing Agent and the Purchasing Office reserve the right to dispose of an item, instead of storing it, if the item is deemed not to have nominal worth or value.
- 17.5. Maintenance Department Notification and Pick-Up. The Purchasing Office will contact the Maintenance Department and notify them of the item(s) to be removed and the location for where it is to be stored. The Maintenance Director will prepare a work order and will have someone pick up the item.

MAINTENANCE WILL NOT PICK UP SURPLUS UNLESS IT HAS RECEIVED APPROVAL FROM THE PURCHASING OFFICE.

- 17.6. Surplus Transfer Process. Before an item can be advertised or sold at a public auction, the item shall be offered to the County Government and School System. An Account Manager who is interested in a specific item of surplus shall make an official request for the item by completing a Surplus Transfer Request Form and forwarding it to the Purchasing Office. The Purchasing Agent

and Purchasing Office will decide which department receives specific items by evaluating the need, proposed use, and the date the item was requested. Government requests for Government surplus will supercede School requests for Government surplus. Likewise, School requests for School surplus will supercede Government requests for School surplus.

- 17.7. Surplus Auction. Items that are not requested as part of the Surplus Transfer Process will be eligible to be sold in a public auction. After receiving quotes, the Purchasing will procure the services of an auctioneer and will establish a date for a public auction.

The Purchasing Office will supply a list of items to be auctioned to the Auctioneer and those items will be advertised in a public newspaper, trade magazine, or on the County web site. Only items appearing in the advertisement will be eligible to be sold at the auction.

All items will be sold as-is and the County will provide no guarantee or warranty for the condition of any surplus item. **NO EMPLOYEES OR THEIR IMMEDIATE FAMILIES MAY PARTICIPATE IN THE SURPLUS AUCTION OR RECEIVE GOODS FROM SOMEONE WHO DOES.**

The Purchasing Office reserves the right to use an on-line auction if it is deemed to be in the best interest of the County.

- 17.8. Proceeds from Auction. Any and all profit from a surplus auction will be divided proportionally based upon the origin of the item(s) sold and the proceeds collected from the sale of the item(s) will be returned to the non-departmental revenue account in the relevant fund.

- 17.9. Items Not Sold at Auction. Any items not sold at auction will be offered to employees through a sealed bid process. The Purchasing Office will notify employees of the items available for sale and will establish a deadline for the receiving and recording of all sealed bids. The employee that submits the highest bid will be awarded the item. In the event of a tie, the employee who submitted the earliest bid will be awarded the item. Any items that are not sold through surplus auction or the employee sealed bid process shall be disposed of by the Purchasing Office.

ARTICLE 18: ETHICS IN PROCUREMENT

SUMMARY

- POLICIES THAT PROHIBIT UNETHICAL BEHAVIOR AND THE CONSEQUENCES OF UNETHICAL BEHAVIOR

- 18.1. Ethical Violations. To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth below. Criminal, civil, and administrative sanctions against employees or nonemployees which are in existence on the effective date of this Resolution shall not be impaired.

18.2. Vendor Relations. All transactions relating to the expenditure of appropriated and activity funds require the highest degree of public trust. To eliminate conflicts of interest or inappropriate standards of conduct, County personnel are not authorized to accept a discount or gift from a vendor based on their employment status with the County, unless the discount or gift is offered and made known to all County personnel.

Account Managers should exercise caution when dealing with vendors to ensure that proper procurement procedures and policies are followed.

18.3. Employee Conflict of Interest. It shall be unethical for any County employee to participate directly or indirectly in a procurement contract when the County employee knows that:

- a. the County employee or any member of the County employee's immediate family has a financial interest pertaining to the procurement contract; or
- b. any other person, business, or organization with whom the County employee or any member of a County employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

A County employee or any member of a County employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

18.4. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal.

18.4. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. This prohibition against kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation.

18.5. Prohibition Against Contingent Fees. It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

18.6. Contemporaneous Employment Prohibited. It shall be unethical for any County employee who is participating directly or indirectly in the procurement process to become or to be, while such a County employee, the employee of any person contracting with the governmental body by whom the employee is employed unless it be disclosed as stated in 18.7.

18.7. Waivers from Contemporaneous Employment Prohibition and Other Conflicts of Interest. The County may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- a. the contemporaneous employment or financial interest of the County employee has been publicly disclosed;
- b. the County employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and
- c. the award will be in the best interests of the County.

18.8. Use of Confidential Information. It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

18.9. Sanctions. The County may impose any one or more of the following sanctions on a County employee for violations of the ethical standards in this Article:

- a. oral or written warnings or reprimands;
- b. suspension with or without pay for specified periods of time; or
- c. termination of employment.

The Board of Supervisors and/or the School Board may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:

- a. written warnings or reprimands;
- b. termination of contracts; or
- c. debarment or suspension as provided in "Authority to Debar or Suspend"

18.10. Recovery of Value Transferred or Received in Breach of Ethical Standards. The value of anything transferred or received in breach of the ethical standards of this Resolution by a County employee or a nonemployee may be recovered from both County employee and nonemployee.

Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

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

ARTICLE 19: TRAVEL, MEAL, AND MILEAGE REIMBURSEMENTS

SUMMARY

- DEPENDING ON THE EXPECTED COST OF THE TRIP, THE EMPLOYEE MUST HAVE ACCOUNT MANAGER OR EXECUTIVE APPROVAL BEFORE DEPARTING.
- SUMMARY OF TRAVEL EXPENSES THAT ARE ELIGIBLE OR UNELIGIBLE FOR REIMBURSEMENT
- PROCEDURE FOR REQUESTING REIMBURSEMENT FOR MILEAGE, MEALS, AND PUBLIC TRANSPORTATION

- 19.1. Planning for Travel. The County will reimburse employees traveling on official County business for reasonable and necessary expenses involved. Travel expenses are open to the public and must be able to sustain the test of public review. When planning and paying for travel, economy, discretion, and necessity are of special importance. The use of County funds to accommodate personal comfort, convenience, and taste is not permitted.

Travelers must keep receipts and accurate records of all expenses to ensure correct reporting and submission of travel reimbursements.

The County will not act as a fiscal agent for expenses incurred by family members traveling with employees.

- 19.2. Travel Requisition. All travel requires the completion of a Travel Requisition. Minor travel is travel clearly totaling \$800 or less for all expenses, and which includes no lodging or fare expense. Major travel is travel likely to cost more than \$800, or which includes lodging or fare expense. An Account Manager must approve minor travel in advance. An Executive must approve major travel in advance.

The Requisition shall include a reason for the travel, a hard-copy confirmation of any and all hotel and airline expenses. The Requisition shall also include an estimate of meal expenses, conference/seminar registrations, and any other travel costs.

- 19.3. Advance Payments. Advance payments for direct-billed hotel/motel expenses are discouraged. Use of a County Credit Card is encouraged to secure room confirmations. Actual advance payments for travel will not be reimbursed prior to the trip.

- 19.4. Meal Expenses. Generally, meals that do not involve an overnight stay are not reimbursable. When staying overnight, the employee is permitted to request reimbursement for meals and incidental expenses incurred during the trip. The rates allowed for meals and incidental expenses are set per the U.S. General Services Administration. To view the rates, log onto www.gsa.gov and click on “per diem rates” and then click on Virginia. Please note that there are lower amounts allotted for first and last day stays. The Executive is authorized to approve exceptions to the GSA per diem rate provided that any exception authorized by the Executive is to be documented in writing setting forth a reasonable explanation for the exception.

To be reimbursed for any meal, the employee must have an Account Manager sign a completed Reimbursement Voucher and attach a copy of the receipt and other applicable paperwork.

One exception when meals may be reimbursed when an overnight stay is not involved is business meals. For the expense of a business meal to be reimbursed, the Reimbursement Voucher must include an Account Manager signature, the original receipt, a summary of the business that was discussed, and a list of all the individuals involved in the meal. The County employee initiating and sponsoring the cost of the business meal must have prior authorization from an Executive to spend County funds for a business meal.

- 19.5. Incidental Travel Expenses. Examples of Incidental Travel Expenses that are eligible for reimbursement include:

- a. Taxes and surcharges paid by the traveler for lodging.
- b. Business telephone calls and facsimiles made for official business purposes and paid for by the traveler may be claimed on the travel reimbursement voucher. A full explanation must be stated on the reimbursement voucher accompanied by supporting documentation. Individuals

using personally owned cellular telephones may be reimbursed for business calls when shown to be cost beneficial or out of necessity. In this case, an itemized cell phone statement must be included. In the event that free minutes are used for business calls, reimbursement is not permitted.

- c. Tolls and parking fees are reimbursable when paid for by the traveler in the course of conducting official County business.

Examples of Incidental Travel Expenses that are not eligible for reimbursement include:

- a. Lost or stolen articles
- b. Alcoholic beverages
- c. Damage to personal vehicles, clothing, or other items
- d. Services to gain entry to a locked vehicle
- e. Movies charged to hotel bills
- f. All expenses related to the personal negligence of the traveler, such as fines
- g. Entertainment expenses
- h. Personal vehicle towing charges
- i. Expenses for children, spouses, and companions while on travel status.

The above list is not all-inclusive. Travelers should use prudent judgment and remember that all travel expenses are open to the public and must be able to sustain the test of public review.

- 19.6. County-Owned Vehicles. When an employee is scheduled to travel for official County business, he/she is highly encouraged to contact the Maintenance Department to reserve one of the County-owned vehicles. The employee is expected to provide the Maintenance Department with as much advanced notice as possible.

When using a County-owned vehicle, the employee is expected to use the Fuel Card in the glove compartment of the vehicle or as provided by the Maintenance Department to fill the vehicle with fuel, as needed. Although rare, if an employee is in area that does not have a location that accepts the fuel card, the employee may use their personal funds for fuel and may request reimbursement fuel upon their return. However, the employee will be required to submit a copy of the receipt, a description of their trip, and the reasoning for not using the County Fuel Card with his/her request.

If possible, the employee should fill the County-owned vehicle with fuel before returning it to the Maintenance Department.

- 19.7. Mileage Reimbursement. When traveling for official County business, employees are permitted to use their personally owned automobile when a County-owned vehicle is not available, or when the use of a personally owned vehicle is cost-beneficial to the County. Employees electing to use their personal vehicle may request reimbursement for mileage by completing a Mileage Reimbursement Form. The Mileage Reimbursement Form shall include a description of the trip and the number of miles traveled for business purposes only. The Mileage Reimbursement Form shall be submitted to the Accounts Payable Department within thirty (30) days from the completion of the trip.

Mileage shall be reimbursed at the rate established by the Commonwealth of Virginia Department of General Services.

- 19.8. Public Transportation. Public transportation travel includes rental car, plane, train (including subway or metro), bus, taxi/shuttle, or other "for hire transportation." Public transportation rates must not

exceed those for tourist or coach class accommodations. Receipts for such expenses must be retained for submission with the travel voucher.

For taxis, metro rail, subway, shuttle vans, and other forms of “for hire transportation,” receipts are required only if the reimbursement claim exceeds \$10.00.

Public transportation from place of lodging to other locations is only eligible for reimbursement if it is for official County business purposes.

APPENDIX

Included in this appendix are procurement forms and documents that shall be used by all County employees. The County’s General Terms and Conditions are also included in this appendix. This appendix is a part of this resolution.

1. General Terms and Conditions.

These terms and conditions are a part of this resolution and all vendors must adhere to them.

2. Procurement Forms will be redesigned and added to the appendix once the aforementioned policies and procedures have been approved.

COUNTY OF CLARKE
GENERAL TERMS AND CONDITIONS

These General Terms and Conditions are required for all sealed and unsealed written solicitations issued by the County of Clarke. The County of Clarke includes the Clarke County Board of Supervisors and General Government, the Clarke County School Board and School System, and all other agencies, boards, and commissions under the fiscal direction of the Clarke County Board of Supervisors.

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- A. **COMPETITION INTENDED:** It is Clarke County’s intent that this document permits competition. It shall be the prospective bidder’s responsibility to advise the Director of Joint Administrative Services in writing if any language requirements, specifications, etc., or any combinations thereof, inadvertently restrict or limit the requirements stated in this document to a single source. The Director of Joint Administrative Services must receive such notification not later than ten (10) calendar days prior to the date set for the bids to close.
- B. **INQUIRIES:** If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder shall contact the Director of Joint Administrative Services, no later than seven (7) days before the due date.

Any changes after the bid is advertised will be official only when submitted in writing and signed by the Director of Joint Administrative Services.

Any and all changes will be made by addendum and sent to all recorded holders of the bid documents.

All addenda issued will become part of the bid.

For a list of specific persons available to discuss this bid, see Points of Contact.

- C. **INCONSISTENCY IN PROVISIONS:** In the event there are inconsistencies between the General Terms and Conditions and any other schedules contained herein, the first shall govern.
- D. **COOPERATIVE PURCHASING:** It is the desire of Clarke County that all other jurisdictions be allowed to “ride the bid” and enter in to a contract with any successful Contractor chosen by Clarke County, based on mutual agreement between successful Contractor(s) and other jurisdiction(s).

If this bid is used as a cooperative IFB issued by Clarke County, the following would apply:

1. Clarke County is acting as the “Contracting Agent” for the jurisdictions concerned and shall not be held liable for any costs, damages, etc., incurred by any other jurisdiction.
2. Each jurisdiction will execute its own purchase orders with the Contractor(s) and be invoiced accordingly, in accordance with each jurisdiction’s purchasing policy and procedures.
3. For copies of other jurisdictions’ terms and conditions, Contractor must contact them.

- E. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Article 6 of the Virginia Public Procurement Act (VPPA) as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all contracts solicited or entered in to by Clarke County. A copy of these provisions may be obtained from the Director of Joint Administrative Service upon request.

By submitting their bids, all bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or Subcontractor in connection with their bid, and that they have not conferred to any public employee having official responsibility for this 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 was exchanged.

The provisions referenced above supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia Conflict of Interest Act (§2.2-3100 et. Seq.). The provisions apply not

withstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act. To the extent that violations of the ethical standards of conduct constitute violations of the Code of Virginia, they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth.

By entering into a contract, the bidder conveys, sells, assigns, and transfers to Clarke County, all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the anti-trust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by Clarke County, under said contract.

Consistent and continued tie bidding could cause rejection of bids by Clarke County and/or investigation for anti-trust violations.

- F. **TAX-EXEMPT STATUS:** Since municipalities and school districts are exempt from all direct federal and state taxes, Clarke County is tax-exempt and will provide a tax-exempt certificate upon request.
- G. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed by the laws of the Commonwealth of Virginia. All Court proceedings shall be held in the Commonwealth of Virginia. The contractor shall comply with all applicable federal, state and local laws, rules, ordinances, and regulations.
- H. **FIRM BID PRICING:** Clarke County requires the bid price remains firm for ninety (90) days after date of the bid opening, during which period bids may not be withdrawn. "Discount from list" bids are not acceptable unless requested.
- I. **TIE BIDS:** The Joint Administrative Services Department and all other departments of Clarke County making purchases of services, supplies, material or equipment, shall, in making purchases of same, give preference to services, supplies, material or equipment sold by Clarke County and the State of Virginia vendors, in that order, in all cases of tie bids, quality and service being equal.
- J. **ANTI-DISCRIMINATION:** Every individual or firm bidding must be an Equal Opportunity Employer as defined by federal law and the Code of Virginia, Virginia Public Procurement Act as amended: "Section 2.2-4311, Employment Discrimination by Contractor Prohibited" which reads:

All public bodies shall include in every contract of more than \$10,000 the following provisions:

- 1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

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

K. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting their bids, bidders certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

L. DEBARMENT STATUS: By submitting a bid, the bidder certifies that they are not currently debarred by the Federal Government, Commonwealth of Virginia, or by any City, Town, or County from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

M. RESPONSE FORM PROCEDURES:

1. Response Forms must be signed and received at the Purchasing Office, before the opening hour.
2. Sealed Bids and Sealed Proposals offered by fax and or telephone will not be accepted.
3. Quotes offered by fax will be accepted; however, telephone quotes will not be accepted.
4. All Response Forms delivered in person must be delivered to the Purchasing Office.
5. In submitting a Response Form, the bidder signifies that he/she is fully informed as to the extent and character of the supplies, materials, equipment and/or services necessary to perform this project in accordance with all documents constituting the bid and will comply satisfactorily with the bid documents.
6. Further, the bidder signifies that when necessary he/she has inspected the site on which the work shall be done and is aware of all conditions affecting the execution of the work contained within the bid documents. Failure to visit the site will in no way relieve the successful bidder from performance under the contract.
7. All information required by the solicitation must be supplied to constitute a responsive bid. All information submitted including prices should be typed so as to insure legibility. However, the bidder's signature shall be handwritten in ink in order for the bid to be considered.
8. The bidder expressly warrants that the price or prices quoted herein are not the result of an agreement or understanding expressed or implied with any other bidder or bidders.
9. By submitting a Response Form, bidders certify that they are not currently debarred by Clarke County from submitting bids, proposals or quotes on contracts, nor are they an agent of any person or entity that is currently debarred by Clarke County from submitting bids, proposals or quotes.

10. Any Response Form submitted with corrections must have corrections initialed by the person who signed the original. The unit price will prevail in the event an error is made in computing totals.
11. All prices for materials are to be F.O.B. Destination, prepaid and allowed. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order, commodity description, and quantity.
12. The successful bidder shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or his/her right, title, or interest therein, or his/her power to execute written consent of Clarke County.
13. Bidders are encouraged to have a representative at the bid opening if information on the bids submitted is desired.
14. Bids will be opened at the advertised local prevailing time, but Clarke County officials reserve the right to take sufficient time to study the various bids and then make the awards. Bids will be awarded as promptly as possible after the closing date.
15. Unless otherwise specified, Response Forms must be submitted in triplicate and will be received at:

Clarke County Purchasing Office
 129 Ramsburg Lane
 Berryville VA 22611

16. Sealed Bid envelopes must be clearly marked, with the IFB number and project name, on the outside, lower left corner as follows:

Sealed Bid – Do Not Open
IFB # _____
PROJECT NAME _____

17. Sealed Bids will be received up to the advertised time and date at the Clarke County Purchasing Office and at the appointed time will be opened publicly and read allowed. The clock on the Purchasing Office's wall will be used to log the time each bid/proposal is received.
18. If more than one bid opening is held the same date, bids will be opened in succession as numbered and lettered (A, B, C, etc.).
 - a. Late bids will not be accepted. Bids received in the mail will be returned to the bidder unopened (provided properly sealed and marked as indicated above). Failure to comply with conditions set forth herein may result in removal of bid (all/part) from consideration.
 - b. All contracts, unless otherwise specifically stated, shall provide materials/commodities in new, first class condition, fresh stock, latest model, design or pack. This shall include any containers suitable for shipment, usage and/or storage unless otherwise indicated within this document. Verbal agreements to the contrary will not be recognized.

- c. Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specifications and which are clearly necessary for the completion of such equipment and its appurtenance shall be considered a part of such equipment although not directly specified or called for in the specifications.
- d. By law, Clarke County will not receive any materials, products, or chemicals that may be hazardous to an employee's health, unless accompanied by a Material Safety Data Sheet (MSDS) when products and/or chemicals are received. **MSDS must be submitted to Clarke County in triplicate.**

N. BID WITHDRAWALS

1. A bidder, for contract other than for public construction, may request withdrawal of his/her bid before award, by submitting a written request to the Director of Joint Administrative Services.
2. After bid/proposal opening, corrections shall be permitted only to the extent that the vendor can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the price actually intended. After the opening, no changes in prices or other provisions of bids/proposals prejudicial to the interest of the County or fair competition shall be permitted. In lieu of bid correction, a low bidder/offeror alleging a material mistake of fact may be permitted to withdraw its bid/proposal if:
 - a. the mistake is clearly evident on the face of the bid/proposal document but the intended correct bid/proposal is not similarly evident; or
 - b. the vendor submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Director of Joint Administrative Services.
3. If bid bonds were tendered with the bid, Clarke County may exercise its right of collection. No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder in which the ownership of the withdrawing bidders is more than five percent (5%).
4. If a bid is withdrawn under the authority of this paragraph, the lowest qualified remaining bid shall be deemed to be the low bid.
5. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the Director of Joint Administrative Services.
6. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor or to 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.

O. AWARD SPECIFICS

1. Clarke County reserves the right to accept, reject and/or cancel all or any part of any Response Form, and to waive minor technicalities.
2. Awards will be made to the lowest responsive and responsible bidder(s), provided services and quality are considered to be equal to (or better than) that offered by other bidders, and the right is reserved to make the award to other than the lowest bidder when it is in the best interest of Clarke County. Further, Clarke County will be the sole judge as to conditions affecting such interest.
3. Clarke County may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the work and/or furnish the item(s), and the bidder shall furnish to Clarke County all such information and data for this purpose, as may be requested.
4. Clarke County reserves the right to inspect bidder's physical facilities before award to satisfy questions regarding the bidder's capabilities.
5. Clarke County further reserves the right to reject any bid, proposal or quote if the evidence submitted by, or investigations of, such bidder fails to satisfy Clarke County, that such bidder is properly qualified to carry out the obligations of the contract and to complete the work and/or furnish the item(s) contemplated therein.
6. Clarke County reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services confirm to the specification.
7. A contract shall not be assignable by the Contractor, in whole or part, without the written consent of Clarke County.
8. Unless otherwise specified, the right is reserved to make award based on all work and/or items, or on any part of work/items, whichever is in the best interest of Clarke County.
9. The right is reserved to cancel any contract and reject deliveries of any products or materials not in accordance with the specifications. All returns or exchanges will be at the Contractor's expense. Clarke County shall be the sole and final judge.
10. The Contractor shall pay all sales, consumer, use and other similar taxes for work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.
11. The right is reserved to decide when a deviation from specifications is of sufficient consequence, when measured against the purpose for which the item will be purchased, to justify including it for consideration. Clarke County shall be the sole and final judge.
12. Should the delivery of any part of an order be delayed beyond time specified, or should any portion of the products delivered fail to comply with the specifications, Clarke County shall have the right to buy at market price for immediately delivery, and any excess cost of same over the price named herein is to be paid by the Contractor or deducted from any money due him/her thereafter.

13. If delay is foreseen, the Contractor shall give thirty (30) days prior written notice to the Director of Joint Administrative Services. Clarke County has the right to extend delivery date if reasons appear, in the sole discretion of Clarke County, to be valid. The Contractor must keep Clarke County advised at all times of status of order.
14. Default in promised delivery (without accepted reasons) or failure to meet specifications, authorizes the Joint Administrative Services Department to purchase supplies, equipment or services elsewhere and charge the full increase in cost and handling to the defaulting Contractor.
15. **The Joint Administrative Services Department will permit NO SUBSTITUTIONS OR CANCELLATIONS after award without written approval.**
16. When Clarke County notifies a bidder, in writing, of its acceptance of the bidder's price(s) of any goods or services, this notification will signify the effective date of the acceptance of this contract.
17. Cancellation of a contract for any reason may result in the removal of the successful bidder's name from the mailing list for future bidding. If the cancellation is for non-performance of the contract, such cancellation may be at the successful bidder's expense.
18. All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Office before final payment on the contract is made. Unless otherwise stated, the manufacturer's standard warranty applies.

P. JUSTIFICATION FOR TERMINATION

1. Clarke County may terminate this contract in whole or part whenever the Director of Joint Administrative Services shall determine that such a termination is in the best interest of Clarke County.
2. Any such termination shall be effected by delivery to the Contractor at least ten (10) business days prior to the termination of a written Notice of Termination specifying the extent to which performance shall be terminated and the date upon which such termination becomes effective.
3. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit or unperformed services.
4. If any work or service hereunder is in progress, but not completed as of the date of termination, then this contract may be extended upon written approval by Clarke County until said work or service is completed and accepted.
5. Possible reasons for termination are:
 - a. Termination for Convenience – in the event this contract is terminated or cancelled upon request and for the convenience of Clarke County, without the required ten (10) days advance written notice, then Clarke County shall negotiate reasonable termination costs, if applicable.

- b. Termination for Cause – termination by Clarke County for cause, default or negligence on the part of the Contractor shall be excluded from the foregoing provision; termination costs, if any, shall not apply. The ten (10) days advance notice requirement is waived in the event of Termination for Cause.
- c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years – when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be cancelled and the Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

Q. DRUG FREE WORKPLACE: Every individual or firm bidding must be an Equal Opportunity Employer as defined by federal law and the Code of Virginia, Virginia Public Procurement Act as amended: “Section 2.2-4312, Drug-free Workplace to be Maintained by Contractor; Required Contract Provisions” which reads:

All public bodies shall include in every contract over \$10,000 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 this chapter, 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.

R. INSURANCE REQUIREMENTS: By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the contractor and any subcontractors, at any tier, will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

1. Please note the below insurance requirements are guideline minimum amounts only, and, depending on the goods/services required, may be increased or decreased. **Any changes in insurance requirements will be referenced within this document, under Specific Reference to General Terms and Conditions.**

2. The successful bidder shall procure, maintain and provide proof of insurance coverage for injuries to persons and/or property damage as may arise from, or in conjunction with, the work performed on behalf of Clarke County by the bidder, his/her agents, representatives, employees or Subcontractors.

3. Actual proof of coverage as contained herein shall be submitted to Clarke County Purchasing Office within five (5) days after award has been made and before any work starts, services are provided, or goods are delivered.

4. The bidder shall maintain such coverage for the duration of the contract period for “occurrence” policies. “Claims made” policies must be in force, or that coverage purchased, for three (3) years after contract completion date.

5. The Certificate of Insurance shall be properly completed as follows:

a. It shall name “Clarke County, Virginia, its officers, officials, employees, volunteers and agents (as their interest may appear)” as “Certificate Holder”.

b. It shall list “Clarke County, Virginia, its officers, officials, employees, volunteers and agents (as their interest may appear) added as an additional insured” under “Description of Operations/Locations/Vehicles/Exclusions Added by Endorsement/Special Provisions”.

c. This provision may not apply to Professional Liability or Workers’ Compensation/Employers’ Liability.

6. The Certificate of Insurance shall be for a minimum of the following:

a. **Worker’s Compensation- Statutory requirements and benefits.** Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the County of Clarke of increases in the number of employees that change their workers’ compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.

b. **Employer’s Liability - \$100,000**

c. **General Liability – per occurrence \$1,000,000.00**

This coverage shall be as broad as: Comprehensive General Liability endorsed to include Broad Form, Bodily Injury and Property Damage, Personal and Advertising Injury, and Commercial General Liability form including Products/completed Liability Operations.

d. **Automobile Liability – per occurrence \$1,000,000.00**

Coverage shall be sufficient to cover all vehicles owned, used or hired by the bidder, his/her agents, representatives, employees and/or Subcontractors.

e. Product Liability \$1,000,000.00

Refer to General Liability above.

f. Professional Liability/Errors and Omissions Coverages are required when soliciting those services as follows:

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

7. The Contractor's insurance company shall provide thirty (30) days written notice to Clarke County before any cancellation, suspension, or void of coverage, in whole or part, where such provision is reasonable.
8. **Contractor shall be responsible for making sure any/all Subcontractors each provide a Certificate of Insurance and meet all of Clarke County's insurance requirements.**
9. All deductibles or self-insured retention shall appear on the certificate(s) and shall be subject to approval by Clarke County. At the option of Clarke County, either the insurer shall reduce or eliminate such deductible or self-insured retention; or the bidder shall be required to obtain a bond guaranteeing payment of losses and related claims expenses.
10. Failure to comply with any reporting provisions of the policy(ies) shall not affect coverage provided to Clarke County, its officers/officials, agents, employees and volunteers.

11. The insurer shall agree to waive all rights of subrogation against Clarke County, its officers/officials, agents, employees and volunteers for any act, omission or condition of premises by which the parties may be held liable by reason of negligence.
12. The bidder shall furnish Clarke County with the Certificate(s) of Insurance including endorsements affecting coverage. The certificates are to be signed by a person authorized by the insurance company(ies) to bind coverage on its behalf. If executed by a broker, a notarized copy of authorization to bind or certify coverage must be attached.
13. All insurance shall be placed with insurers maintaining an A.M. Best rating of no less than A: VII. If A.M. Best rating is less than A: VII, approval must be received from the Director of Joint Administrative Services.
14. All coverage designated herein shall be as broad as the Insurance Services Office ((SO) forms filed for use with the Commonwealth of Virginia.

S. BOND REQUIREMENTS

1. **Any necessary bonds will be referenced within this document, under Specific Reference to General Terms and Conditions** and the requirements are outlined below.

- a. **Bid Bonds** – Each bidder shall accompany their bid with a bid bond or certified check in the amount of five percent (5%) of the amount bid. Such bond shall serve as liquidated damages and be forfeited in the event the successful bidder fails to enter into the contract.

If a bid bond is required and stated in an invitation for bid and a bidder submits a bid without a bid bond, the bidder will be considered non-responsive and shall be disqualified.

- b. **Performance and Payment Bonds** – The successful Contractor shall furnish both a performance and payment bond, each in the amount equal to one hundred percent (100%) of the contract as security for the faithful performance of this contract.

c.) One or more surety companies authorized to do business in Virginia shall execute each of the bonds and the contractor shall select the surety company. Required bonds shall be payable to the County.

3. **Any other special bonding requirements will be listed under Specific Reference to General Terms and Conditions.**

4. All bonds shall be obtained at bidder's expense and shall be included in the bid price.

T. PERMITS AND LICENSES

1. Clarke County will attempt to make reference, within this document, to any necessary permits and licenses under Special Terms and Conditions. However, the contractor is ultimately responsible for ensuring that he/she has all the required permits and licenses.

2. For convenience purposes only, the following most commonly required permits and licenses are listed with their respective contact information.

Clarke County Building Permit

Per instructions from Building Department Office
Phone 540-955-5112

Clarke County Business License

Per instructions from Commissioner of the Revenue's Office
Phone 540-955-5108

Virginia State Contractor's License

Per VA Board for Contractors Statutes Title 54.1, Chapter 11
Phone 804-367-8500

Town of Berryville Since some of the county and school property is located within the limits of the Town of Berryville, Contractor is advised to check with the Town office to see what permits and licenses might be required for those projects. The Town Office phone number is 540-955-1099.

3. Clarke County does not waive any fees involved in securing Clarke County (or any other) permits. Any required permits and licenses are to be obtained at bidder's or Contractor's expense and to be included in the bid price.

4. All permit/license numbers must be indicated on or attached to the Response Form of this document.

U. PAYMENTS TO CONTRACTOR

1. Contractor warrants having clear title to all materials and supplies by submission of invoice being presented for payment.

2. All submitted invoices shall reflect the contract number and/or purchase order number, a detailed itemized breakdown of all charges, and (unless otherwise specified) shall be delivered to:

**Clarke County Accounts Payable
524 Westwood Road
Berryville VA 22611**

(v) 540-955-6171 (f) 540-955-0676

- a. All submitted invoices shall show payer identification as follows:
- b. Individual Contractors shall provide social security number.
- c. Proprietorships, Partnerships and/or Corporations shall provide their federal employer identification number.

d. Payment will be made thirty (30) days after receipt of proper invoice, or thirty (30) days after receipt of all goods or inspection and acceptance of work, whichever is later.

e. Payment shall not preclude Clarke County from making a claim for adjustment on any item later found not to have been in accordance with the contract.

f. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the County of Clarke shall promptly notify the contractor as to those charges that it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification.

V. PAYMENTS TO SUBCONTRACTORS

1. Any mention of the term “subcontractor(s)” in this section shall include any and all sub-tier Contractors.

2. A Contractor awarded the contract under this solicitation is hereby obligated to:

a. Pay the Subcontractor(s) within seven (7) days of the Contractor’s receipt of payment from Clarke County for the proportionate share of payment received for work performed by the Subcontractor(s) under the contract or to notify Clarke County and the Subcontractor(s), in writing of the Contractor’s intention to withhold payment and the reason.

b. Pay the Subcontractor(s) interest at the rate of one percent (1%) per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from Clarke county, except for amounts withheld as stated above.

c. The date of mailing of any payment by U. S. mail is deemed to be payment to the addressee.

d. A Contractor’s obligation to pay an interest charge to a Subcontractor may not be construed to be an obligation on the part of Clarke County.

e. By submitting an invoice, the contractor agrees that all subcontractors have been paid or will be paid and the Contractor shall be responsible for resolving any and all claims submitted by the subcontractors.

W. DISPUTES

1. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) calendar days after final payment; however, written notice of the Contractor’s

intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based.

2. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amount agreed due in the final payment.

X. PROTEST OF AWARD OR DECISION TO AWARD

1. Any bidder or offeror who desires to protest the award or decision to award a contract shall submit such protest, in writing, to the Director of Joint Administrative Services, no later than ten (10) calendar days after the award announcement or decision to award, whichever occurs first.
2. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror.
3. Written protest shall include basis for the protest and relief sought.

Y. USE OF BRAND NAMES

1. Unless otherwise provided within this document, 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/or quality of the article desired, and any article which Clarke 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.
2. Any catalog, brand name or manufacturer's reference used in the bid invitation is descriptive – ***not restrictive*** – it is to indicate the type and quality desired.
3. Bids on brands of like nature and quality will be considered.
4. If other than brand specified is offered, illustrations and complete description (manufacturer, brand or trade name, catalog number, etc.) must be submitted with bid. Please note that samples may be required.
5. If bidder makes no other bid and takes no exception to the specifications or reference data, the bidder will be required to furnish brand names, numbers, etc., as specified.
6. Bidders, by their signature and submission of bid, certify that any/all item(s) bid upon meet and/or exceed the specifications.

Z. PAYMENT OF CLARKE COUNTY TAXES

1. All bidders located or owning property in Clarke County shall assure that all real and personal property taxes are **paid before submitting a bid.**
2. Clarke County will verify payment of all real and personal property taxes by the successful bidder before the award of any contract.

AA. NOTICE OF REQUIRED DISABILITY LEGISLATION COMPLIANCE

1. Clarke County is required to comply with state and federal disability legislation: §504 of The Rehabilitation Act (RA) of 1973, The Americans with Disabilities Act (ADA) for 1990 Title II, and the Virginians with Disabilities Act (VDA) of 1990.
2. Specifically, Clarke County may not, through its contractual and/or financial arrangements, directly or indirectly, avoid compliance with Title II of the ADA, Public Law 101-336, which prohibits discrimination on the basis of disability by public entities.
3. Subtitle A protects qualified individuals with disability from services, programs, or activities of all state and local governments. It extends the prohibition of discrimination in federally assisted programs established by the RA of 1973 Section 504 to all activities of state and local governments, including those that do not receive federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the ADA. The VDA of 1990 follows the RA of 1973, Section 504.

BB. CONTRACT QUANTITIES

1. The quantities specified in this document are estimated only, and are given for the information of bidders and not for the purpose of bid evaluation. They do not indicate the actual quantity to be ordered, since such volume will depend upon requirements that develop during the contract period.
2. Quantities shown shall not be construed to represent any amount which Clarke County shall be obligated to purchase under the contract, or relieve the Contractor of obligation to fill all orders placed by Clarke County.
3. No bid will be considered which stipulates that Clarke County shall guarantee to order a specific quantity of any item.

CC. DEVIATIONS: If there is any deviation in any bid from that prescribed in the Scope of Services, the appropriate line in the Scope of Work/Services shall be ruled out and the substitution clearly indicated and submitted with the Bid Response Form. Clarke County reserves the right to determine the responsiveness of any deviation(s).

DD. SAFETY

1. All Contractors and Subcontractors performing services for Clarke County are required to and shall comply with all Occupational Safety and Health Administration (OSHA), state and county Safety and Occupational Health Standards and any other applicable rules and regulations.
2. Also, all Contractors and Subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.

- EE. **HOLD HARMLESS CLAUSE:** Bidders shall provide that, during the term of this contract, including any warranty period, for the firm indemnifying, defending and holding harmless of Clarke County, its officials, employees, agents, representatives thereof, from all suits, actions or claims of any kind, including attorney's fees, brought on account of any personal injuries, damages or violations of rights, sustained by any person or property in consequence of any neglect in safeguarding contract work or on account of any act or omission by the Contractor or Contractor's employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. The bidder also agrees that this clause shall include claims involving infringement of patent or copyright.
- FF. **REFERENCES:** All bidders shall include with their Response Form a list of current references for whom comparable work has been performed or to whom comparable goods have been provided. A separate attachment has been provided and must be completed entirely and returned with the bid. Failure to include Reference Form may be ample cause for rejection of bid as non-responsive.
- GG. **FEDERAL/STATE LAWS AND COUNTY ORDINANCES:** Any and all Federal and Commonwealth of Virginia Laws and County Ordinances that are not referenced or stated in the County's General Terms and Conditions shall apply to all contracts/orders.
- HH. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the County of Clarke all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchases or acquired by the County of Clarke under said contract.
- II. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the County of Clarke, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the County may have.
- JJ. **TYPES OF CONTRACT CLAUSES THAT THE COUNTY SHALL ATTEMPT TO REMOVE FROM VENDOR CONTRACTS.** Some, but not all, examples of clauses that may delay or stop a contract from being signed are shown below:
- a. The County shall attempt to remove late fee clauses.
 - b. The County shall attempt to remove one-time fee clauses, such as administrative, restocking, and documentation fees.
 - c. The County shall attempt to remove clauses involving the adjustment of payments due on a fixed-price contract (without prior County approval).
 - d. The County shall attempt to remove clauses that provide the vendor with an automatic renewal of a contract unless County notification is provided within a particular time frame.
 - e. The County shall attempt to remove clauses where the County is asked to reimburse a vendor for its expenses to refurbish equipment or materials that have been leased by the County to ensure that the vendor can resell or release the item.

- f. The County shall attempt to remove clauses where the County is asked to provide a security deposit.
- g. The County shall attempt to remove any clauses that disclaim warranties.
- h. The County shall attempt to remove any clauses that put time constraints on the County's right to file legal action.
- i. The County shall attempt to remove indemnity clauses from all contracts. If the complete removal of an indemnity clause can not be agreed upon, the County shall ensure that the maximum amount of liability is satisfactory. The County also may attempt to include its own indemnity clause in which the County's maximum amount of liability is clearly stated.
- j. The Clarke County Treasurer must approve any contract that allows a vendor to directly debit/charge the County's bank account.
- k. All Court proceedings shall be held in the Commonwealth of Virginia.

When a specific contract clause can not be agreed upon, the County reserves the right to end negotiations with the respective vendor and begin negotiations with another vendor.

KK. SEVERABILITY OF CONTRACT: In the event that any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

LL. The County reserves the right to waive or amend any of its General Terms and Conditions if the Purchasing Agent and/or Joint Administrative Board deem it to be in the best interest of the County.

**END OF GENERAL TERMS AND CONDITIONS
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