Purchasing Policy

James City County

2/22/19

PURCHASING POLICY

CHAPTER 1 - GENERAL PROVISIONS

Section 1 - Title

This document shall be known as the James City County Purchasing Policy.

SECTION 2 - ORGANIZATION

The James City County Purchasing Office is part of the Department of Financial and Management Services. It operates under the supervision of the Manager of the Department of Financial and Management Services. The Purchasing Director supervises all Purchasing Office operations.

SECTION 3 - RESPONSIBILITY

The Purchasing Office, through the Purchasing Director, is responsible for managing all County procurement activity and implementing this Purchasing Policy. The Office shall utilize modern purchasing, supply management techniques, and ensure all procurement activity complies with applicable laws and generally accepted professional standards. The Purchasing Director provides methods to handle delegated purchasing authority.

SECTION 4 - DUTIES

The Purchasing Director shall prepare and maintain a Purchasing Manual containing detailed rules and regulations consistent with this Policy and the laws of the Commonwealth of Virginia governing the operations of County purchasing. The Purchasing Director shall propose amendments to the James City County Purchasing Manual for approval by the Manager of the Department of Financial and Management Services.

The Purchasing Director shall coordinate purchasing procedures among departments by becoming acquainted with the needs of each, assisting in the preparation of specifications, locating the sources of needed products or services and providing follow-up after delivery. Purchasing shall review the quality, quantity, and kind of goods and services requested and recommend alternatives, if appropriate.

The Purchasing Director shall act as the County's representative on matters pertaining to purchasing as defined within this Policy and the James City County Purchasing Manual.

The Purchasing Director shall ensure procurement actions are properly documented and maintain all related records.

The Purchasing Director shall pursue the implementation of a fully automated and integrated purchasing system, including use of electronic media for vendor communications, solicitation, distribution, and e-commerce activities.

SECTION 5 - COOPERATIVE PROCUREMENT

The County may participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more public bodies or agencies of the United States for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that shall allow for participation in any such arrangement.

SECTION 6 - DEFINITIONS

Best Value means the overall combination of quality, price, and various elements of required goods and services that in total are optimal relative to the County's needs. Purchasing shall use best value bid evaluation when procuring certain goods and nonprofessional services when it is in the best interests of the County to allow factors other than price to be considered in making an award. The factors to be used in making the award and the numerical weighting for each factor are predetermined in a solicitation. Best value bid evaluation factors may include any of the following or other factors determined to be relevant by the Purchasing Director.

• Quality of the good or service;

• Operational costs incurred by the County if the bid is accepted;

• Life-cycle costing;

• Reliability of delivery and implementation schedules;

• Maximum facilitation of data exchange and systems integration; Warranties, guarantees, and return policy;

• Vendor financial stability;

• Consistency of proposed solution with County's planning documents and strategic direction; Quality and effectiveness of the business solution and approach;

• Industry and program experience;

• Prior record of vendor performance;

• Vendor expertise with projects of similar scope and complexity;

• Consideration of potential product acceptance by all user groups;

• Proven development methodologies and tools; and

• Innovative use of current technologies and quality results.

Competitive Sealed Bidding is a formal method of selecting the lowest responsive and responsible bidder. It includes the issuance of a written Invitation for Bid (IFB), public notice, a public bid opening, and evaluation based on the requirements set forth in the IFB. The Purchasing Director may elect for prequalification of bidders or include a statement of any requisite qualifications of potential contractors in the IFB. Multiple awards may be made when so specified in the IFB. An IFB may be issued to vendors electronically. Bids may be submitted electronically if specifically authorized in the IFB.

Competitive Negotiation is a formal method of selecting the top rated offeror. It includes the issuance of a Request for Proposals (RFP), public notice; evaluation based on the criteria set forth in the RFP and allows negotiation with the top rated offeror. Any unique capabilities or qualifications required of the contractor shall be set forth in the RFP. An RFP may be issued to vendors electronically. Offers may be submitted electronically if specifically authorized in the RFP.

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

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

Design-build contract shall mean 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.

Emergency shall be deemed to exist when a breakdown in machinery and/or a threatened termination of essential services or a dangerous condition develops, or when any unforeseen circumstances arise causing curtailment or diminution of essential services.

Firm shall mean any individual, partnership, corporation, association, or other legal entity permitted by law to practice in the Commonwealth of Virginia; or any other individual, firm partnership, corporation, association, or other legal entity qualified to perform professional services.

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

Informality shall mean a minor defect or variation of a bid or proposal from the exact requirements of the IFB or RFP that does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured.

Nonprofessional services shall mean any service not specifically identified below as a professional or consultant service.

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

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

Public body shall mean any legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty and empowered by law to undertake the activities described in this policy. Public body shall include any metropolitan planning organization or planning district commission that operates exclusively within the Commonwealth of Virginia.

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

Public or County employee shall mean any person employed by the County, including elected officials or appointed members of governing bodies.

Responsible bidder or Responsible offeror shall mean an individual, company, firm, corporation, partnership, or other organization who has the capability in all respects to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance and who has been prequalified if required.

Responsive bidder shall mean shall mean an individual, company, firm, corporation, partnership, or other organization who has submitted a bid that conforms in all material respects to the Invitation for Bids.

Services shall mean any work performed by an independent contractor wherein the services rendered do not consist primarily of acquisition of equipment or materials or the rental of equipment, materials, and supplies.

Surplus property shall mean any property that exceeds the requirements of the entire County.

Targeted business shall mean businesses that are small, locally owned, locally operated, or owned by a woman or minority.

Value Engineering shall mean review of a project's architectural and engineering drawings and specifications by an independent team of engineers and/or architects for complex or construction projects estimated to be at or over $2 million. The independent team makes recommendations that focus on achieving like-performance at reduced costs. Value engineering must be applied as early in the design cycle as feasible to achieve maximum benefits. For large construction projects, value engineering studies are performed during the schematic stage and then at approximately the 30-40 percent design stage.

Virginia Public Procurement Act shall mean those portions of the Code of Virginia, 1950, as amended designated as the Virginia Public Procurement Act.

CHAPTER 2 - PURCHASING POLICIES

SECTION 1 - COMPLIANCE

All James City County procurement transactions shall comply with the Code of Virginia, the James City County Purchasing Policy, and the James City County Purchasing Manual. Fiscal partners of the County, organizations that utilize the County as their fiscal or purchasing agent, and County departments/Constitutional Officers exempt from regular purchasing requirements through special provisions of the Virginia Public Procurement Act and/or other sections of the Code of Virginia will be subject to this compliance policy if the procurement is handled through the James City County Purchasing Office. The James City County Purchasing Office encourages the adoption of this Policy by the governing bodies/individuals of the aforementioned entities.

Section 2.2-4343(B), VPPA, provides with respect to procurements with federal funds:
Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this section, a public body may comply with such federal requirements, notwithstanding the provisions of this section, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this section in conflict with the conditions of the grant or contract.

SECTION 2 - PURCHASING METHODS

1- Use of Competitive Sealed Bidding or Competitive Negotiation

Unless otherwise authorized by law or provided for in this Policy or the James City County Purchasing Manual, all County contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchases of services, insurance or construction shall be awarded after competitive sealed bidding or competitive negotiation.

Competitive Bidding Federal Projects (Grants)

The County shall follow the requirements of 2 C.F.R. § 200.326 and 2 C.F.R Part 200, Appendix II, by inclusion of clauses as required by the Grantor. This may include Davis-Bacon requirements, Copeland Anti-Kickback Act, Contract Work Hours and Safety Standards Act, The Stafford Act, Clean Air Act and the Federal Water Pollution Control Act, Byrd Anti-Lobbing Amendment, Debarment and Suspension review, and/or other clauses as may be required.

2- COMPETITIVE SEALED BIDDING AND COMPETITIVE NEGOTIATION

Whenever the County seeks to procure a good or service estimated to cost more than $50,000, an Invitation to Bid or a Request for Proposals shall be issued. Best value concepts may not be considered when procuring construction or professional services. Purchases shall not be split to avoid the $50,000 limit. An Invitation to Bid shall be posted in a designated public area, and on the county website at least ten days prior to the date bids are due. A Request for Proposals shall be advertised once in a newspaper of general circulation in James City County at least thirty days prior to the date proposals are due. Responses to Formal Sealed Bids and Proposals are secured unopened until the date and time specified in the solicitation.

The Purchasing Director shall have the authority to waive informalities in bids/proposals, reject all bids/proposals, parts of all bids/proposals, or all bids/proposals for any one or more good or service included in a solicitation when in the Director's judgment the public interest may thereby be served. The Purchasing Director shall determine the responsibility of a bid or proposal and responsiveness of a bid.

3- CONSTRUCTION MANAGEMENT / DESIGN BUILD SERVICES PROCUREMENT METHOD

A. In addition to competitive bidding and competitive negotiations, the County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis consistent with this Policy and law.

B. Competitive Negotiation – Construction Management / Design Build Services

1. Determination

a. The County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis in accordance with the Virginia Public Procurement Act (VPPA)

§2.2-4308. Prior to issuing a Request for Proposal for any design-build or construction management project, the Purchasing Director will document that a) the design-build or construction management

contract is more advantageous than a competitive sealed bid construction contract, b) there is a benefit to the County by using a design-build or construction management contract, and c) competitive sealed bidding is not practical or fiscally advantageous.

2. Evaluation Committee

a. The Purchasing Director shall appoint an Evaluation Committee that will include a licensed professional engineer or architect with professional competence appropriate to the proposed project. The licensed professional engineer or architect shall advise the County regarding the use of design-build or construction management project and will assist with the preparation of the Request for Proposal consistent with this Policy for competitive negotiation of non-professional services, and will assist in the evaluation of proposals. A qualified person or firm may provide the licensed professional engineer or architect services under a professional services contract.

3. Selection, Evaluation and Award of Construction Management or Design- Build Contracts.

a) Design Requirements. The Request for Proposal shall include and define the criteria of the construction project in the areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; special telecommunications; and may define such other requirements as the County determines appropriate for the particular construction project.

b) Selection, Evaluation and Award Factors. Proposal evaluation factors and other source selection criteria shall be included in the Request for Proposal for the specific design-build or construction management project.

c) Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, based on the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the fully qualified offeror that, in its opinion, has made the best value proposal in response to the Request for Proposals, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so stated in the RFP, awards may be made to more than one offeror. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

Trade secrets or proprietary information provided by an offeror in response to a request for qualifications or a request for proposals shall not be disclosed to the public or to competitors, provided the offeror has invoked protection pursuant to the Code of Virginia § 2.2-4342(F).

d) The Purchasing Director may promulgate such additional procedures, not inconsistent with the provisions of this section and consistent with the procedures for the procurement of nonprofessional services through competitive negotiations, as deemed necessary and appropriate to effect the selection and evaluation of offerors and the award of design-build and construction management contracts.

4- SOLE SOURCE

Sole source procurement is authorized when there is only one source practicably available for the required goods or services. Competition is not available in a sole source situation; thus distinguishing it from a situation where the product required is restricted to the manufacturer(s) stipulated, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a

single vendor's capability to deliver in the least amount of time is not appropriate since availability alone is not a valid basis for determining a sole source procurement. All sole source procurements require Purchasing Director approval.

5-**EMERGENCY**

In case of an emergency, as defined herein, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practical under the circumstances. Except as provided below, approval by the Purchasing Director shall be required for all emergency purchases. If an emergency occurs at a time other than regular County business hours, the Department Manager may purchase the required goods or services in an amount not to exceed $50,000. The County Administrator or designee shall approve emergency procurements over $50,000. The Department Manager shall, not later than the next business day, submit a requisition, tabulation of bids received (if any), delivery record, and a brief explanation of the emergency.

6- SMALL PURCHASES

Any procurement not expected to exceed $50,000 in expenditure of public funds, from any source, may be made in accordance with the following small purchase limits. Procurements up to $2,500 may be made upon receipt of one written or documented verbal quote or proposal. Solicitation of three written quotes or proposals are required for purchases of $2,500 - $5,000. Solicitation of three written quotes or Informal solicitations for quotes or proposals may be required for purchases of $5,001 - $50,000 at the Purchasing Director's discretion.

Award shall be made to the lowest responsive and responsible vendor that supplies a quote or to the offeror that made the best proposal. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this policy. Similar items or services may be combined for formal competition at the Purchasing Director's discretion.

7- PURCHASING CARD

Selected County personnel may be issued Purchasing Cards to use for small purchases and emergency procurements. The competition requirements for small and emergency purchases shall apply. All Purchasing Card transactions shall conform to the James City County Purchasing Card Policy and Procedures. The Purchasing Card Policy and Procedures are part of the James City County Purchasing Policy and Manual.

SECTION 3 - PREQUALIFICATION

Prospective contractors may be prequalified for particular types of goods, services, insurance or construction and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedures shall be established in writing and sufficiently in advance of their implementation to allow potential contractors a fair opportunity to complete the process. The Purchasing Director may deny prequalification to any contractor only upon finding 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 such 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 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 the County 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 officer thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of the Virginia Public Procurement Act, (ii) the Virginia Governmental Frauds Act (Virginia Code § 18.2-498.1 et seq.), (iii) Chapter 4.2 (§

59.1-68.6 et seq.) of Title 59.1 of the Virginia Code, or (iv) any substantially similar law of the United States or another state.

f) The contractor or any officer, director or owner thereof is currently debarred or enjoined pursuant to an established debarment or enjoinment 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 County in a timely manner any information requested by the County relevant to items a) through f) above.

SECTION 4- CONTRACT APPROVAL AUTHORITY

Authorization by the Purchasing Director shall be required for contracts if the amount is $50,000 or less. Authorization by the County Administrator shall be required for awards over $50,000 up to $100,000. Authorization by the Board of Supervisors shall be required for the award of all contracts over $100,000.

SECTION 5- AUTHORITY TO AMEND OR TERMINATE A CONTRACT

The Purchasing Director may amend any James City County contract that includes provisions for modification of the contract during performance. Any single or cumulative increase to a fixed price contract that would result in a new contract amount over $50,000 requires written approval of the County Administrator. Any single or cumulative increase to a fixed-price contract greater than twenty-five

percent of the original contract or $50,000, whichever is greater, requires written approval of the Board of Supervisors.

The Purchasing Director may terminate any contract for convenience, cause, or non- appropriation of funds in accordance with the contract terms and conditions after consultation with the Office of the County Attorney.

SECTION 6- PREFERENCES AND TIE BIDS

In accordance with the Code of Virginia, James City County does not grant preferences or set- asides except in the case of tie bids. If all bids are for the same total amount or unit price (including authorized discounts and delivery times) and if the public interest will not permit the delay of re-advertisement for bids, the Purchasing Director shall be authorized to award the contract to the resident James City County tie bidder whose firm has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots.

SECTION 7- VENDOR OUTREACH

The Purchasing Office is the County's main contact point with vendors. As such, the Office will pursue outreach activities that may include developing specialized publications, attending/hosting trade fairs, and encouraging vendor visits with Office staff.

SECTION 8- ANTI-DISCRIMINATION

James City County conforms, as applicable, to the provisions of the Federal Civil Rights Act of 1964, as amended; the Virginia Fair Employment Contracting Act of 1975, as amended; the Virginians with Disabilities Act; the Americans With Disabilities Act, and Sections 2.2-4310 and 2.2-4311 of the Virginia Public Procurement Act. All bidders/offerors who submit bids/proposals to the County are required to certify they conform to these same anti-discrimination requirements.

SECTION 9- ASSISTANCE TO TARGETED BUSINESSES

The County shall undertake every reasonable effort to increase the opportunity for participation in the procurement process by targeted businesses. To this end, the Purchasing Office shall:

1. Make targeted businesses aware of the County's procurement policies. Any targeted business seeking assistance in understanding or completing any bids or proposals should seek the assistance of the Purchasing Department.

2. Participate in training seminars for the purpose of informing targeted business bidders of the procurement opportunities and procedures.

3. Participate in local and regional targeted business purchasing fairs.

4. Cooperate with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies.

SECTION 10- DEBARMENT ENJOINMENT OR SUSPENSION

Contractors who either do not meet their obligations or have other performance or non-performance issues may be suspended or disqualified from contracting with the Commonwealth through enjoinment or debarment.

Enjoinment is to impose bidding restrictions on a contractor when the contractor fails to fulfill its obligations. Enjoinment is used for issues that can be corrected. A contractor may be enjoined for the following reasons:

1. Failure to meet SWaM requirements
2. Delinquency
3. Unwillingness or inability to fulfill a contract
4. Failure to comply with the Contract documents, Special and General Conditions

The punishment for enjoinment will be the prohibition of bidding on County construction contracts for a period not to exceed one year.

Debarment is the County's exclusion of certain individuals or firms from contracting with the County for a specified period of time. The Purchasing Director may debar a person or company from consideration for awards or contracts for a period up to three (3) years upon a finding of cause that the vendor has engaged in any of the following activities.

1. Unsatisfactory performance on a contract with a public body, including but not limited to, failure to comply with contract terms and conditions or to meet specification/scope of services requirements.

2. Offering any gift, gratuity, favor, or advantage to any County employee who exercises official responsibility for procurement transactions.

3. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner of the vendor in a contract or purchase order awarded by the County.

4. Conviction of any officer, director, owner, partner, or agent of the vendor of any criminal offense involving public contracting.

5. Court judgment finding a violation of Federal or State antitrust laws.

6. Conviction of any criminal offense, or a judgment in civil litigation, which indicates a lack of moral or business integrity.

7. Abandonment of performance or termination for default on any other James City County project.

8. Default on any surety bond or written guaranty on which James City County is an obligee.

9. The filing of a bankruptcy petition, by, against, or regarding the contractor.

10. Any other cause that the Purchasing Director determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or prior reprimands.

The Purchasing Director may suspend a person or company from consideration for award or contracts for a period up to three months upon a finding of probable cause that might lead to debarment.

In debarring or suspending any individual or firm from contracting with the County, the Purchasing Director shall follow all applicable procedures outlined herein and in the James City County Purchasing Manual.

SECTION 11- EXCESS AND SURPLUS PROPERTY

The Purchasing Director shall be responsible for:

1. Redistribution of serviceable excess personal property.

2. Disposal of surplus County personal property through sealed bid, online or physical auction, trade-in, or fixed price sales. Some personal property may also be disposed of by junking, sale as scrap metal, or cannibalization.

3. Disposal of unclaimed property in the custody of the Police Department in accordance with the Code of Virginia Sections 15.2-1719, 15.2-1720 and 15.2-1721.

Surplus County property may be donated to charitable and other non-County activities where appropriate. The Purchasing Director shall evaluate the request for donation and first determine whether the requested item is needed by any County agency. Other factors to be considered in the evaluation are availability of the requested item, serviceability, compatibility to the intended use and potential benefits to the County, including public relations and goodwill.

SECTION 12- PUBLIC PURCHASING ETHICS

All James City County procurement is subject to and will be conducted in accordance with the Virginia Public Procurement Act, the State and Local Conflict of Interests Act, and the Governmental Frauds Act.

James City County
Procedures Regarding Requests Made Pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002

***Revised* January 7, 2019**

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I. INTRODUCTION

The Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code Ann. §§ 56-575.1 to -575.18(the "PPEA"), grants a public entity the authority to create public-private partnerships for the development of a wide range of projects for public use ("qualifying projects") if the public entity determines that there is a need for a project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The definition of "public entity" in § 56-575.1 of the PPEA includes, *inter alia,* any political subdivision of the Commonwealth. The PPEA defines "responsible public entity" (RPE) to include any public entity that "has the power to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate the applicable qualifying project." Individually negotiated interim or comprehensive agreements between a private entity and an RPE will define the respective rights and obligations of the RPE and the private operator.

Section 56-575.16 of the PPEA provides that a public entity having the power to develop or operate a qualifying project (a "responsible public entity") may not consider any proposal by a private entity for approval of the qualifying project pursuant to the PPEA until the responsible public entity has adopted and made publicly available procedures that are sufficient to enable the responsible public entity to comply with the PPEA. Accordingly, these procedures (the "Procedures") are hereby adopted by the Board of Supervisors (the "Board") as the governing body of James City County (the "County"). The Board must adopt any amendments to these Procedures. The County Purchasing Director shall serve as the point of contact to receive proposals submitted under the PPEA and to respond to inquiries regarding the PPEA or these Procedures.

II. GENERAL PROVISIONS

A. Proposals

1. Pursuant to Section 56-575.4 of the PPEA, a proposal may be either solicited by the County (a "Solicited Bid/Proposal") or delivered by a private entity on an unsolicited basis (an "Unsolicited Proposal"). In either case, any such proposal shall be clearly identified as a "PPEA Proposal." Proposers may be required to follow a two-part proposal submission process consisting of a conceptual phase and a detailed phase, as described herein.

2. The requirements for any particular Solicited Bid/Proposal shall be as specified in the solicitation by the County for that particular proposal and shall be consistent with all applicable provisions of the PPEA.

3. All Unsolicited Proposals shall be submitted to the County by delivering six complete copies, together with the required initial review fee as provided below in § II C., to the Purchasing Director, James City County Purchasing Office. Other requirements for an Unsolicited Proposal are as set forth below in § IV. A working group

may be designated by the County Administrator to review and evaluate Unsolicited Proposals.

4. The County may require that any proposal be clarified. Such clarification may include, but is not limited to, submission of additional documentation, responses to specific questions, and interviews with potential project participants.

5. Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the qualifying project and the benefits to be derived from the project by the RPE. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the RPE of the financial feasibility of the project. The cost analysis of a proposal should not be linked solely to the financing plan, as the RPE may determine to finance the project through other available means.

B. Affected Local Jurisdictions

1. The term "affected local jurisdiction" includes any county, city or town in which all or a portion of a qualifying project is located.

2. Any private entity submitting a Solicited Bid/Proposal or an Unsolicited Proposal to the County as the responsible public entity for a qualifying project must provide any other affected local jurisdiction with a copy of the proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of the proposal to the County. The private entity is responsible for documenting delivery of the request for proposals. Any such other affected local jurisdiction shall have 60 days from the date it receives its copy of the proposal to submit written comments to the County and to indicate whether the proposed qualifying project is compatible with the affected local jurisdiction's local comprehensive plan, local infrastructure development plans, capital improvements budget, or other government spending plan. The County will consider comments received within the 60-day period prior to entering into a comprehensive agreement pursuant to the PPEA regarding the proposal. However, the County may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.

C. Proposal Review Fee

1. A review fee will be charged to a private entity submitting an Unsolicited Proposal to the County to cover the County's costs of processing, reviewing, and evaluating the proposal, including the cost to compare it to any competing proposals. Such costs include but are not limited to County staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants and/or financial advisors, used by the County in its sole

discretion to assist in processing, reviewing, or evaluating the proposal. Such fees generally shall be in the amount necessary to completely cover all of the County's costs.

2. Such fees shall be imposed based on the reasonably anticipated costs to the County in accordance with the following schedule:

a. Initial fee. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the County in order for the County to proceed with its review. The initial fee shall be one percent (1%) of the reasonably anticipated total cost of the proposed qualifying project, but shall be no less than $1,000 nor more than $20,000, regardless of the anticipated total cost.

b. Additional fees. Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the County reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The County will notify the private entity of the amount of such additional fees when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue to process, review, and evaluate the proposal.

c. Reimbursement of excess fees paid. In the event the total fees paid by the private entity exceed the County's total costs incurred in processing, reviewing, and evaluating the proposal, the County shall reimburse the difference. Otherwise, the County shall retain all fees paid.

D. Virginia Freedom of Information Act

1. General applicability of disclosure provisions

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act ("FOIA") except that subdivision 11 of §2.2-3705.6 exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and the RPE may elect to release some or all of documents except to the extent the documents are:

a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§59.1-336 et seq.);

b. Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or

c. Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities

are compelled or protected from disclosure by a court order, the RPE must comply with the provisions of such order.

2. Protection from mandatory disclosure for certain documents submitted by a private entity.

a. Any confidential and proprietary information provided to a responsible public entity by a private entity pursuant to the PPEA shall be subject to disclosure under the Virginia Freedom of Information Act ("FOIA") except as provided by § 56-575.4(G) of the PPEA.

b. Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the RPE at the time the documents are submitted designating with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of the three class of records listed in Section D. 1.a. A private entity may request and receive a determination from the County as to the anticipated scope of protection prior to submitting the proposal. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the private entity without reasonably differentiating between the proprietary and non-proprietary information contained therein.

c. Upon receipt of a written request from a private entity that designated portions of a proposal be protected from disclosure, the County will determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the RPE or private entity in accordance with Section D.1.a. The RPE shall make a written determination of the nature and scope of the protection to be afforded by the RPE under this subdivision. If the determination regarding protection or the scope thereof differs from the private entity's request, then the County will accord the private entity a reasonably opportunity to clarify and justify its request. Upon a final determination by the County to accord less protection than requested by the private entity, the private entity will be given an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be afforded protection from release although what may be protected must be limited to the categories of records identified in Section D. 1.a. Once a written determination has been made by the RPE, the protected documents shall continue to be protected from disclosure when in the possession of the RPE or any affected local jurisdiction.

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

3. Protection from mandatory disclosure for certain documents produced by the responsible public entity.

Memoranda, staff evaluations, or other records prepared by or for the County, its staff, outside advisors or consultants, exclusively for the evaluation and negotiation of proposals may be withheld from disclosure if the disclosure of such records required by the PPEA would adversely affect the financial interest or bargaining position of the responsible public entity or private entity, and the basis for the determination of adverse affect is documented in

writing by the responsible public entity.

4. If a private entity fails to designate confidential or proprietary information, records or documents from disclosure, such information, records or documents shall be subject to disclosure under FOIA.

5. The County may not withhold from public access:

a. Procurement records other than those subject to the written determination of the public entity;

b. Information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of an kind executed by the County and the private entity;

c. Information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or

d. Information concerning the performance of any private entity developing or operating a qualifying project.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then the County must comply with such order.

E. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects and shall be in compliance with the County's fiscal policies.

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the County to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA. Likewise, in submitting proposals and in developing, executing or operating facilities under the PPEA, private entities shall comply with all applicable federal, state and local laws.

III. SOLICITED BIDS/PROPOSALS

1. The procedures applicable to any particular Solicited Bid/Proposal shall be specified in the solicitation for that proposal and shall be consistent with the

requirements of the PPEA and any other applicable law. All such solicitations shall be by issuance of a written Invitation to Bid ("IFB") or Request for Proposal ("RFP") within the meaning of "competitive sealed bidding" and "competitive negotiation" as used in the James City County Purchasing Policy.

2. Any proposal submitted pursuant to the PPEA that is not received in response to an IFB or RFP shall be an Unsolicited Proposal under these procedures, including but not limited to (a) proposals received in response to a notice of the prior receipt of another Unsolicited Proposal as required by the PPEA and provided for below in § IV(A)(3) and (b) proposals received in response to publicity by the County concerning particular needs when the County has not issued a corresponding IFB or RFP, even if the County otherwise has encouraged the submission of proposals pursuant to the PPEA that address those needs.

IV. UNSOLICITED PROPOSALS

The process for evaluating Unsolicited Proposals, described in detail below, consists of four steps: 1) upon receipt of an Unsolicited Proposal, the County will determine whether to accept it for consideration at the conceptual phase; 2) if so, the County will give public notice of the Unsolicited Proposal; 3) the County will proceed with a review at the conceptual stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the conceptual stage; and 4) the County will conduct an in-depth review at the detailed stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the detailed stage. The County may discontinue its evaluation of any proposal at any time. Furthermore, if the County determines that it is in the County's interest to do so with respect to any Unsolicited Proposal, the County may eliminate review at the conceptual stage and proceed directly to a review at the detailed stage.

The County shall engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the RPE, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying project unless the County determines that such analysis of a request by a RPE for approval of a qualifying project shall be performed by an employee of the County.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. The County reserves the right to reject any and all proposals at any time. If the RPE rejects a proposal initiated by a private entity that purports to develop specific cost savings, the RPE shall specify the basis for rejection.

2. Upon receipt from a private entity of any Unsolicited Proposal accompanied by payment of any required fees, the County will determine whether to accept the Unsolicited Proposal for publication and conceptual-phase consideration, as described below. If the County determines not to accept the proposal at this stage it will return the proposal and the accompanying initial review fee to the private entity.

3. If the County chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall within 10 working days after acceptance give public notice of the proposal in accordance with the PPEA and shall specify a period of time not less than 45 days during which it will receive competing Unsolicited Proposals pursuant to Section 56-575.4 (A) of the PPEA. The County shall also publish the same notice in one or more newspapers or periodicals of general circulation in the County to notify any parties that may be interested in submitting competing unsolicited proposals.

The notice shall state that the County (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or a comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the procedures adopted by the County and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. Copies of unsolicited proposals shall be available upon request, subject to the provisions of FOIA and Section 56-575.4 (G) of the PPEA. During the 45-day period for receiving competing Unsolicited Proposals, the County may continue to evaluate the original Unsolicited Proposal.

B. Posting Requirements

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the RPE within 10 working days after acceptance of such proposals in the following manner:

a. Posting shall be on the RPEs website and by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Commonwealth's electronic procurement website.

2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the RPE so as to provide maximum notice to the public of the opportunity to inspect the proposals.

3. In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the RPE and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

C. Contents of Initial Submission

1. An Unsolicited Proposal must contain information on the private entity's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. The information should be adequate to enable the County to evaluate the practicality and sufficiency of the proposal. The private entity may request that the County consider a two-step proposal process, consisting of an initial conceptual submission to be followed by a more detailed submission.

2. Unsolicited Proposals should provide a concise description of the private entity's capability to complete the proposed qualifying project and the benefits to be derived from the project by the County. Project benefits to be considered may occur during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project, including but not limited to (a) the identity of any parties expected to provide financing for the project and (b) a statement indicating whether the private entity intends to request the County to provide resources for financing the project and the nature and extent of any such resources.

3. The County may require additional submissions to clarify information previously provided or to address other areas of concern to the County.

D. Initial Review at the Conceptual Stage

1. Only proposals complying with the requirements of the PPEA and these Procedures that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format, as described below, will be considered by the County for further review at the conceptual stage.

2. The County will determine at this initial stage of review whether it will proceed using procurement through competitive sealed bidding as defined in the VPPA or procedures developed by the County that are consistent with procurement of other than professional services through competitive negotiation as defined in the VPPA.

3. After reviewing an Unsolicited Proposal and any competing Unsolicited Proposals submitted during the notice period, the County may determine (a) not to proceed further with any proposal, (b) to proceed to the detailed phase of review with the original proposal, (c) to proceed to the detailed phase with a competing proposal, (d) to proceed to the detailed phase with multiple proposals or (e) to request modifications or amendments to any proposals. Discussions between the RPE and private entities about the need for infrastructure improvements shall not limit the ability of a RPE to later determine to use standard procurement procedures to meet its infrastructure needs. The County at all times retains the right to reject any proposal at any time for any reason whatsoever.

E. Format for Submissions at the Conceptual Stage

Unsolicited Proposals at the conceptual stage shall contain the following information in the following format, plus such additional information as the County may request:

1. Qualification and Experience

a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team. All members of the offeror's team, including subcontractors known to the proposer must be identified at the time a proposal is submitted for the conceptual stage. Identified team members including major subcontractors may not be substituted or replaced once a project is approved and an interim or comprehensive agreement executed without the written approval of the County.

b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Describe the past safety performance record and current safety capabilities of the firm. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims of the firm. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.

c. For each firm or major contractor that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past 3 years with contact information for such clients (names/addresses/ telephone numbers). If a firm has worked on more than ten projects during this period, it may limits prior project list to ten, but shall first include all projects similar in scope and size to the proposed project, and second, it shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents in its possession evaluating the firm"s performance during the preceding three years in terms of cost, quality, schedule, safety and other matters relevant to the successful project development, operation, and completion.

d. Provide the names, addresses, emails and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.

e. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater.

f. Identify any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.

g. For each firm or major subcontractor that will perform construction and/or design activities, provide a sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.

h. Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.

i. Identify the proposed plan for complying with the intent of Va. Code §22.1-296.1C if the contractor or its employees or subcontractors, will have direct contact with students. This section of the Code requires that all contractor employees who will have direct contact with students, must certify that (i)they 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 (ii) whether they have been convicted of a crime of moral turpitude.

2. Project Characteristics

a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and all the communities that may be affected are clearly identified.

b. Identify and fully describe any work to be performed by the County or any other public entity.

c. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.

d. Identify any anticipated adverse social, economic and environmental impacts of the project measured against the County's comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project. Indicate if environmental and archaeological assessments have been completed. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe

benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.

e. Identify the projected positive social, economic and environmental impacts of the project measured against the County's comprehensive land use plan and applicable ordinances and design standards.

f. Identify the proposed schedule for the work on the project, including sufficient time for the County's review and the estimated time for completion.

g. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.

h. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the County's use of the project.

i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.

j. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.

k. List any other assumptions relied on for the project to be successful.

l. List any contingencies that must occur for the project to be successful.

3. Project Financing

a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.

b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for all such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs based upon the County's operational standards.

c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.

d. Identify all anticipated risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.

e. Identify any local, state or federal resources that the private entity contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from governmental sources (identify each such source) and the timing of any anticipated commitment, both one-time and on-going. Such disclosure should include any direct or indirect guarantees or pledges of the County‟s credit or revenue.

f. Identify any third parties that the private entity contemplates will provide financing for the project and describe the nature and timing of each such commitment.

g. Identify the amounts and the terms and conditions for any revenue sources.

h. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

4. Project Benefit and Compatibility

a. Describe the anticipated benefits to the community, region or state, including anticipated benefits to the economic, social, environmental, transportation, etc., condition of the County. Identify who will benefit from the project and how they will benefit. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.

b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition (including that in any affected jurisdiction), for the project.

c. Explain the strategy and plans, including the anticipated timeline, that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.

d. Explain whether and, if so, how the project is critical to attracting or maintaining competitive industries and businesses to the County or the surrounding region. Describe the compatibility of the project with local, regional and state economic development efforts.

e. Explain whether and, if so, how the project is compatible with the County's comprehensive plan (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, capital improvements budget, or other government spending plan.

E. Format for Submissions at the Detailed Stage

If the County decides to proceed to the detailed phase of review with one or more Unsolicited Proposals, then the following information must be provided by the private entity unless waived by the County:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.

2. A conceptual site plan indicated proposed location and configuration of the project on the proposed site;

3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the project.

4. A detailed description of the proposed participation, use and financial involvement of the County in the project. Include the proposed terms and conditions for the project.

5. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings.

6. A statement and strategy setting out the plans for securing all necessary property and/or easements. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the private entity intends to request the County or affected jurisdiction to condemn.

7. A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties along with a record of any prior defaults for performance.

8. A total life-cycle cost, including maintenance, specifying methodology and assumptions of the project or projects including major building systems (i.e., electrical, mechanical, etc.) and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses using County service levels and standards.

9. A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, and the methodology and circumstances for changes and usage of the project over its estimated useful life.

10. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.

11. Demonstration of consistency with appropriate County and/or affected jurisdiction comprehensive plans (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans.

12. Explanation of how the proposed project would impact local development plans of the County and each affected local jurisdiction.

Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to schedule, cash management, quality, worker safety, change orders, and legal compliance.

13. Identification of any known conflicts of interest or other limitations that may impact the County's consideration of the proposal, including the identification of any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.

14. Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the County. Include a detailed description of any financing plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the County, and all underlying data supporting any conclusions reached in the analysis or the selection by the private entity of the financing plan proposed for the project.

15. Additional material and information as the County may request.

V. PROPOSAL EVALUATION AND SELECTION CRITERIA

Some or all of the following matters, along with the information required under §§ IV. D and IV. E above, may be considered in the evaluation and selection of PPEA proposals. The County retains the right at all times to reject any proposal at any time for any reason whatsoever.

A. Qualifications and Experience

Factors to be considered in either phase of the County's review to determine whether the private entity possesses the requisite qualifications and experience may include but are not necessarily limited to:

1. Experience, training and preparation with similar projects;

2. Demonstration of ability to perform work;

3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;

4. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;

5. Leadership structure;

6. Project manager's experience;

7. Management approach;

8. Project staffing plans, the skill levels of the proposed workforce, apprenticeship and other training programs offered for the project, and the proposed safety plans for the project;

9. Financial condition; and

10. Project ownership.

B. Project Characteristics

Factors to be considered in determining the project characteristics may include but are not necessarily limited to:

1. Project definition;

2. Proposed project schedule;

3. Operation of the project;

4. Technology; technical feasibility;

5. Conformity to laws, regulations, guidelines and standards;

6. Environmental impacts;

7. Condemnation impacts;

8. State and local permits; and

9. Maintenance of the project.

C. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include but are not necessarily limited to:

1. Cost and cost benefit to the County;

2. Financing and the impact on the debt or debt burden of the County;

3. Financial plan including default implications, overall feasibility and reliability of the plan; operator's past performance with similar plans and similar projects; degree to which the operator has conducted due diligence investigation of proposed financial plan and results of any such inquiries or studies;

4. Estimated cost including debt source, operating costs, etc.; and

5. Life-cycle cost analysis. and

6. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment;

7. Such other items as the County deems appropriate.

D. Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans may include but are not necessarily limited to:

1. Community benefits; such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.

2. Community support or opposition, or both;

3. Public involvement strategy;

4. Compatibility with existing and planned facilities;

5. Compatibility with local, regional, and state economic development efforts; and

6. Compatibility with the County's and affected jurisdictions' land use and transportation plans.

E. Other Factors

Other factors that may be considered in the evaluation and selection of PPEA proposals include:

1. The proposed cost of the qualifying project;

2. The general reputation, industry experience, and financial capacity of the private entity;

3. The proposed design of the qualifying project;

4. The eligibility of the project for accelerated documentation, review, and selection;

5. Local citizen and government comments;

6. Benefits to the public; including whether the project will lead to productivity or efficiency improvements in the County's processes or delivery of services to the public;

7. The private entity's minority business plan or good faith effort to comply with the goals of such plan;

8. The private entity's plan to employ local contractors and residents; and

9. Other criteria that the County deems appropriate.

F. Timelines

Guidelines for determining applicable timelines are as follows:

1. For solicited proposals, the timeline for selecting proposals and negotiating an agreement will be consistent with the terms and conditions set forth in the Request for Proposals.

2. For unsolicited proposals, an estimated timeline will be developed and distributed within 60 days of receipt of the proposal. The timeline will be subject to revision(s), as required.

3. Accelerated selection, review, and documentation timelines shall be permitted for proposals involving a qualifying facility that the County deems a priority.

VI. INTERIM AND COMPREHENSIVE AGREEMENT

The County shall not accept liability for any part or phase of a project prior to entering into a properly executed interim or comprehensive agreement. The Board of Supervisors shall approve any interim or comprehensive agreement executed pursuant to the PPEA. Any changes in the terms of an executed interim or comprehensive agreement shall be in the form of a written amendment.

A. Interim Agreement Terms

Interim agreements may be used when it is necessary or advisable to segment a project to produce distinct and clear deliverables necessary to keep the project moving towards development of a comprehensive agreement. An interim agreement may not be used to have the County assume risks that should be assumed by the proposer or to pay costs attributable to the private entity"s efforts in making the proposal. Interim agreements require the same level of approval as Comprehensive Agreements.

Development of an interim agreement is in the sole discretion of the County and in no way limits the rights reserved by the County to terminate the evaluation of any or all proposals at any time.

Prior to or in connection with the negotiation of the comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. Such interim agreement may:

1. Permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying project, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities;

2. Establish the process and timing of the negotiation of the comprehensive agreement; and

3. Contain any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate.

B. Comprehensive Agreement Terms

Prior to developing or operating any qualifying project, a selected private entity shall enter into a comprehensive agreement with the County as provided by the PPEA. Each comprehensive agreement shall define the rights and obligations of the County and the selected proposer with regard to the project. Any such comprehensive agreement must be approved by the County's Board of Supervisors before it is entered into on behalf of the County.

As provided by the PPEA, the terms of the comprehensive agreement shall include but not be limited to:

1. Delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project, in the forms and amounts satisfactory to the County;

2. Review and approval of plans and specifications for the qualifying project by the County;

3. The right of the County to inspect the qualifying project to ensure compliance with the comprehensive agreement and any development plans and specifications;

4. Maintenance of a policy or policies of liability insurance or self-insurance in form and amount satisfactory to the County and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;

5. Monitoring of the practices of the operator by the County to ensure proper maintenance;

6. Reimbursement to be paid to the County for services provided by the County;

7. Filing by the operator of appropriate financial statements on a periodic basis;

8. Policies and procedures governing the rights and responsibilities of the County and the operator in the event that the comprehensive agreement is terminated or there is a material default by the operator, including the conditions governing assumption of the duties and responsibilities of the operator by the County and the transfer or purchase of property or other interests of the operator by the County;

9. Providing for such user fees, lease payments, or service payments, if any, as may be established from time to time by agreement of the parties, which shall be the same for persons using the facilities under like conditions and shall not materially

discourage use of the qualifying project. Classifications according to reasonable categories for assessment of user fees may be made.

10. Requiring a copy of any service contract to be filed with the County and providing that a schedule of the current user fees or lease payments shall be made available by the operator to any member of the public upon request.

11. The terms and conditions under which the responsible public entity may contribute financial resources, if any, for the qualifying project;

12. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;

13. The terms and conditions under which the RPE will be required to pay money to the private entity and the amount of any such payments for the project;

14. Any other provisions required by applicable law or provisions that the County determines serve the public purpose of the PPEA.

Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the comprehensive agreement only by written amendment.

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the County. Accordingly, as part of the comprehensive agreement, the prospective operator and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the prospective operator shall immediately notify the County of same. Any violation of this section of the comprehensive agreement shall give the County the right to terminate the agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

C. Notice and Posting Requirements

1. At some point during the proposal review process, but at least 30 days prior to entering into an interim or comprehensive agreement, the RPE shall hold a public hearing on the proposals that have been received.

2. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the RPE, the RPE shall post the proposed agreement in the following manner:

a. Posting shall be on the RPEs' website or by publication, in a newspaper of general circulation in the area in which the contract work is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Commonwealth's electronic procurement website.

b. At least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the RPE and the private entity.

c. Any studies and analyses considered by the RPE in its review of a proposal shall be disclosed to the appropriating body at some point prior to the execution of an interim or comprehensive agreement.

3. Once an interim agreement or a comprehensive agreement has been entered into, the RPE shall make procurement records available for public inspection, upon request.

a. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adverse affect on the financial interest or bargaining position of the RPE or private entity.

b. Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

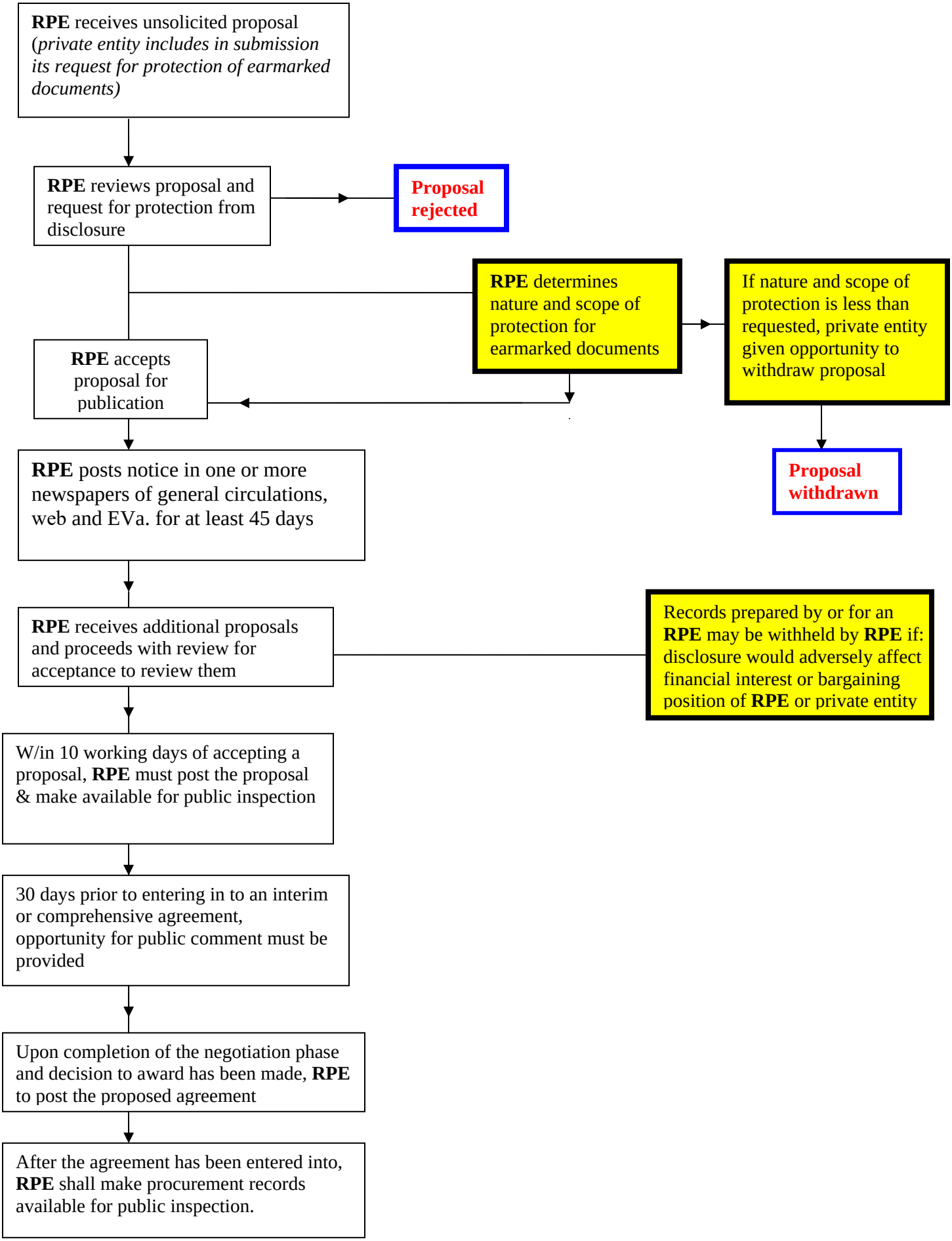
To the extent access to procurement records are compelled or protected by a court order, then the RPE must comply with such order.

4. The RPE shall electronically file a copy of all interim and comprehensive agreement and any supporting documents with the Auditor of Public Accounts. Such agreements and supporting documents should be provided within 30 days of the execution of the interim or comprehensive agreement.

VII. GOVERNING PROVISIONS

In the event of any conflict between these guidelines and procedures and the PPEA, the terms of the PPEA shall control.

PPEA Unsolicited Proposal Notice Overview (Incorporating SB 76 & SB 5011)



Purchasing Manual

James City County

2/22/19

APPENDIX

SECTION 1 GENERAL

[redacted]

1.1 Purpose
1.2 Authority
1.3 Applicability
1.4 Responsibility
1.5 Changes
1.6 Documents Incorporated by Reference

[redacted]

1.1 **PURPOSE**

The purpose of this Purchasing Manual is to provide detailed instructions for requesting, ordering, receiving, paying for and disposing of goods and services needed by the County.

1.2 **AUTHORITY**

This manual revision is authorized by the James City County Purchasing Policy adopted by the Board of Supervisors on January 9, 2001 and last revised August 2011. This manual supersedes the Purchasing Manual that was last revised by the Board of Supervisors in March 1985.

1.3 **APPLICABILITY**

All County procurements from nongovernmental sources shall be made in accordance with this Manual, regardless of whether the consideration is monetary or non-monetary and regardless of whether the County, contractor or some third party is providing the consideration. Use of the term "VPPA" refers to the Virginia Public Procurement Act, Sections 2.2-4300 et seq. of the Code of Virginia (1950), as amended.

1.4 **VIOLATIONS**

Violations of the provisions of the Purchasing Policy or this Manual shall be grounds for disciplinary action, up to and including, termination.

1.5 **CHANGES**

The Purchasing Director will submit proposed changes to the Manager of Financial and Management Services for approval.

1.6 **DOCUMENTS INCORPORATED BY REFERENCE**

The current versions of the James City County Purchasing Card Policy, and the Surplus Property Guide are incorporated into this Manual by reference.

SECTION 2

GENERAL PROCUREMENT POLICIES

2.1 Invitations for Bids, Requests for Proposals and Responses
2.2 Bonds
2.3 Contractor License Requirements
2.4 Federal Grants
2.5 Multiple Awards
2.6 Prohibited Participation
2.7 Public Access to Procurement Records
2.8 Publicly Posted Notices
2.9 Responsible Bidder or Offeror
2.10 Responsive Bid
2.11 Vendor List
2.12 Donation Trust Fund Purchases
2.13 Contract Approval Authority

2.1 Invitations for Bids, Requests for Proposals and Responses

a. **Adequate Competition**. Solicit responses from a sufficient number of sources to satisfy the requirements of the procurement method being used.

b. **Amending a Solicitation**. If it is necessary to amend a solicitation, prepare and send an addendum to all potential bidders or offerors who received a copy of the solicitation or who at tended a pre-bid or pre-proposal conference. It is recommended that a signed acknowledgment of addenda be included with the forms vendors submit with their bid or proposal.

c. **Canceling a Solicitation**. An Invitation for Bids, Request for Proposal or any other solicitation may be canceled or rejected. When canceling a written solicitation, all vendors who have been issued a solicitation should receive a copy of the notice. The reason for cancellation shall be made a part of the contract file. A public body shall not cancel or reject a solicitation solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror (*Code of Virginia* § 2.2-4319).

d. **Receipt of Bids or Proposals**. Bids or proposals are received at the Purchasing Office. The official time of receipt used in the receipt of bids/ proposals is that time stamped by the automatic time stamp machine in the Purchasing Office. When bids or proposals are received, the bids or proposals shall be stamped on the envelope showing the date and time of receipt. The bid or proposal receipt time deadline must strictly comply with the date and time stated in the solicitation.

Purchasing staff shall be responsible for deciding when the time of the receipt deadline has arrived and the solicitation is closed. No further bids/proposals will be accepted after the deadline has passed. It is the sole responsibility of the bidder or offeror to have the bid or proposal at the specified location by the appointed time. The Purchasing Office is not responsible for equipment or mechanical failures or delays in the delivery of mail by the US Post Office or private carriers.

If bids or proposals are scheduled to be received during a period of suspended business operations, schedule the receipt and opening for the same time on the next regular business day.

Sealed Bids. Sealed bids must be held unopened in a secure area until the date and time established for opening in the solicitation. They shall then be publicly opened. Questions on bid contents other than name of vendor and bid amounts should not be answered until after evaluation is complete and an award decision has been made.

Sealed Proposals. Public openings are not required by law for proposals submitted under competitive negotiation, but doing so avoids the appearance of impropriety. If a public opening of proposals is conducted, only the names of the firms submitting proposals shall be disclosed. Questions on proposal content other than the name of an offeror should not be answered until after evaluation and negotiations are complete and an award decision has been made.

Late Bids or Proposals. Bids or proposals received after the time on the date specified for receipt in the solicitation shall not be considered and shall be returned unopened to the bidder or offeror.

e. **Facsimile Bids or Proposals**.

(1) **Unsealed Bids/Unsealed Proposals**. Facsimile bids or proposals may be accepted when using small purchase procedures requesting unsealed bids or unsealed proposals. Facsimile bids or proposals must be completely received in the Purchasing Office prior to the time on the date specified for receipt. The original copy of the facsimile transmission may be requested.

(2) **Sealed Bids/Sealed Proposals.** Facsimile bids or proposals shall not be accepted for sealed bids or sealed proposals.

f. **Acceptable Sealed Bid/Sealed Proposal Signatures**. The original sealed bid or sealed proposal returned by the bidder or offeror must be signed in ink. Typewritten or stamped signatures are not acceptable. The person signing the bid or proposal must be a person authorized by the bidder or offeror to sign bids or proposals. The person signing must, if requested, verify the authority to bind the company to the contract.

g. **Correcting or Withdrawing Bids or Proposals by Vendors**.

1) **No plea or claim**. Except as herein provided, No plea or claim of mistake in a solicitation or resulting contract or purchase order shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder/offeror as a result of the breach or nonperformance of such contract or purchase order.

2) **Correction or Withdrawal Before Opening**. A bidder or offeror may correct mistakes discovered before the time and date set for receipt of bids or proposals by withdrawing and replacing or by correcting the bid/proposal. Any corrections should be initialed by the person making the change. Erasures, strike-overs or the use of opaquing fluid on bids and proposals that affect unit price, quantity, quality or delivery may result in the rejection of the line item or items involved in the bid or proposal.

Bids/Proposals may be withdrawn upon written request from the bidder/offeror received at the address shown in the solicitation prior to the time of acceptance.

3) **Correction or Withdrawal After Opening**

(A) **Informality**. An informality is a minor defect or variation of a bid or proposal from the exact requirements of the Invitation for Bids, or the Request for Proposal, which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured (*Code of Virginia*, § 2.2-4301). The Purchasing Office may, in its sole discretion, waive such informalities or permit the bidder/offeror to correct them, whichever procedure is in the best interest of the County. Examples include the failure of a bidder/offeror to:

(1) Return the number of signed bids/proposals required by the solicitation.

(2) Sign the face of the bid/proposal in the space provided, but only if the unsigned bid/proposal is accompanied by other signed documents indicating the bidder's/offeror's intent to be bound.

(3) Acknowledge receipt of an addendum to the solicitation, but only if it is clear from the bid/ proposal that the bidder/offeror received the addendum and intended to be bound by its terms, or the addendum involved had a negligible effect on price, quantity, quality, or delivery.

(4) Failure to supply the contractor license number provided this information is promptly submitted upon the request of the Purchasing Office.

(B) **Construction**. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgmental mistake, and was actually because of an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice [*Code of Virginia*, 2.2- 4330A. (i)]. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

(C) **Non-Construction**. Requests for withdrawal of non-construction bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the County Purchasing Director, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.

If an error and the intended correct bid are clearly evident, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples may include typographical errors, errors in ex tending unit prices, transposition errors and arithmetical errors.

If the intended correct bid is not evident, a bidder may be permitted to withdraw a low bid if an error is clearly evident from the bid documents submitted by the bidder and/or a comparison with other bids.

Bids/proposals shall not be withdrawn after award of a contract or issuance of a purchase order.

(D) No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five (5) percent.

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

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

(G) If the purchasing agent denies the withdrawal of a bid under the provisions of this section, he shall notify the bidder in writing, stating the reasons for his decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder (Code of Virginia, 2 .2-4330F). The decision denying withdrawal of a bid shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking the appropriate appeals procedure described in Section 10.9 of this Manual or by instituting legal action as provided in the Code of Virginia, § 2.2-4364.

h. **Bid Evaluation**. As soon as practical after the opening, the bids should be evaluated and an award made to the lowest responsive and responsible bidder. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder shall be notified in writing (*Code of Virginia,* § 2.2-4359).

i. **Single Response to a Solicitation**. If only one response is received and the project is considered to have a significant budgetary impact and competitive sources are known to exist, the buyer should investigate to determine why other bidders or offerors did not respond and make a determination whether to award or to reject the bid or proposal and re-solicit. If it is determined to make the award based on a single response, the buyer must determine that the price is fair and reasonable.

2.2 **Bonds**

a. **Bid Bonds**. Except in cases of emergency, all bids or proposals for construction contracts in excess of $100,000 shall be accompanied by a bid bond from a surety company selected by the bidder that is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work specified in the bid. The amount of the bid bond shall not exceed five percent of the amount bid (*Code of Virginia*, § 2.2-4336).

(1) 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.

(2) Nothing in this section shall preclude the County from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than $100,000.

b. **Performance and Payment Bonds**.

(1) Upon the award of any public construction contract exceeding $100,000 awarded to any prime contractor, such contractor shall furnish to the County such bonds, executed by one or more surety companies that are legally authorized to do business in Virginia, as follows:

(a) 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.

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

(2) Each of the bonds shall be filed with the Purchasing Office within the time specified in the Notice of Award.

(3) The County may require payment or performance bonds for construction contracts below $100,000.

d. **Bonds on Other than Construction Contracts**. The County may require bid, payment, or performance bonds for contracts for goods or services, regardless of contract amount if provided in the Invitation for Bids, Request for Proposal or other solicitation document.

e. **Alternative Forms of Security**. A certified check or cash escrow may be accepted in lieu of a bid, payment, or performance bond. A bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval and acceptance shall be granted by the Purchasing Director only upon consultation with the County Attorney and a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

2.3 **Contractor License Requirements**. All contractors shall be properly licensed as required by Federal, state and local law. Construction contractors shall meet the requirements of *Code of Virginia*, §§ 54. 1-1103 and 54. 1-1115. Solicitations should state that the appropriate contractor license number will be furnished with the bid or proposal. If a contractor who is already licensed fails to submit the license number with the solicitation, the response may still be considered if the number is promptly submitted upon the request of the Purchasing Office.

An unlicensed vendor submitting a bid or proposal when such license is required is non- responsive and is in violation of state law. Any buyer who knowingly receives or considers a response from an unlicensed vendor when a license is required is in violation of state law (*Code of Virginia*, § 54.1-1115).

2.4 **Federal Grants**. If federal grant or contract funds contain conditions that are in conflict with the *VPPA*, the Board of Supervisors must provide written determination that the acceptance of the grant or contract funds under the applicable conditions is/are in the public interest. Such determination shall state the specific provision(s) of the *VPPA* in conflict with the conditions of the grant or contract (*Code of Virginia*, § 2.2-4343B).

2.5 **Multiple Awards**. Unless otherwise specified in the solicitation, the Purchasing Director may make an award in whole, in part or on an individual line item basis.

2.6 **Prohibited Participation**.

a. **From Architect or Engineer**.

(1) No building materials, supplies, or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure; or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in *Code of Virginia*, § 2.1-639.2 and § 2.2-4374A.

(2) No building materials, supplies, or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person which has provided or is currently providing design services specifying a so le source for such materials, supplies, or equipment to be used in such building or structure to the independent contractor employed by the County to furnish architectural or engineering services in which such person has a personal interest as defined in *Code of Virginia*, § 2.1-639.2 and § 2.2-4374B.

(3) The provisions of (1) and (2) above shall not apply in cases of emergency.

b. **Other Contractors**. A n independent contractor employed or otherwise paid by the County to design a project, develop a scope of work, write specifications or otherwise define contract requirements is not eligible to compete for or receive the resulting contract, except in cases of emergency, when only one source is practicably available for both the defining of contract requirements and the performance of those requirements or when the Purchasing Director determines in writing that the exclusion of such vendor would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the County. In addition the contractor may not be a subcontractor or supplier for the entity that is awarded the contract or any of that entity's subcontractors, however far removed. A vendor may offer, without consideration, assistance to County personnel in developing specifications for a requirement and compete on that requirement; however, the Purchasing Director shall assure vendor provided specifications reflect the procurement needs of the County rather than being drawn to favor a particular vendor.

c. **Limitation on Submitting Bid for Same Procurement**. Submission of a subsequent bid/proposal, unless specifically identified as an additional bid, shall constitute the withdrawal of any prior bid submitted by the same bidder or offeror on the same IFB/RFP.

2.7 **Public Access to Procurement Records**. Records are open to the public in accordance with the *Virginia Freedom of Information Act* and § 2. 2-4342 of the *Code of Virginia.* Project budgets are considered to be cost estimates as referred to in §2.2-4342B.

2.8 **Publicly Posted Notices**. Procurement notices will be publicly posted in the area designated and regularly used for that purpose. The Purchasing Office bulletin board is the designated place for the posting of public notices. The public posting area shall be available to the public during normal working hours. Public notice of Invitations for Bid (IFB), Requests for Proposal (RFP), and award notices/intent to award notices for IFBs, RFPs, sole source and emergency procurements shall be posted in this designated area. Public notices may also be posted on the County's Internet website.

2.9 **Responsible Bidder or Offeror**. In determining a responsible bidder or offeror, a number of factors, including but not limited to the following, are considered. The vendor should:

a. be a regular dealer, supplier, or when required in the solicitation an authorized dealer of the goods or services offered;

b. have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;

c. have a satisfactory record of performance;

d. have a satisfactory record of integrity; and

e. have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract.

A bidder or offeror found to be nonresponsible for a particular procurement shall be notified in writing of the determination and the factual support for the determination.

2.10 **Responsive Bid**. To be considered for an award, a bid must comply in all material respects with the Invitation for Bids. Responsiveness relates to compliance with the provisions of the solicitation, including specifications and terms and conditions. Failure to comply with the requirements set forth in the Invitation for Bids may result in a bid being declared nonresponsive. The following are examples of nonresponsive bids, but are not meant to be all inclusive:

- failure to sign a bid,
- failure to return the required bid documents,
- substitution or addition of bidder's own contractual terms,
- taking exception to or deletion of terms and conditions or specifications stated in the Invitation for Bids,
- failure to offer a product or service that meets the requirements of the Invitation for Bids,
- providing multiple prices for performing a service where a single price was solicited,
- failure to provide prices for all categories of labor in the pricing schedule of a time and materials service contract (if required),
- failure to submit the bid bond if required in the Invitation for Bid,
- submission of sample goods that do not meet the specifications, or
- failure to acknowledge receipt of an addendum when it affects price, quantity, quality or delivery.

A bidder found to be nonresponsive for a particular procurement shall be notified in writing of the determination and the factual support for the determination.

2.11 **Vendor List**

The Purchasing Office does not maintain a separate list of vendors, but utilizes the eVA website to source vendors categorized by commodity code. Interested vendors are encouraged to register their company on the eVA site, however, registration does not guarantee receipt of a request for quotation, invitation to bid, or request for proposal. It is the vendor's responsibility to check the public notices of available solicitations posted by the Purchasing Office.

2.12 **Donation Trust Fund Purchases**

Requisitions for purchases using the Donation Trust Fund shall be accompanied by a memo authorizing the purchase signed by the County Administrator, County Treasurer and the Manager of Financial and Management Services. The purchase order will not be processed without the memo.

2.13 **Contract Approval Authority**

The dollar amount of the contract during its initial term shall be used to determine the required level of contract approval authority. (Refer to Chapter 2, Section 4 of the James City County Purchasing Policy).

SECTION 3

SOLICITATION PREPARATION & PROCESS

3.1 Preparing the Written Solicitation
3.2 Specifications
3.3 Prequalification
3.4 Prompt Payment Discounts
3.5 Award Documents
3.6 Insurance
3.7 Maintenance/Repair of Equipment
3.8 Printing
3.9 Services
3.10 Non-Professional Services
3.11 Professional Services
3.12 Construction
3.13 Use of Contractor's Standard Contract Form
3.14 Antitrust Violations

3.1 **Preparing the Written Solicitation**.

a. **General**. Solicitations should convey to the reader, in a clear, concise and logical sequence, the information necessary to answer the basic questions of who, what, why, where, when and how. Generally, if there is an ambiguity in a written contract that results in a dispute, the resolution will be against the party who wrote the contract.

b. **Qualifications**. Unless the County has provided for pre-qualification of bidders, the solicitation shall include a statement of any requisite qualifications. Such qualifications must be verifiable and must be used in determining responsiveness of bids and in evaluating proposals.

c. **Contract Period**. Term contracts normally cover a 12-month period or cite a specific time f or completion f or the project or service. Multi-year programs are subject to availability of funds, and each solicitation covering a multi-year period must contain an availability of funds (non-appropriation) clause. If price adjustments are to be permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract. Purchasing Office staff should review all multi-year contracts at least annually to determine if the goods or services are still required, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory.

d. **Types of Contracts**.
Contracts may be awarded on a fixed price or cost reimbursement basis or on any other basis that is not prohibited. No public contract shall be awarded on the basis of cost plus a percentage of cost except in case of an emergency affecting the public health, safety or welfare and in the case of certain insurance policies as described in the *Code of Virginia*, § 2.2-4331.

e. **Pre-bid or Pre-proposal Conferences**. Conference and/or site visits early in the solicitation cycle provide an opportunity to emphasize and clarify critical aspects of solicitations, eliminate ambiguity or misunderstandings, and permit vendor input. Conferences/site visits should be conducted with potential bidders or offerors when the solicitation contains complex, large dollar or critical requirements. These conferences or site visits should not be scheduled less than ten full calendar days from the date the solicitation is issued and public notice requirements are completed. Pre-bid or pre-

proposal conferences scheduled during a period of suspended business operations should be rescheduled by the Purchasing Office to a date and time that will permit proper notification to all potentially interested participants. If a modification to the solicitation is required as a result of the conference or site visit, an addendum must be issued.

Attendance at conferences or site visits may be either optional or mandatory. When attendance is mandatory, attendees shall sign a roster and only bids or proposals from those firms represented at the conference or visiting the site will be accepted. No one shall be admitted to a mandatory pre-bid conference after the announcement is made that the meeting is closed. Staff should carefully consider whether it is absolutely necessary that bidders or offerors attend in order to understand the solicitation and submit a response to it. Such mandatory conferences and site visits can reduce competition because of vendor scheduling conflicts. Vendors find out who their competition is and may be able to judge how competitive they must be to win an award. Unscrupulous bidders may have a better chance to collude if they want to rig a bid.

f. **Response Time**. When establishing an opening date and time, buyers should allow for holiday mail disruptions and erratic mail deliveries as well as vendor's time required to respond to complex procurements. The opening date should be no less than ten (10) days after the scheduled pre-bid or pre-proposal conference. If the tenth calendar day falls on a weekend or holiday, the bid or proposal due date shall be no sooner than the first regular business day thereafter.

g. **Acceptance Period**. Unless otherwise specified in the solicitation, responses are valid for ninety (90) days from opening date.

3.2 **Specifications**. Specifications can either enhance or inhibit competition. It is the County's policy that competition be sought to the maximum feasible degree. This can be accomplished by describing goods or services in a manner that meets the County's needs and encourages competition. Unless expressly stated in the solicitation, all supplies and equipment furnished must be new, unused and in first class condition. Demonstration, previously rented or reconditioned items are not considered new .The following specification categories are listed in the preferred order of use:

a. **Generic (Performance and Design)**. Analyze requirements with a view towards soliciting the requirement on a generic specification basis. Under appropriate circumstances, performance specifications (setting forth the performance requirements), design specifications (setting forth the essential characteristics of the items solicited), or a pre-qualified products list may be used.

b. **Brand Name or Equal**. When it is determined to be impractical to develop a generic specification, a brand name may be used to convey the general style, type, character and quality of the article desired. Unless the solicitation states otherwise, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand or manufacturer named. Any article that the County, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended, shall be accepted (*Code of Virginia*, § 2.2- 4315).

c. **Proprietary**. A proprietary specification restricts the acceptable products to those of one or more specified manufacturers. It is appropriate to use a proprietary specification when the desired product must be compatible with or is an integral component of existing equipment or products, or where pre-qualification of products is necessary to support specific needs of a program; is covered by a patent or copyright; must yield absolute continuity of results; or is one with which a user has had extensive training and experience, and the use of any other similar piece of equipment would require considerable reorientation and training. Efforts should be made to obtain full competition among the distributors who carry the manufacturer's product.

d. **Vendor Assistance in Specification Preparation**. Advice or assistance may be received from a vendor in identifying the features and characteristics needed by the County. See 2.6 Prohibited Participation for restrictions on this practice.

3.3 **Prequalification**. It is sometimes necessary to pre-qualify products or suppliers and only solicit those who have been prequalified. In such cases, a list shall be maintained of specific products or contractors that have been evaluated and determined to be acceptable in meeting predetermined minimum acceptable levels of quality or performance. A contractor whose product or service has been determined not qualified will be advised in writing. Reasons for disqualification are listed in Chapter 2, Section 3 of the Purchasing Policy. Solicitations are only sent to those contractors determined to be qualified. The prequalification procedure described in § 2.2-4317 of the VPPA shall apply to all County prequalification solicitations.

3.4 **Prompt Payment Discounts**. Unless specifically permitted in the solicitation, prompt payment discounts shall not be considered in determining the lowest responsive bidder. If a bidder does offer a discount for prompt payment, it should be included on the purchase order, and the discount taken if invoices are processed and payment made within the stipulated time frame.

3.5 **Award Documents**. Award documents used by the County will vary according to the method of solicitation. The award shall include or incorporate by reference the solicitation documents, all written modifications made after the opening and the bid or proposal submitted by the contractor. The award document is to be signed and issued by the Purchasing Director or authorized representative. Listed below are the types and conditions under which they are to be used.

a) Purchase Order. A Purchase Order should be used (other formats such as an order form may be acceptable in placing orders against term contracts):

- to place orders against term contracts for goods and non-professional services or -
- as a binding commitment for one time spot purchases of goods and non - professional services.

b) Notice of Award. The Notice of Award form is issued to contractors to accept sealed bids or proposals.

c) Notice Of Intent To Award. The Notice of Intent To Award form may be used to officially notify the public through a public posting of the intent to issue an award. This notice is recommended for use whenever considerable bidder or offeror interest has been expressed about the potential award and/or the Purchasing Office has reason to believe an award decision may be challenged. The notice should not be posted until after completion of the evaluation. The notice should be date stamped and publicly posted for the ten (10) day period allowed for protest (*Code of Virginia* § 2.2-4360). Upon expiration of the ten (10) day period, the appropriate award document as discussed above may be issued.

3.6 **Insurance**. When work is to be performed on County owned or leased property or facilities, the contractor shall be required to have Workers' Compensation, Commercial General Liability and Automobile Liability, and, in certain situations, Professional Liability/Errors and Omissions insurance coverage. The County's Risk Manager Director and insurance consultant can provide additional guidance. The County must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage. Stipulated insurance shall be obtained prior to commencing work and shall be maintained during the entire term of the contract. The contractor shall certify to the County that it possesses the appropriate insurance coverage. The Purchasing Office may require a certificate of insurance to be furnished prior to commencement of work and at any time during contract performance.

3.7 **Maintenance/Repair of Equipment**. Equipment is generally covered by warranty provisions for various periods of time. Determine that full advantage is taken of warranty provisions prior to contracting for m maintenance or repair service. When equipment is covered by insurance, the insurance carrier shall be advised, in accordance with the provisions of the policy, prior to contracting for repair.

3.8 **Printing**.

a. **Ownership of Artwork, Negatives, Etc**. All artwork, negatives, dies, overlays or similar material used to print a job shall be the property of the County and shall be delivered to the user department upon completion of the job. User departments should not process any invoice for payment until these items are returned.

b. **Copyright**. No vendor may copyright any work produced for the County without the written consent of the County Administrator.

c. **Overruns and Underruns.** The County may accept up to a 10% overrun or underrun. Prices for overruns must not exceed the quoted base price per unit or the quoted price for additional copies run at the same time (R.A.S.T.). Whichever price is less will prevail. Prices for underruns will be calculated at the quoted base price per unit. If the County will not accept underruns or overruns, it must be stated in the specifications.

3.6 **Services.**

In procurements involving both professional and non-professional services, the procedures for professional service procurement shall be used. An attempt should be made to separate the components into 2 separate procurements if possible.

Term Contracts. - Term contracts (annual or multi-year) shall be considered where the anticipated cumulative annual costs for a service exceed $50,000 and a fixed price type contract or a unit priced requirements type contract can be awarded. In some instances, even though the annual amount is less than $50,000, a term contract may beneficial and may be used.

3.7 **Non-Professional Services**

a. **General**. The term "non-professional" services, as used in this section, means all services not within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, professional engineering or others as defined in the *Code of Virginia*, § 2.2-4301.

b. **Individual Services**. Problems have arisen with the Federal Internal Revenue Service concerning withholding and Social Security taxes in situations where the individual contractor performs under the supervision and control of the department. An employer - employee relationship has been determined to exist in such cases, thereby subjecting the County to liability for such taxes plus those employment obligations established by State law. When in doubt, Human Resources and/or the County Attorney should be contacted before entering into such a contract.

c. **Consultant Services**. By definition, consultants provide information, assistance, and guidance of a purely advisory nature, usually in the form of a report or other deliverable, setting forth alternative courses of action and recommendations based on the expertise possessed by the outside individual, firm or organization. Such advice or assistance does not relieve a user department of responsibility for its final decision.

The following methods are suggested for use in developing the pricing schedule and for payment of consultants:

(a) A lump sum or fixed price for the total project.

(b) Hourly rate plus cost reimbursement, with a ceiling on the total contract; payment will be made only for hours used at the agreed r ate and cost incurred. Items for which cost reimbursement will be made must be specifically indicated in the solicitation and resulting

contract.

(c) Daily or hourly compensation for work "when requested" during the period of the contract at agreed rates, with a ceiling on the total, including any other costs which have been determined to be allowable.

(d) An incentive fee arrangement designed to motivate the contractor to complete the project early or achieve specified economies.

3.8 **Professional Services**.

a. **General**. Professional Services as defined in § 2.2-4301 of the VPPA 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, and professional engineering.

b. **Legal Services and Expert Witness**. The County may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 5 (§ 2.2-500 et seq.) of Title 2.2 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

c. **Competitive Negotiation**. Competitive negotiation shall be used for the procurement of professional services for single or term contracts with the aggregate or the sum of phases expected to exceed the small purchase limit of $30,000. Note that solicitations for professional services shall not request that offerors furnish estimates of man-hours or cost for services (*Code of Virginia*, § 2.2-4301 3.a.).

d. **Professional Services Small Purchases**. If the aggregate or the sum of all phases of the professional service being procured is not expected to exceed $50,000, professional services may be procured using small purchase procedures (*Code of Virginia*, § 2.2-4303 H). Professional services procurements under $30,000 may be awarded on the basis of an unsealed Request for Proposal as described in Chapter 4. Estimates of man-hours or cost for services may be requested as part of an unsealed Request for Proposal. At the Purchasing Director's discretion, competitive negotiation may be required for professional services procurements under $50,000 if this best serves the County's needs.

e. **Evaluation and Award Procedures**. Chapter 6 describes the evaluation and award procedure for the procurement of professional services by competitive negotiation.

f. **Contractor Performance**. During the period of the contract, the contractor's performance is to be monitored in accordance with the standards set forth in the contract.

3.9 **Construction**.

a. **Definitions**

(a) **Construction**. Construction shall mean building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property (*Code of Virginia*, § 2.2- 4301).

(b) **Capital Outlay Project**. Capital outlay projects include acquisition, construction or improvement related to property, plant or equipment. User departments are responsible for monitoring BOS approval of future capital outlay projects and consulting the Purchasing Office early in the preliminary design stage to ensure adequate planning.

b. **Construction**. Construction may be procured only by competitive sealed bidding, except that

competitive negotiation may be used in the following instances upon a determination made in advance 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 (*Code of Virginia*, § 2.2-4303 D):

(a) for the alteration, repair, renovation, or demolition of buildings when the contract is not expected to cost more than $500,000.

(b) for the construction of highways and any draining, dredging, excavation, grading, or similar work on real property.

(c) For design-build or construction management contracts as allowed in the *Code of Virginia*, § 2.2-4308.

c. Equipment and/or furnishings, whether built-in or free standing, not acquired as part of a general construction contract and not requiring plans and specifications prepared by an architect or engineer, will be purchased in accordance with the provisions of this manual. Systems necessary to make a building functional, such as heating, ventilation, air conditioning, electrical, elevators, or like systems are considered construction purchases.

d. Except in an emergency, all bids for construction services in excess of $100,000 must be accompanied by a Bid Bond from a surety, selected by the bidder, which is legally authorized to do business in Virginia. The amount of the Bid Bond shall not exceed 5% of the amount bid (*Code of Virginia*, § 2.2-4336 A).

e. Upon award of a construction contract exceeding $100,000, the contractor shall furnish a Performance Bond and a Payment Bond, each in the sum of the contract. Each such bond shall be executed by one or more surety companies which are legally authorized to do business in Virginia.

f. Solicitations for construction contracts with an estimated cost over $1,000 shall request proof of the appropriate state-issued Contractor License. See *Code of Virginia* § § 54.1-1103 and 54.1-1115.

3.10 **Use of Contractor's Standard Contract Form**. Use of a contractor's standard form is strongly discouraged because any discussions about possible modifications will begin from a position that automatically favors the contractor. Any contractor's standard contract form should be carefully read. Any provisions that are contrary to the interests of the County or in conflict with state law, must be lined out, rewritten, or removed. If it is not possible to award a contract without using the contractor's contract form, use an addendum to make the County's desired terms and conditions part of the agreement. The Contract Form Addendum to Contractor's Form contained in Chapter 4 of the Commonwealth's *Agency Procurement and Surplus Property Manual* provides a sample format and suggested language.

3.14 **Antitrust Violations**

a. **General.** Practices that eliminate or restrict competition usually lead to excessive prices and may warrant criminal, civil, or administrative action against the offeror, vendor, or contractor. Examples of anti-competitive practices are collusive bidding, bid rigging, bid rotation, and sharing of the business.

b. **Reporting Suspected Antitrust Violations**. The Purchasing Director shall report to the County Attorney any bids, proposals or other instances wherein evidence or suspicion of an antitrust law violation has occurred. (See *Code of Virginia*, § 59.1-9.et seq.)

SECTION 4

SMALL PURCHASES

4.1 General
4.2 Purchasing Cards for Small Purchases
4.3 Single Quotation
4.4 Three Quotations
4.5 Unsealed Bidding
4.6 Unsealed Proposals
4.7 Blanket Purchase Orders

4.1 **General**

The following small purchase procedures apply when procuring materials, supplies, equipment, printing or services under $50,000. All costs associated with the procurement, including all possible renewal periods for service or term contracts, should be included when determining the proper method of procurement. Procurements using small purchase procedures do not require public bid openings or newspaper advertising of competitively negotiated procurements. User departments should submit requisitions for small purchases using the HMS automated requisition system.

4.2 **Purchasing Cards for Small Purchases**

The County has a Purchasing Card for transactions to $2,500 for the purchase of goods and some limited services. The Purchasing Card Policy and Procedures apply to all Purchasing Card transactions. The Purchasing Card Policy and Procedures are incorporated into this Purchasing Manual by reference.

4.3 **Single Quotation**. (0 - $2,500)

a. Where the estimated cost of goods or services is $2,500 or less, purchases may be made upon receipt of one quotation. A record of the quotation must be kept with the file. The Purchasing Office may require the quote to be in written form from the vendor. When using the Purchasing Card, quotes should be obtained whenever possible.

b. Users should seek additional competition whenever there is reason to believe a quotation is not a fair and reasonable price.

4.4 **Three Quotations**. (Over $2,500 to $50,000*)

a. Solicit three valid quotations if the cost is $2,501 to $5,000. Verbal quotes may be obtained but shall be noted in writing and placed in the procurement file. The Purchasing Office may require the quotes to be in written form from the vendor.

Purchases from $5, 001-$50,000 require either solicitation of three **written** quotes, or issuance of an informal bid/RFP. If written quotes are solicited, all documentation shall be placed in the procurement file. Failure of a vendor to respond to a request to submit a quote shall be noted in the procurement file. If fewer than the required number of sources are solicited, the reasons shall be noted in the procurement file. *Note- Goods/Services may be determined by the Purchasing Office to be solicited by means of an RFQ or an unsealed request for proposals. Users are to work with the Purchasing office to determine the best procurement method for purchases $5,000 - $50,000.

4.5 **Request for Quotes (Up to $50,000)**

The Purchasing Office may issue a Request for Quotes (RFQ) for small purchases. The RFQ will be distributed to at least three potential vendors. Quotes may be opened and tabulated upon receipt. Faxed responses are acceptable. Quotes must be received at the Purchasing Office by the date and hour specified. Award will be made to the lowest responsive and responsible vendor. If a vendor offers an alternative (not an equal) that the Purchasing Office and the user determine would be in the best interests of the County, each vendor contacted for the RFQ will be provided with the revised requirement and allowed to submit another quote.

4.6 **Unsealed Proposals (Up to $50,000)**

The Purchasing Office may issue an unsealed Request for Proposals (RFP) for small purchases. The unsealed RFP includes a general description of what is needed, any capabilities or qualifications that vendors must have and the criteria and weights (if any) to be used in evaluation. The RFP will be distributed to at least three potential vendors.

Proposals may be opened and evaluated upon receipt. Faxed responses are acceptable. Proposals must be received at the Purchasing Office by the date and hour specified. Instead of an evaluation committee, the Purchasing staff and end user may evaluate and rank offers. Upon completion of the evaluation, negotiations will be conducted with the selected vendors and an award will be made.

4.7 **Blanket Purchase Orders**.

Blanket purchase orders (BPOs) are contractual relationships with local vendors to obtain small dollar value expendable operating supplies or services with low or erratic demand. A set of terms and conditions are agreed upon between the buyer and seller wherein the seller will deliver or permit pick up of supplies ordered through a call system controlled by the individual who has received authorization from the Purchasing Office. The prevailing market price, less any trade and/or volume discounts as may be agreed upon, is charged and invoiced on a consolidated basis. The Purchasing Card replaced the need for most Blanket Purchase Orders. The Purchasing Office shall determine if a Blanket Purchase Order is necessary.

SECTION 5

COMPETITIVE SEALED BIDDING

[redacted]

5.1 Competitive Sealed Bidding
5.2 Preparation and Issuance of IFBs
5.3 Sealed Bids - Receipt, Opening, Evaluation, and Award
5.4 Two-Step Competitive Sealed Bidding
5.5 Procedure for Two-Step Competitive Sealed Bidding
5.6 Combined Two-Step Competitive Sealed Bidding
5.7 Negotiation with the Lowest Responsible Bidder

[redacted]

5.1 **Competitive Sealed Bidding**. Competitive sealed bidding is the preferred method for acquiring goods, printing, and nonprofessional services when the estimated cost is over $50,000. The Purchasing Office shall administer the entire Invitation for Bids process from start to finish. Purchasing will solicit user Department input in developing the Invitation for Bids and evaluating the bids.

The goods or service to be procured under this method must be capable of being described so that bids submitted by potential contractors can be evaluated against the description in the Invitation for Bids (IFB) and an award made to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation for Bids, awards may be made to more than one bidder.

Competitive sealed bidding includes the issuance of a written IFB containing the specifications or scope of work/purchase description and the contractual terms and conditions applicable to the procurement. The terms or conditions of the solicitation should include how the County will publicly post the notice of the award or make the announcement of the decision to award the contract. The requirements set forth in the IFB may include special qualifications required of potential contractors, life cycle costing, value analysis, and other criteria such as testing, quality, workmanship, delivery and suitability for a particular purpose which may help in determining acceptability. IFBs must describe the requirements accurately and completely. Unnecessarily restrictive specifications or terms and conditions that unduly limit competition must be avoided. In addition to the public notice, bids are to be solicited directly from potential bidders. In the competitive sealed bid process, bids are publicly opened and read aloud.

The bids shall be evaluated based on the requirements set forth in the IFB and an award made to the lowest responsive and responsible bidder. If multiple awards are so provided in the solicitation, awards may be made to the lowest responsive and responsible bidders. Best value concepts may be applied when procuring goods and nonprofessional services but not construction or professional services. Solicitations may include criteria, factors and basis for the consideration of best value, and the process for the consideration of best value shall be as stated in the IFB.

5.2 **Preparation and Issuance of IFBs**.

a. **Timeframe**. Establish a due date and time that will allow sufficient time for potential bidders to seek clarification and for the issuance of an addendum, if necessary. The due date shall not be less than 10 days from the issue date of the IFB.

b. **Scope**. Specify in detail the materials, equipment, and supplies to be furnished or the scope of work to be per formed by the contractor, including or incorporating by reference the specifications, drawings and contractual terms and conditions applicable to the procurement.

c. **Verify**. Review the IFB Solicitation and File Checklist contained in Chapter 6 (Annex 6-D) of the Commonwealth's *Agency Procurement and Surplus Property Manual* to assure that all requirements applicable to the procurement have been met.

d. **Conferences/Site visits**. All pre-bid conferences and/or site visits shall be mentioned in the IFB and any advertisement, if applicable. If attendance at such a conference or site visit is a prerequisite for bidding, the public notice period shall be long enough to provide adequate opportunity for potential bidders to obtain a copy of the IFB and attend.

Carefully consider if it is necessary to make the pre-bid conference mandatory because it can restrict competition. Mandatory pre-bid conferences scheduled during a period of suspended County business operations should be rescheduled to a date and time that will permit proper notification to all potentially interested participants. Any changes in the requirements of the solicitation must be made by written addendum. The due date for receipt of bids should not be less than 10 day s after the issue date of the addendum.

5.3 **Sealed Bids - Receipt, Opening, Evaluation, and Award**.

a. **Receipt**. Bids shall be received until the time specified in the IFB. Late bids shall not be considered. The official time used in the receipt of bids/ proposals is that time stamped by the automatic time stamp machine in the Purchasing Office. Date/time stamps marked after the designated time of receipt shall be rejected. Bids received prior to the deadline are then publicly opened and read aloud. The names of the bidder and the amount bid are the information that is read aloud.

b. **Opening**. After bid opening, each bid is evaluated to determine if it is responsive to the IFB. See 2.10. The responsive bids are then evaluated according to the criteria and/or evaluation procedure described in the IFB to determine which is the lowest bid.

c. **Evaluation**. The lowest responsive bidder is then evaluated to determine if the firm is responsible. See 2.9.

d. **Award**. The contract is awarded to the lowest responsive and responsible bidder.

5.4 **Two-Step Competitive Sealed Bidding**. Two-step competitive sealed bidding is used when it is impractical to initially prepare a definitive purchase description to support an award based on prices. In such instances an IFB is issued requesting the submission of un-priced technical proposals, to be followed by an IFB for a price, limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation. There is no negotiation in the two-step competitive bid process; however, the County at its option may request information from bidders to clarify material contained in t heir technical proposals.

5.5 **Procedure for Two-Step Competitive Sealed Bidding**.

a. **Step One**. Purchasing shall prepare an I FB requesting a technical proposal. The solicitation shall describe the County's requirement in general t erms and ask for a technical proposal describing how the bidder intends to meet the County's requirements and what goods, equipment, and service, as applicable, will be furnished. The solicitation shall specify any mandatory technical data and information

to be submitted in the proposal and any optional information desired. The cover sheet shall explain the two-step procedure and emphasize that the technical proposal is not to include the bid price. It should indicate if a pre-bid conference will be conducted and if attendance is mandatory or optional. The proposals shall be publicly opened, and the names of the firms submitting proposals shall be announced. The County then evaluates and selects those proposals that will meet its needs, based on the mandatory criteria specified in the solicitation. The evaluators may request written or oral discussions from bidders to clarify or amplify the material in the proposal. The contents of the technical proposal are not subject to negotiation and must be evaluated as submitted. They are not ranked but are determined to be acceptable or not acceptable for meeting the County's needs. Only those responsive bidders whose technical proposals were determined to be acceptable will be invited to submit a bid price.

b. **Step Two**. Purchasing shall prepare an IFB to include a pricing schedule, reference to the request for technical proposal title and number, and a specific date and time for receipt of sealed bids. A public opening shall be held. Bids shall be evaluated, and the contract shall be awarded to the lowest responsive and responsible bidder. The award document shall incorporate by reference the terms and conditions of the solicitation, the contractor's technical proposal, and the bid price.

5.6 **Combined Two-Step Competitive Sealed Bidding**. The two steps can be combined by requiring the firms that respond to the solicitation to furnish their un-priced technical proposals in one sealed envelope and their bid prices in a second sealed envelope at the same time. The instructions issued must specify that the responses are to be submitted in two separate sealed envelopes - one marked "Technical Proposal" and the other "Bid Price". If the solicitation is a combined two-step IFB, the bidders should be instructed to identify both the technical proposal and pricing envelope with the bidder's name, company name and address, and bid reference number. The technical proposals are opened and evaluated as described in 5.3, then only the price envelopes for those technical proposals selected as acceptable are opened, and the award made to the lowest responsive and responsible bidder. The award document will incorporate by reference the terms and conditions of the solicitation and include the contractor's technical proposal and the bid price. The envelopes containing the bid price for those proposals determined to be not acceptable will be returned unopened.

5.7 **Negotiation with the Lowest Responsible Bidder.** If the bid from the lowest responsible bidder exceeds available funds, the County may negotiate with the apparent low bidder to obtain a contract price within available funds if the solicitation contains language allowing this (Code of Virginia, § 2.2-4318). If the Purchasing Director decides to negotiate in such circumstances, the decision should be documented in writing in advance of the negotiations. Otherwise, unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted. "Available funds" are those budgeted by the County for the requirement and designated as such prior to the issuance of the IFB. The purpose of this provision is not to force a bidder to take a lower price but rather to negotiate an acceptable change in requirements, including price that is agreeable to both parties. Negotiations might include an extended delivery date, reduced quantity, different accessories, etc., with a corresponding reduction in price.

CHAPTER 6 COMPETITIVE NEGOTIATION

6.1 Competitive Negotiation
6.2 Preparation and Issuance of a Request for Proposal (RFP)
6.3 Sealed proposals - Receipt and Evaluation General Information
6.4 Goods and Non-Professional Services: Evaluation, Negotiation and Award
6.5 Professional Services: Evaluation, Negotiation and Award
6.6 Unsolicited Proposals

6.1 **Competitive Negotiation**.

The VPPA requires the use of competitive negotiation for the procurement of all professional services over $50, 000. For additional considerations for professional service procurements, refer to Section 3.11. Competitive negotiation may be the procurement method used for goods and nonprofessional services when it is not practicable or fiscally advantageous to use competitive sealed bidding (*Code of Virginia*, §§ 2. 2-4301 & 2.2-4303C). **The Purchasing Office shall administer the entire Request for Proposals process from start to finish. Purchasing will solicit user Department input in developing the Request for Proposal and evaluating the proposals.**

Competitive negotiation has the advantage of flexibility for describing in general terms what is being sought and the factors to be used in evaluating responses. It offers the opportunity, through negotiation, to change the content of an offer and pricing after opening. Negotiation is the dialogue that occurs to achieve mutually satisfactory objectives and benefits and to reconcile differences through mediation. This discussion provides the means for both the buyer and seller to reach agreement on a contract's content, terms, and conditions. In the course of negotiation, both parties should be able to reach a mutually acceptable agreement.

This method of procurement requires the issuance of a Request For Proposal (RFP) that describes in general terms the requirement, the factors that will be used to evaluate the proposal, the General Terms and Conditions, plus any special conditions including unique capabilities or qualifications that will be required. In a sealed program, all responses must be held unopened until the date and time specified for their receipt.

The County may cancel a RFP, or reject proposals at any time prior to making an award (*Code of Virginia*, § 2.2-4319).

The County is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. Offerors may inspect the proposal records after evaluation and negotiations are complete, but prior to award, except in the event that the County decides not to accept any of the proposals and to reopen the contract. Proposal records shall be open to public inspection only after award of the contract (Code *of Virginia*, § 2 .2-4342D).

6.2 **Preparation and Issuance of a Request for Proposal (RFP)**.

a. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation (*Code of Virginia* § 2. 2-4303C). The writing shall document the basis for this determination. This document shall be retained in the procurement file.

b. A written RFP is issued to describe in general terms what is to be procured. The RFP must specify and list the specific requirements to be addressed by the offerors that will be used in evaluating the proposals and will contain other applicable contractual terms and conditions, including any unique capabilities or qualifications required of the contractor. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror. The terms or conditions of the RFP must state the manner in which public notice of the award or the announcement of the decision to award shall be given.

c. If the method for receiving "Best and Final Offers" (BAFO) is to be used in the negotiation and evaluation process, it must be stated in the RFP for the offerors' notification and consideration.

d. Mandatory requirements should be kept to a minimum and refer only to those areas that are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The use of "shall" or "must" indicates a mandatory requirement. Specify any optional information desired. The factors for use in evaluation shall be stated in the RFP, and the weights assigned to them must be included in the RFP or shall be posted in the location use d for public posting of procurement notices prior to the opening and evaluation of proposals. A breakout of subcomponent weights need not be listed. Price can be one of the factors considered, but need not be the determining one. Include a pricing schedule in the RFP. **RFPs for professional services shall not request that offerors furnish estimates of man- hours or cost for services.**

e. Review the RFP Solicitation and File Checklist contained in Chapter 7 of the Commonwealth's *Agency Procurement and Surplus Property Manual* to assure that all specific requirements have been met. In writing the scope of work and/or technical specification for an RFP, use the term "contractor" to describe the person/firm that is to perform the requirements of the contract after award. Use the term "offeror" to describe who will submit a response to the RFP.

f. Establish a proposal submission due date and time that provide sufficient time for potential offerors to develop a proposal. The minimum time period is ten (10) days from issue date of the RFP. The time period used may be greater than the required ten (10) days based on the complexity of the requirement and whether or not a pre- proposal conference is required.

g. All pre-proposal conferences or site visits must be mentioned in the RFP and any advertisement of it. If attendance at such a conference or site visit is a prerequisite for submitting a proposal, the public notice period should be at least ten (10) days after issuance to provide adequate opportunity for potential offerors to obtain a copy of the RFP and attend.

Carefully consider if it is necessary to make the pre-proposal conference mandatory because it can restrict competition. Mandatory pre-proposal conferences scheduled during a period of suspended County business operations should be rescheduled to a date and time that will permit proper notification to all potentially interested participants. Any changes in the requirements of the solicitation must be made by written addendum. The due date for receipt of bids should not be less than 10 days after the issue date of the addendum.

6.3 **Sealed Proposals - Receipt and Evaluation General Information**.

a. Public openings of proposals are not required. If a public opening is held, the names of the individuals, or the names of firms submitting proposals in a timely manner, is the only information read aloud and made available to the offerors and general public.

b. Proposals are evaluated by an evaluation team, facilitated by the buyer. Proposals are evaluated on the basis of the criteria set forth in the RFP, using the scoring weights previously determined. All timely filed RFP responses are to be evaluated. Proposals not meeting requirements should be scored lower. Only bids in response to an IFB may be determined to be non-responsive. Offerors may be given an opportunity to correct a deficiency in their proposals, within a designated period of time as determined by the Purchasing Office. Offerors who fail to submit required documentation or meet mandatory requirements within the designated period of time may be eliminated from further consideration.

6.4 **Goods and Non-Professional Services: Evaluation, Negotiation and Award**.

a. As an option, evaluators may request presentations or discussions with offerors, as necessary, to clarify material in the offerors' proposals, to help determine those fully qualified and best suited. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the evaluation criteria listed in the Request for Proposals. Price is considered, but need not be the sole determining factor. Negotiations shall then be conducted with each of the offerors so selected.

During the evaluation phase it may be determined that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration. A written determination shall be prepared and retained in the contract file to document the meaningful and convincing facts supporting the decision for selecting only one offeror and negotiating with that offeror.

b. Negotiation allows modification of proposals, including price. Offers and counter-offers may be made as many times with each offeror as is necessary to secure a reasonable proposal. After negotiations have been conducted with each of the selected offerors, the County selects the offeror who, in its opinion, has made the best proposal, and the contract is awarded to that offeror. Once an intent to award notice is posted, no further negotiation shall be conducted.

When a provision for receiving best and final offers (BAFO) is included in the RFP, after negotiations, offerors are given the opportunity to submit a best and final offer. After the offeror submits a BAFO, no further negotiation shall take place with that offeror. The offeror's proposal, if already received and scored, may be re-scored to combine and include the information contained in the BAFO with the technical evaluation score previously assigned, and the award decision made. The procurement file shall be documented to show the basis for the award, and include the final re-scoring of the proposals following negotiation and receipt of best and final offers.

c. The award document should be a signed contract incorporating by reference all the requirements, terms and conditions of the RFP and the contractor's proposal as negotiated, together with all written modifications thereof. In all cases, written confirmation shall be obtained from the offeror on any modifications of the original proposal. Care should be taken to ensure that all points negotiated are properly documented and become part of the contract.

6.5 **Professional Services: Evaluation, Negotiation and Award**

a. The evaluation committee shall engage in individual discussions with t wo or more offerers 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. Such 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. Such discussions may also include non-binding estimates of total project costs, including but not limited to where appropriate, design, construction and life cycle costs. Non-binding methods to be utilized in arriving at a price for services may also be discussed. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussions outlined in this paragraph, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the evaluation committee shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

b. Negotiation shall then be conducted, beginning with the offeror ranked first. I f a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiation with the offeror ranked first shall be formally terminated and negotiation conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the evaluation committee determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror. At any time during the negotiations, the Purchasing Office may terminate all negotiations and re-advertise the requirement. The reason for such termination is to be made a part of the file.

c. The award document should be a signed contract incorporating by reference all the requirements, terms and conditions of the RFP and the contractor's proposal as negotiated, together with all written modifications thereof. In all cases, written confirmation shall be obtained from the offeror on any modifications of the original proposal. Care should be taken to ensure that all points negotiated are properly documented and become part of the contract.

6.6 **Unsolicited Proposals**. This policy applies to goods and non-professional services, and not to construction or professional services. The submission of a unique offer for new and innovative goods or services through unsolicited proposals is encouraged. However, all solicited and unsolicited proposals and all solicited and unsolicited ideas for innovation or improvement are submitted at the risk and expense of the offeror, and no obligation on the part of the County and no restriction on the County's use of such ideas, proposals or the information contained therein shall arise in connection with such submission. The foregoing shall not preclude express, written commitments made by the County in formal solicitation documents within the limitations imposed by the *Code of Virginia,* § 2.2-4342F and the *Freedom of Information Act*. The foregoing shall also not diminish or waive any copyright, patent rights or trademark rights, which the offeror may have.

If acceptance of offers to "loan" or provide goods or services at no cost or minor cost would tend to create a need for subsequent additional acquisitions, the requirement for such goods or services and the additional needs shall be offered for competition in accordance with the *Virginia Public Procurement Act* (*VPPA*) and the *County Purchasing Manual*). Potential bidders or offerors shall be afforded an opportunity to participate in the resulting procurement activity.

If the offeror believes that it is the only source practicably available for goods or services required by the County and available through the unsolicited proposal, to assist the County in evaluating the unsolicited proposal, the proposal shall include a justification by the offeror as to why the company is the only source practicably available for the goods or services in question.

a. Definition: "Unsolicited Proposal" means a proposal received that is not in response to any County initiated solicitation or program.

b. Receipt: Unsolicited proposals shall be submitted in writing directly to the purchasing office who is the established primary point of contact to coordinate the receipt and handling of unsolicited proposals.

c. Evaluation:

(1) A favorable comprehensive evaluation of an unsolicited proposal by the County does not, in itself, justify awarding a contract without providing for competition. No preference shall be given to the offeror that initially offered the unsolicited proposal.

(2) If it is determined by the evaluation that goods or services required by the County and offered in an unsolicited written proposal are practicably available from only one source, a buyer may negotiate and award a contract following the sole source procedures in Chapter 7. The buyer shall post a notice of intent to award for ten (10) calendar days before awarding the contract.

CHAPTER 7
SOLE SOURCE PROCUREMENT

[redacted]

7.1 Definition
7.2 Purchasing Director Approval
7.3 Negotiating a Contract
7.4 Price Reasonableness Determination
7.5 Posting

[redacted]

7.1 **Definition**. A sole source procurement is authorized when there is only one source practicably available for the goods or services required. Competition is not available in a sole source situation; thus distinguishing it from a proprietary purchase where the product required is restricted to the manufacturer(s) stipulated, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a single vendor's capability to deliver in the least amount of time is not appropriate since availability alone is not a valid basis for determining a sole source procurement.

Legitimate reasons for a sole source procurement include a sole provider with a copyright, patent or exclusive franchise; a sole provider of items compatible with existing equipment, inventory, training, systems, programs or services; and sole provider of factory-authorized warranty service.

7.2 **Purchasing Director Approval**. A written determination approved in advance by the Purchasing Director documenting that there is only one source practicably available for that which is to be procured, must be included in the procurement file. The writing shall document the basis for the determination and should include any market analysis conducted in order to ensure that the good or service required is practicably available from only one source. The following items should be addressed in the explanation of the sole source determination:

- Why this is the only product or service that can meet the needs of the County.
- Why this vendor is the only practicably available source from which to obtain this product or service.
- Why the price is considered reasonable.
- A description of the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayers.

7.3 **Negotiating a Contract**. Upon satisfying the requirements of paragraph 7.2 above, the Purchasing Office shall negotiate and award a contract in the best interest of the County. Negotiations can be conducted on adding terms and conditions favorable to the County and deleting or changing terms that are one-sided, in favor of the contractor. It is important to know the market and the contractor's situation in regard to the market. Written documentation of the negotiations should be included in the procurement file.

7.4 **Price Reasonableness Determination**. Purchasing Office staff should carefully research the good or service and determine in writing what is a fair and reasonable price. For example, if the good or service has been provided before, the Purchasing Office shall determine what price was previously paid. The Purchasing Office shall research and determine if another department has purchased the same commodity. This process will provide valuable pricing information that can be used in the course of negotiations and in determining price reasonableness.

7.5 **Posting**. A notice of award for sole source procurements above 530,000 will be posted on the bulletin board in the Purchasing Office's public posting area.

CHAPTER 8 EMERGENCY PROCUREMENT

[redacted]

8.1 Definition
8.2 Types of Emergency Procurements
8.3 Award of Emergency Procurements
8.4 Emergency Planning
8.5 Posting

[redacted]

8.1 **Definition**. An emergency shall be deemed to exist when a breakdown in machinery and/or a threatened termination of essential services or a dangerous condition develops, or when any unforeseen circumstances arise causing curtailment or diminution of essential services. that threaten the County's ability to provide essential services. An emergency demands immediate action. Emergency procedures may be used to purchase only that which is necessary to cover the requirements of the emergency. Subsequent requirements shall be obtained using normal purchasing procedures. **Lack of planning or potential loss of budgeted funds are not considered emergencies.**

8.2 **Types of Emergency Procurements**.

a. For an emergency purchase required to protect personal safety or property, efforts should be directed to finding a source and directing the contractor to proceed; however, such procurement shall be made with such competition as is practicable under the circumstances (*Code of Virginia*, 2.2-4303F). This does not relieve the County from negotiating a fair and reasonable price and subsequently documenting the procurement action.

b. For other types of emergencies, competition should also be sought to the maximum extent practicable. Vendor qualifications may be checked and verification of insurance coverage, if applicable, information on warranty offered, and any other data pertinent to the procurement should be obtained.

8.3 **Award of Emergency Procurements**. User departments should contact the Purchasing Office to obtain a confirming purchase order number and Purchasing Director approval. As soon as possible after obtaining the confirming purchase order number, the department must prepare a requisition and forward it to the Purchasing Office along with a written quote from the vendor. The requisition should indicate the nature of the emergency and the reason for selection of the particular contractor. The Purchasing Office prepares a purchase order that includes the details of any agreements, including price that were made or ally with the contractor. All information submitted shall be retained in the procurement file.

If the emergency occurs after business hours, the Department Manager may select a vendor and proceed for purchases up to $50,000. Emergency purchases over $50,000 shall be approved by the County Administrator or designee. The Department Manager shall, not later than the next business day, submit a requisition, tabulation of bids received (if any), delivery record, and a brief explanation of the emergency.

8.1 **Emergency Planning**. In many cases, procurement planning can reduce the need for using emergency procedures. Departments should prepare and keep current a list of local sources of goods and services that might be needed in an emergency. These should be dependable, established firms that have indicated they can provide support on short notice. Include information on contact names, titles, phone numbers and availability during non- working hour s, w eekends and hol idays. I n addi tion, on -call, a s-needed, and annual contracts for various services may be competitively bid to expedite action, ensure adequate support, and reduce the cost of meeting emergency requirements.

8.2 **Posting**. A notice of award for emergency procurements above $30,000 will be posted on the bulletin board in the Purchasing Office's public posting area.

CHAPTER 9 CONTRACT ADMINISTRATION

9.1 General
9.2 Planning and Checklist
9.3 Responsible Parties
9.4 Procurement Records
9.5 Delivery of Goods
9.6 Inspection
9.7 Acceptance
9.8 Rejection
9.9 Restocking Charges
9.10 Overshipments/Overruns
9.11 Lost or Damaged Shipments
9.12 Payment and Invoice Processing
9.13 Modifications and Change Orders
9.14 Contract Renewal and Extension
9.15 Termination for the Convenience of the County
9.16 Cancellations of Purchase Orders and Contracts
9.17 Default
9.18 Notice to Cure
9.19 Termination for Default and Reprocurement Costs
9.20 Debarment and Suspension

9.1 **General**. Contract administration begins after award of the contract. Its purpose is to assure that the contractor's and County's total performance is in accordance with the terms and conditions of the contractual agreement. Goods or services shall be furnished, received, invoiced and paid as specified in the contract. Contract administration includes all actions taken by the County relative to a specific contract after the award is made. The Purchasing Office will assemble and maintain a master listing of all their term contracts to include the initial period and number of renewals.

After issuance of a contract award document, contract administration efforts ensure that the services or goods are provided in accordance with the terms of the contract. The Purchasing Office and the user department are both involved with contract administration. The County Contract Administrator may also be involved if the procurement has a high dollar value and/or is complicated. Planning and proactive management of a contract are crucial to effective contract administration. All vendor noncompliance shall be reported to the Purchasing Office in a timely manner.

9.2 **Planning and Checklist**. Contract administration planning should occur during the pre- award phase and be reflected in solicitation and award documents. All purchases should encompass some post -award administrative efforts--with the degree determined by evaluating purchase complexity, value, delivery or performance schedule, commodity or service type, and risks to the user department. A contract checklist or milestone chart should be developed for each contract that requires multiple or scheduled actions by the contractor during the contract period. This checklist or chart is developed directly from the contract by extracting specific requirements, scheduled delivery dates, start-up and a completion date, plus other related items such as performance guarantees (e.g., bonds, certificates of insurance, catalogs, copies of warranties, volume reports, as-built drawings, maintenance manuals, parts lists, maintenance, scheduled testing, etc.). These actions are essential to ensure that the contractor fulfills the obligations of the contract.

9.3 **Responsible Parties**. Contract administration may be delegated in writing by the Purchasing Director designating a specific individual or position, highlighting important aspects of the contract, and distinguishing between the contract administrator's authority and that which must remain a function of the Purchasing Office. Specific delegated tasks should be outlined which m ay include acceptance of goods or services, approval of invoices, scheduling and monitoring of project progress, coordination of the provision of County or other resources when part of the contract, and favorable or critical feedback to the contractor and buyer. If the County Contract Administrator is involved with a project, the Performance Agreement between the Project Manager, County Contract Administrator and the Assistant County Administrator shall outline the responsibilities to be assumed by the County Contract Administrator.

9.4 **Procurement Records**. A complete file should be maintained in the Purchasing Office for each purchase transaction, containing all the information necessary to understand the why, who, what, when, where and how of the transaction. The file should contain as a minimum, as applicable, the description of requirements, sources solicited, a copy of the advertisement of public posting notice, cancellation notices, the method of evaluation and award, a signed copy of the contract or purchase order, contractor performance reports submitted by the administrator, modifications or change orders, cure letters, usage data and any other actions relating to the procurement.

9.5 **Delivery of Goods**. The County's policy is to request bids for goods F.O.B. Destination which means the quoted price includes shipping costs. Receiving personnel should have a copy of the purchase order or award document in order to be aware of the type or method of delivery the contractor is required to perform and what is to be delivered. The contractor may be required by the contract to deliver in a specific manner such as one of the following: tailgate only, at dockside only, deliver on pallets, make inside delivery by floor and room number, deliver and install and remove all debris, or deliver at only certain specified hours. Delivery instructions should be made clear in the award documents specifying any conditions or issues impacting delivery such as restrictive loading areas or limited elevator access. Delivery must be made by the date or period specified in the contract or the contractor will be considered to be in default.

9.6 **Inspection**. User departments are responsible for inspecting and accepting goods or services purchased. Inspection is the close and critical examination of goods or services delivered to determine conformance with applicable contract requirements or specifications. It includes the determination that:

a. Unless otherwise specifically ordered, the delivery consists of new and unused merchandise.

b. Goods or services of the quality, quantity, grade, or standard specified in the purchase order or contract have been delivered.

c. The design, construction, ingredients, size, kind, type, make, color, style, etc., of the commodities conform to the requirements of the purchase order or contract and where applicable, to the manufacturer's published specifications.

d. The packaging and labeling, marking, or other means of identification meet specifications. The commodities comply with specification requirements in all essential respects, are in good condition, and delivery has been made in accordance with the terms and conditions of the purchase order or contract.

9.7 **Acceptance**. Proper notification of the acceptance of goods or services usually involves the requisitioner, the purchasing and accounting departments. Notification of the acceptance of the delivery should be emailed to Accounts Payable in a timely manner by the receiver to facilitate timely and proper payment of invoices.

9.8 **Rejection**. Rejection of goods or services is the responsibility of the receiver whenever the goods or services do not meet contract requirements. I n the event of a partial or total rejection, the receiver should take immediate act ion to notify the contractor as to the reasons for rejection and to request prompt replacement. When a rejection is made, the Purchasing Office should be contacted as soon as possible.

9.9 **Restocking Charges**. A restocking charge may be assessed by a contractor for those deliveries rejected by the County due to no fault of the contractor. The value of these charges should be identified prior to making the decision to return.

9.10 **Overshipments/Overruns**. A user department should not accept goods in excess of those specified on the purchase order or contract unless it is recognized as a custom of that industry (e.g. printing, cable, fabric), is so stated in the bid, and is accepted by the Purchasing Director. Increases or decreases should be provided for by a change order. In the event that an overshipment is not recognized until after receipt and not provided for in the award, the user department must notify the contractor that the overshipment will not be accepted and, unless the overshipment is picked up by the contractor, it will be returned at the contractor's expense. Prices for overruns must not exceed the quoted base price per unit or the quoted price for additional copies run at the same time. Whichever price is less will prevail. Prices for underruns will be calculated at the quoted base price per unit. If a user department will not accept underruns or overruns for a printing job, it should be stated in the specifications.

9.11 **Lost or Damaged Shipments**. It is the user department's responsibility to promptly inspect deliveries for shipping damage at the receiving location. Concealed damage or latent defects should be reported to the Purchasing Office as soon as possible. The carrier and contractor should be notified as soon as possible and prior to removal from the point of delivery if possible. It is difficult to fix responsibility for deliveries once the user department has moved goods to another location or when the inspection has not been made in a timely manner. If latent defects are found, the contractor is responsible for replacing the defective goods within the delivery time originally stated in the solicitation and is liable f or any resulting expenses incurred by the County. The County accepts title only when goods are received regardless of the F.O.B. point.

9.12 **Payment and Invoice Processing**. To maintain good vendor relationships and a competitive environment, it is imperative that invoices be processed promptly and in accordance with the contract terms. The County's policy is to pay properly documented invoices within thirty (30) days of receipt. It is critical that users immediately notify Accounts Payable via email upon satisfactory receipt of an item. If this receiving notification is not submitted promptly, the County's ability to pay within 30 days is in jeopardy. If a vendor sends an original invoice to a department other than Accounts Payable, it is critical that it be forwarded to Accounts Payable immediately because the 30 day period begins when the department receives the invoice. Vendors should be instructed to submit invoices to Accounts Payable as stated on the Purchase Order and in contracts. When a large purchase requires performance over an extended period of time, arrangements should be made to process partial payments upon receipt of evidence indicating that the goods or services have been received.

9.13 **Modifications and Change Orders**. Any James City County contract that includes provisions for modification of the contract during performance may be amended by the Purchasing Director. Any single or cumulative increase to a fixed price contract that would result in a new contract amount over $50,000 requires written approval of the County Administrator. Any single or cumulative increase to a fixed-price contract greater than twenty-five percent of the original contract or $50,000, whichever is greater, requires written approval of the Board of Supervisors. This limitation applies to the aggregate change orders in a contract. The modification of a purchase order or contract can only be authorized by the Purchasing Director. To change a purchase order, user departments must submit a Purchase Order Change Form to the Purchasing Office. Any request for change affecting price, quality, quantity, delivery or cancellation requires a thorough written explanation by the user department prior to approval. A contractor shall not be notified that a change has been approved until that change has been authorized by the Purchasing Director. All change requests should be evaluated for contract validity and price reasonableness.

9.14 **Contract Renewal and Extension**.

a. **Renewal**. A term contract may contain a renewal clause describing the conditions under which it may be renewed for a stipulated period of time. Automatic renewals are not permitted. No contract may be renewed and no additional consideration may be paid unless specifically provided for in the original contract. Often indices such as the Consumer Price Index (CPI) or Producer Price Index (PPI) are used as a benchmark in pricing renewal options and assist in determining price reasonableness. Price increases should not be given automatically at renewal. It is the responsibility of the contractor to request a price increase, if desired, up to the amount authorized by the index referenced in the contract. The County may then negotiate the amount of the increase up to the indexed amount.

b. **Extension**. The County may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract. Extensions require a contract change order-see 9.13. No additional consideration exceeding the contracted price may be paid to the contractor unless authorized by a contract change order.

9.15 **Termination for the Convenience of the County**. A purchase order or contract may be terminated for the convenience of the County if such is provided in the purchase order or contract. The contractor shall be paid for the goods or services provided up to the termination date. The termination date and the extent of termination must be specified in writing to the contractor.

9.16 **Cancellations of Purchase Orders and Contracts**. Cancellation of contracts may only be made in writing and approved by the Purchasing Director. Any request for cancellation should include an explanation of the basis for the request. A contractor may request cancellation, and the County may, in its sole discretion, grant relief if the contractor is prevented from specific performance, including timely delivery, by an act of war, order of legal authority, act of God, or other unavoidable causes not attributed to the contractor's fault or negligence.

9.17 **Debarment and Suspension**. In addition to the above default procedures, concurrent action to have the defaulted contractor debarred or suspended may be initiated by the Purchasing Director. Grounds for debarment and suspension are listed in the Purchasing Policy. Procedures for debarment and suspension appear in Chapter 10. It is not necessary that there be a judicial determination of the violations listed as grounds for debarment or suspension in the Purchasing Policy for debarment or suspension to occur.

Debarment or suspension does not relieve the contractor of responsibility for existing obligations. Debarment and suspension apply to prospective bidders, offerors and existing contractors. The debarred or suspended individual or firm shall not be permitted to quote, bid or propose on goods/services solicited by the County. A debarred or suspended contractor may be reinstated by the County during the term of debarment or suspension at any time this is in the best interest of the County. The existence of a cause for debarment or suspension does not require that the contractor be debarred or suspended.

9.18 **Default**. A contractor is considered in default if he or she fails to perform in accordance with the terms and conditions of the contract (e.g., late delivery, nonconformance to specifications, etc.). If it is determined that a contractor is in default, written notice of the complaint should be issued and distributed followed by a Notice to Cure ("cure letter") if unacceptable vendor response, resolution, or action is received. A cure letter may also be issued at the same time as the written notice of complaint. In some instances a contractor will notify the County that they refuse to or cannot deliver or complete performance on a contract. Assuming the contractor has set out that position in writing, it is not necessary to follow the procedure of using a cure notification.

CHAPTER 10 APPEALS & DISPUTES

10.1 Debarment and Suspension
10.2 Appeal of Denial of Withdrawal of Bid
10.3 Determination of Non-responsibility
10.4 Protest of Award or Decision to Award
10.5 Effect of Appeal Upon Contract
10.6 Stay of Award During Protest
10.7 Contractual Disputes
10.8 Legal Actions
10.9 Administrative Appeals Procedure

10.1 Debarment, Suspension and Denial of Pre-qualification

(a) Any bidder, offeror, or contractor refused permission to participate, or disqualified from participation in public contracts by debarment or suspension shall be notified in writing by the Purchasing Director. Prior to the issuance of a written determination of disqualification or ineligibility, the Purchasing Director shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents which relate to the determination, the bidder shall have five business days after receipt of the notice to inspect the documents.

(b) Within ten business days after receipt of the notice, the bidder may submit rebuttal information to the Purchasing Director challenging the evaluation. The Purchasing Director shall issue a written determination of disqualification or ineligibility based on all information in the possession of the Purchasing Director, including any rebuttal information, within five business days after the receipt of such information by the Purchasing Director.

(c) If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Purchasing Director 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 Purchasing Director shall so notify the bidder, offeror or contractor. Such notice shall state the basis for the determination which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by instituting legal action as provided in Section 10.8.

(d) If, upon appeal, it is determined that the action taken was not (i) an honest exercise of discretion, but rather was arbitrary or capricious, or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, the sole relief shall be restoration of eligibility.

(e) Any bidder, offeror or contractor that has been denied pre-qualification shall be notified in writing at least thirty days after the date established for submission of bids or proposals related to the procurement of the contract for which the pre-qualification applies. The notice shall state the reasons for the denial of prequalification and the factual basis of such reasons. This decision shall be final unless the bidder, offeror or contractor appeals the decision as provided in paragraphs (a)-(d) above.

10.2 Appeal of Denial of Withdrawal of Bid

(a) A decision denying withdrawal of a bid under the provisions of Section 2. 1 of this Manual shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by instituting legal action as provided in Section 10.8.

(b) If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of Section 2.1, prior to appealing, shall deliver to the Purchasing Director 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.

(c) If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious, or (ii) 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.

10.3 Determination of Non-responsibility

(a) Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shallstate the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of the receipt of such notice by instituting legal action as provided in Section 10.8.

(b) If, upon appeal, it is determined that the decision of the Purchasing Director was not (i) an honest exercise of discretion, but rather was arbitrary or capricious, or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of the purchasing agent was arbitrary or capricious, and the award of the contract in question has been made, the relief shall be as set forth in Section 10.4 (b).

(c) A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under Section 10.4.

(d) 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.

10.4 Protest of Award or Decision to Award

(a) Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the Purchasing Director no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Director shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of the written decision by instituting legal action as provided in Section 10.8.

(b) If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Director 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 by the court. Where the award has been made and performance has begun, the awarding authority (Board of Supervisors, County Administrator or Purchasing Director based on the dollar value of the contract) 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.

(c) Where the awarding authority determines, after a hearing held by it, or its designee, following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 6 Ethics in Public Contracting of the VPPA, the awarding authority shall not award the contract to the offending bidder.

10.5 Effect of Appeal Upon Contract

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

10.6 Stay of award during protest

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

10.7 Contractual Disputes

(a) Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the

(b) The decision of the Purchasing Director shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final decision on the claim by the Purchasing Director by instituting legal action as provided in Section 10.8.

(c) Under certain circumstances, beyond the control of the contractor, such as acts of God, sabotage, and fire or explosion not caused by negligence of the contractor or its agent, the Purchasing Director may grant relief from the performance of the contract or extend the time limit for performance as required in the contract. Any such extension must be issued in writing and signed by the Purchasing Director.

10.8 <u>Legal actions</u>

(a) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification as set forth in Chapter 2, Section 3 of the James City County Purchasing Policy.

(b) A bidder denied withdrawal of a bid under Section 10.2 may bring an action in circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision was clearly erroneous.

(c) A bidder, offeror or contractor may bring an action in circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the invitation to bid or request for proposal.

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

(e) A contractor shall bring an action involving a contract dispute with the County in circuit court.

(f) Nothing herein shall be construed to prevent the County from instituting legal action against a contractor.

CHAPTER 11 SURPLUS PROPERTY

[redacted]

11.1 Responsibility and Classification
11.2 Disposal Methods
11.3 Security of Property
11.4 Proceeds from the Sale or Recycling of Surplus Materials
11.5 State and Federal Surplus Property

[redacted]

11.1 Responsibility and Classification

The Purchasing Office has responsibility for administering the County's Surplus Property Program. The Purchasing Office coordinates the transfer and disposal of all County surplus items. Employees should not exchange or dispose of items themselves. Employees must complete a Surplus Property Form and forward it to Purchasing. Purchasing will arrange for pickup and removal.

County-owned surplus property may be classified as:

a. Items of value for transfer, trade-in, exchange or sale.

b. Scrap items that have sale value for material content only.

c. Items classified as toxic or hazardous and require special handling.

d. Items for destruction or abandonment that are unusable and have very little or no commercial value.

11.2 Disposal Methods.

a. **Transfer Within Same Department**. Departments are encouraged to transfer needed property from one activity to another within the Department. This does not require notifying the Purchasing Office.

b. **Transfers and Sales to Another Department, Agency, School Division, Public Body or Political Subdivision**. Utilization of surplus property between Departments is encouraged and will take priority over transfer and sales to another agency, school division, public body or political subdivision. The Purchasing Office will note the transfer or sale on the Surplus Property Form describing the property.

c. **Public Sales or Auctions** Public sales or auctions shall be conducted by the Purchasing Office. There is no fee to participate in these sales and auctions. All sales are final, come without warranties of any kind and are AS IS, WHERE IS. County employees and members of their immediate family as defined in Section 2.2-4368 of the VPPA are not permitted to participate either directly or indirectly in these sales or auctions.

(1) **Auction**. Generally, the preferred method of sale to the general public is by auction. Auction items are posted on an internet auction site. Payments shall be made through the site. Bidders are responsible for any and all items they are awarded; for pickup or shipment. Bidders will have no longer than 5 days to pick up items at the end of the auction unless arrangements are made in advance or pick up time is extended. Any bidder who fails to pay for the item or defaults on payment, or does not pick up items may be blocked from participating in any future auctions.

(2) **Sales by Competitive Bid**. Property may also be sold by competitive bid. Payments for sealed bids must be by certified check or money order.

(3) **Negotiated Sale**. Under exceptional circumstances, surplus property may be sold through negotiation, such as when property has not been sold despite efforts at public auction and/or sealed bid. Sales may be conducted only by the Purchasing Office upon receipt of written documentation of the circumstances.

(4) **Set Price**. Surplus property may be offered to the public at a set price. The sales price of an item is based on known sales experience and/or estimated current market value. Set price sales are publicly advertised.

d. **Donations**. Donations are permissible if approved by the Purchasing Director.

e. **Trade-Ins and Other Methods of Disposal**.

(1) **Trade-ins**. Trade-in items are not required to be declared surplus on the Surplus Property Form and may, upon Purchasing Director approval, be traded in on the purchase of new equipment. Trade-in procedures should not be used if the monetary allowance offered is substantially below the known current sales range. If market values are not known, recent sales prices should be researched. Bartering (the trade or exchange of one commodity for another) must be approved in advance by the Purchasing Director. Consignment of surplus property to a nongovernmental entity is not permitted. All transfers of surplus property between governmental agencies must be in accordance with subparagraphs (2) and (3) below.

Notice: Prior to trading in or declaring surplus, licensed or copyrighted materials, a review of the license or copyright agreement needs to be made to determine what right, if any, the licensee has to the property.

(2) **Destruction or Abandonment**. Property which is unusable and determined to have no commercial value, or cost of sale would exceed expected returns may be destroyed or abandoned with approval from the Purchasing Office. These are necessary methods of disposal, but the actions must be carefully controlled and documented to conform to good property management and avoid abuse. All property is to be identified in and submitted with the Surplus Property Form. The completed document will be the authority for removing items from inventory and will serve as an audit trail.

In certain circumstances, it is appropriate for the Purchasing Director to grant Blanket Disposal Authority. This may include the disposal of property that is damaged and needs immediate disposal because of health and safety reasons.

(3) **Hazardous Material**. The Purchasing Office does not accept hazardous materials for surplus disposal. Federal and State laws have been enacted placing strict compliance requirements on the disposal of hazardous materials. Contact the County Risk Manager for guidance.

f. **Recycling**. The recycling of paper products, beverage containers, toner cartridges and used motor oil is strongly encouraged.

11.3 **Security of Property**. Departments are accountable and responsible for reasonable care and security of items declared surplus during the entire disposal process (i.e., the time frame covering reporting, sale preparation, inspection, payments, release, and final pickup).

11.4 **Proceeds from the Sale or Recycling of Surplus Materials**. The proceeds from the sale or recycling of surplus

materials shall promptly be deposited with the County Treasurer.

11.5 **State and Federal Surplus Property**. The Purchasing Office will coordinate County efforts to obtain state and federal surplus property.

Purchasing Card Guidelines and Procedures

James City County 2/22/19

JAMES CITY COUNTY PURCHASING CARD GUIDELINES AND PROCEDURES

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INTRODUCTION

The Purchasing Card ("P-Card") program provides another service within the overall Purchasing system to better support departmental needs. The purchasing card guide contains policies on use of Purchasing Cards to purchase goods or services made directly by departments. The cards are a tool for individuals making purchases on behalf of the County and for which James City County is financially liable. The use of P-Cards is intended to provide a means for streamlining the procure-to-pay process for smaller dollar transactions. This allows the County and its program users to procure goods and services in a more timely manner, reduce processing costs, track expenses more easily, take advantage of supplier discounts, and recoup a sizeable annual rebate by participating in a cooperative consortium contract.

The County contracts for commercial credit card services with JP Morgan Chase. The contract provides commercial Purchasing Cards and associated services to County employees for the purpose of paying for purchases made for official county business.

These Purchase Card Guidelines and Procedures supplement the County's Purchasing Manual and any instructions distributed to the cardholder at the time the card is issued. In the event these Procedures conflict with any instructions provided by the card issuer, these Procedures take precedence.

Documentation and controls over the use of the Purchasing Cards have been designed to assure the safeguarding of County assets and to assure compliance with existing State and County policies and procedures. Training is required for participation in this program. Cardholders must also sign a written statement acknowledging that they understand the program procedures and responsibilities.

Purchasing Cards are the property of James City County. They are issued to individuals as designated by Department Managers. The cardholder is the only person entitled to use the card. The card may only be used for county business. The individual's Department Manager can determine internal dollar limits and the type of goods that can be acquired with each card within the overall parameters established for the County.

Purpose

The purpose of this policy is to provide guidelines and procedures to govern the County's Purchasing Card (Pcard) Program. The Pcard Program has been established to provide County departments and its user agencies with an efficient means of purchasing goods and services. The Pcard Program and policy is intended to:

- Reduce the volume of accounts payable payments while providing departments a timesaving convenience.
- Provide a convenient method for small purchases and to facilitate e-commerce, including Internet purchases and/or payments.
- Ensure that procurement of goods and services with purchasing cards is accomplished in accordance with the County's Purchasing Policy.
- Facilitate good management practices and proper tracking of expenditures.
- Ensure that appropriate internal controls are established to prevent fraud and unauthorized purchases.
- Provide excellent value through rebates earned by making purchases on Pcards.

James City (County) utilizes an electronic Purchasing Card (Pcard) Program that provides the County the opportunity to streamline procedures for procuring small dollar goods and services. All purchases must comply with the County's Pcard Policy and Purchasing guidelines. Purchases shall <u>only be made for official County business</u>. Personal use of the Pcard is prohibited and can result in employee discipline up to and including termination of employment from the County.

Pcard services are currently obtained through consortium participation in the cooperative contract administered by Fairfax County, Virginia. JP Morgan Chase is the County's current provider for the Pcard Program.

PURCHASING CARD REQUEST AND ISSUANCE

Purchasing Cards may be issued to authorized and designated individual employees and volunteers who frequently purchase goods and authorized services. Cards are issued for a pre-approved amount by the employee's Department and the Purchasing Card Administrator in compliance with James City County Purchasing Card Policy and Procedures.

The Purchasing Card will have the employee's name, the County logo, and the expiration date embossed on the face of the card. The Purchasing Card issuer will not have individual cardholder information. No credit records, social security numbers, etc. of the cardholder are maintained.

The Department Program Coordinator must make all requests for new cards or changes to current cardholder accounts in writing to the Purchasing Card Administrator. The Department Coordinator shall ensure that new cardholders review the Purchasing Card Policy and the training tutorial and that the completed quiz and signed cardholder agreement are submitted. . The Purchasing Card Administrator will not process the request for a new card account until the employee completes the training.

The Purchasing Card Administrator will process the new card into the system and then distribute it to the cardholder with instructions for activating the account and administering the card activities. The Purchasing Card Administrator will retain the original request, quiz and cardholder agreement.

ROLES AND RESPONSIBILITIES

Financial Institution

The bank or other financial institution that provides the Purchasing Card guarantees prompt payments to merchants who accept the card as payment in accordance with the contract.

Purchasing Card Administrator

- Processes card applications in accordance with the guidelines for small purchases
- Implements card limits as requested by Departments and defined in the Procedures
- Designates certain staff who may purchase from Amazon.com
- Approves use of card for certain services on a case-by-case basis
- Issues cards
- Terminates cards
- Serves as user (cardholder) liaison
- Serves as ultimate dispute resolution
- Provides training
- Conducts annual review of program and Procedures
- Provides suggested procedural changes to FMS Assistant Director

Department Manager

- Approves requests for card applications for staff at his/her discretion
- Approves defined limits on individual cards in accordance with County policy
- Supports secure practices and procedures in his/her Department
- Approves use of card for certain services on a case-by-case basis

Department Program Coordinator (Supervisor)

- Verifies account code used and approves reconciled transactions
- Provides Accounting with necessary documentation to process payments

- Forwards package to Accounting for payment
- Initiates requests for a card, upon approval and direction from Department Manager
- Conducts annual review of users' (cardholder) adherence to Procedures
- Serves as central point of contact for the Department
- Conducts annual inventory of cards
- Communicates change in user employment status to Purchasing Card Administrator
- Performs final reconciliation when cardholder leaves County employment

Cardholder

- Adheres to approved card uses and all applicable policies and procedures
- Reconciles transactions and disputes
- Provides Department Program Coordinator with all necessary documentation to process payments
- Notifies vendors at the point of purchase that purchases are tax exempt

Accounting

- Verifies and reviews reconciled statements and receipts
- Uploads transactions monthly into financial software
- Ensures timely payment to the financial institution
- Participates in the annual review process
- Performs periodic audits

TRAINING

Prior to receiving a Purchasing Card, employees must complete the appropriate training program for their level of responsibility. The Purchasing Card Administrator or designee will provide the orientation information and basic instructions on how to use the card for cardholders and Department Program Coordinators. The Purchasing Card Administrator or designee will provide both refresher and new cardholder training as requested by individual Departments.

All cardholders must sign an acknowledgement of training as part of the card application. Their signature acknowledges they understand the training provided, received training materials they can utilize for future reference, and understand the consequences associated with misuse of the card. The Purchasing Card Administrator will retain this document while the cardholder's account remains active.

The training program shall cover the following subject areas:

- Internal procedures for using the credit card such as: budgeting for purchases, documenting purchases, reviewing the account statement, reconciling invoices and handling disputes.
- Cardholder and Department Program Coordinator responsibilities.
- Contracting procedures and purchasing ethics such as determining price reasonableness, the prohibition against splitting requirements, checking for existing warranties and information on current term contracts and agreements already providing services to County customers that should not be duplicated.

REVIEWS

Annual Review
The Purchasing Card Administrator will conduct an annual review of the Purchasing Card program in accordance with established policy.

On-Site Review
The Department Program Coordinator will conduct a card inventory and Procedure Review every twelve (12) months.

The Purchasing Card Administrator, or designated representative will take advantage of automated systems that can provide reports of denied transactions for purchases from unauthorized merchants, violations of limits, and other irregular activities. On-site reviews will be conducted immediately when violations are noted.

On-site review results will remain on file for 3 years. Copies of the results are forwarded to the Department Manager, the Department Program Coordinator and the cardholder. The Department Program Coordinator will meet with the cardholder to discuss each finding of noncompliance.

LIMITS

Individual transaction: $2,500

Monthly limit: $5,000--Departments can define lower or higher limits if appropriate, and subject to review/approval from the Program Card Administrator or County Administrator.

Travel: The above limits for individual transaction, and monthly amount apply. The County Administrator can grant exceptions to the above limits for travel. Employees can indicate their proposed travel limits on the card application.

Emergency: 50,000 up to $100,000 in a declared emergency

An emergency is defined as:

- an officially declared state of emergency or
- a situation which would adversely affect the life, health or well-being of citizens or employees.
- Work stoppages, unforeseen conditions, rapid response actions, etc. qualify as emergencies if the conditions arise from unforeseen circumstances.
- Conditions that arise from a lack of planning on the part of employees do not qualify as an emergency.

ALLOWED AND PROHIBITED USES FOR PURCHASING CARDS

Allowed Uses

- Shipping charges
- Office supplies
- Food supplies
- Publications
- Registration fees for seminars and training
- Travel expenses when on County business such as: hotel charges, airline tickets, and rental car
- Operating materials & supplies
- Clothing, as specified with County policy
- Clothing for emergencies, such as for social services clients
- Emergency equipment repair

- Emergency clean up, such as after storms, etc.
- Catering (see below for alcohol policy)
- Other services as approved on a case-by-case basis by Department Manager and Purchasing Card Administrator

Prohibited Uses: All Pcards are restricted from the following transactions

- Alcoholic beverages
- Capital assets
- Cash advances
- Purchase of gift cards
- Personal use
- Any substance, material or service that violates policy, law or County regulation.
- Betting (including lottery tickets, casino gaming chips, off-track betting & wagers)
- Insurance or insurance premiums
- Rental or lease of land or buildings
- Telephone calls
- Entertainment during travel
- Professional services and services not on Allowed Uses list
- Drinking establishments
- Wires
- Money orders
- Pawn shops
- Manual cash disbursements
- Automated cash disbursements
- Non-Financial Institutions
- Dating/escort services
- Massage parlors
- Bail and bond payments
- Sweepstakes
- Food stamps

VIOLATIONS

Any abuse or misuse of the Purchasing Card may result in the privilege being suspended or revoked. Violations will be handled in accordance with County personnel policy. The following actions are considered violations:

- Attempting to make single item purchases that exceed limits. It is the responsibility of the ordering Department to ensure all "extra" charges such as freight handling, set up, etc. are considered before a card transaction is made. A vendor's willingness to honor a transaction exceeding the limit does not authorize a Department to make such purchases.
- Attempting to make more transactions per day than allowed.
- Purchasing from Amazon.com without getting pre-approval from Card Administrator.
- Purchases from vendors that create conflicts of interest, i.e.: companies owned by any County employee, etc.
- Multiple transactions to circumvent the pre-determined limits.
- Purchase of prohibited goods or services.
- Consistently failing to produce proper documentation and receipts.
- Failure to send reconciled statements to Accounting by the due date.

- Failure to properly report a lost or stolen card.
- Purchase of any item that is an unlawful expenditure in accordance with County regulations and policy.
- Failure to use correct Purchasing policies and procedures when using the card.

DISPUTES

If goods and services purchased with the Card are defective or faulty, the cardholder has

the responsibility to return the item(s) to the merchant for replacement receive a credit on the purchase or request the service be performed at a satisfactory level. **CASH REFUNDS WILL NOT BE PERMITTED**. If the merchant refuses to replace or correct the faulty item, then the purchase of this item will be considered in DISPUTE. The cardholder will notify the card issuer and the merchant of the dispute.

It is essential that the time frames and documentation requirements established by the card issuer be followed to protect the cardholder's rights in dispute. Dispute policies and procedures of the card issuer will be the subject of Purchasing Card training and will be provided at the time the cards are issued to cardholders.

BILLING DISCREPANCIES

If an amount on the Transaction Summary differs from the monthly statement:

- Contact the vendor and inquire about the difference.
- If the amount referenced on the Summary is incorrect, note the correction and reason for correction on the Transaction Summary.
- If the amount on the statement is incorrect, ask the vendor to credit the card. Note the credit on your summary to ensure the credit is received.

If a charge appears on the cardholder statement but it not reflected on the Transaction Summary:

- Contact the vendor to determine that the item was a legitimate charge and was received.
- If you determine the charge should not have been posted to your account, ask the vendor to credit your card.
- If you suspect a fraudulent charge, contact the Purchasing Card Administrator immediately.

If a copy of a sales draft is required to investigate a discrepancy, a written request should be sent to the card issuer.

SECURITY

Purchasing Cards will be issued in the names of individual employees. Therefore, it is the responsibility of the employee to secure the Purchasing Card. Cardholders should always treat the Purchasing Card with the greatest level of care.

Employees who are issued a Purchasing Card must:

- Maintain the Purchasing Card in a secure place at all times.
- Carefully guard the account number.
- Not allow other individuals to use their Purchasing Card.
- Immediately report a lost or stolen card to the Department Program Coordinator and the card issuer (use toll free number).
- Return the Purchasing Card to the Department Program Coordinator upon terminating employment with James City County.
- NOT store the card on a vendor site

LOST OR STOLEN CARD

The employee shall notify the bank, 1-888-297-0774, the Purchasing Card Administrator, and the Department Program Coordinator immediately after discovery of the loss or theft of the card.

REBATES

Rebates issued and received by card users, either by check or other means are to be used to purchase items intended for county use only.

TAX-EXEMPT STATUS

Cardholders must notify vendors of the County's tax-exempt status before the order is processed. If sales tax is charged on a purchase for the County, the cardholder will be responsible for reimbursing the County for the sales tax.

DOCUMENTATION

Any time a purchase is made with the card, the cardholder is to obtain or print a customer copy of the transaction, which will become the accountable document. If the card is used to purchase meals, the **detailed receipt showing each item purchased is required**. A receipt with solely the total and tip is not suitable documentation.

PUBLIC RECORDS

All documents related to the Pcard shall be fully disclosed as a public record to the extent provided for by the Virginia Freedom of Information Act (FOIA).

When a detailed charge receipt is not provided with the order, the cardholder shall provide a written explanation that it was a telephone, fax or internet purchase and provide a description of the item, date of purchase, merchant name and total price including shipping and handling. For internet transactions, print out the order confirmation and attach it to the written explanation.

Forward all documentation (including packing slips) to Department Program Coordinator.

If, for some reason, the cardholder doesn't have documentation of the transaction to send with the Reconciliation Report, he/she must attach an explanation that includes an item description, date of purchase, merchant's name, amount and the reason why there is no supporting documentation. Consistent abuse of this provision may result in card cancellation.

RECONCILIATION

Each cardholder must reconcile all purchases made within the transaction cycle. All posted transactions will be reviewed in the Financial Summary tab and a description added to each transaction. The default account code will be reviewed and edited if needed.

After the cardholder has edited and reviewed the financial summary and saved all updates, the cardholder must run the report for the transaction cycle, reviewing it for accuracy, and attaching all supporting documentation/detailed receipts to the report. The report will be signed and approved by the Department Manager or Supervisor (the cardholder should never approve his/her own transaction report) and forwarded to Accounting by the due date specified each month.

The Department Program Coordinator reviews the package to ensure the appropriateness of the purchases and the account codes for the charges. The package is then sent to Accounting by the specified due date.

The vendor will provide a monthly account statement to each cardholder and a consolidated master statement to Accounts Payable at the end of each billing cycle. This statement of account will list all purchases processed in the previous billing cycle. Statements are provided electronically to individual cardholders. Cardholders without access to a computer may obtain a copy of their monthly statement from the Department Program Coordinator.

ACCOUNTING RECONCILIATION

Accounting will pull the monthly transaction report and notify the Treasurer's Office of the total charge for the month. Payment will be made via direct debit for the total amount of the bill. Detailed ledger information will be updated and posted in the general ledger system by the 10th of the following month.

TERMINATION OR TRANSFER

Cardholders who leave the County's employment must surrender the card to the Department Program Coordinator when the resignation becomes official. The person receiving the resignation notice must immediately notify the Department Program Coordinator. The Department Program Coordinator or his designated representative will be responsible for collecting the card, forwarding it to the Purchasing Card Administrator and notifying the Department Manager that the card has been surrendered. The Purchasing Card Administrator will destroy the card and close the account.

For interdepartmental transfers, cardholders must surrender the card as indicated above. Cardholders may reapply if approved by the new Department Manager.

If the Department Program Coordinator is unable to collect the card, he will notify the Purchasing Card Administrator who immediately will cancel the account. The Department Program Coordinator will also notify Human Resources to attempt to recover the card at the exit interview.

RENEWAL AND EXPIRATION

The James City County Purchasing Card will be issued for two (2) years. If the Department Manager approves reissue, the cards will be reissued during the third week of the month the card actually expires to provide for continued access to the card.

CHANGES TO PROCEDURES

The Purchasing Card Administrator shall propose amendments to the James City County Purchasing Card Procedures for approval by the Assistant Director of the Department of Financial and Management Services.

APPENDIX A

James City County Purchasing Card Cardholder Agreement

JCC has entered into an agreement with JP Morgan Chase that provides a Purchasing Card to procure goods and certain services costing less than $2,500 (including shipping and handling). Cardholders must follow the Purchasing Card Policy and Procedures. Violations may result in revocation of privileges and/or disciplinary action, up to and including termination.

General Guidelines

Ownership: The card remains the property of JP Morgan Chase and may not be transferred or used by anyone other than the designated cardholder. Cardholder privileges may be suspended at any time for any reason. The cardholder will surrender the card to the Purchasing Card Administrator or designee upon request. Use of the card after notice of its cancellation may be fraudulent and may be cause for legal action against the cardholder.

Spending Limits: The daily and monthly spending limits are not to be exceeded under any circumstances. No personal expenses are to be charged to the card.

Usage: Cardholders must refer to the Purchasing Card Policy and Procedures for specific guidelines governing card use.

Receipts: It is the cardholder's responsibility to obtain transaction receipts from the vendor each time the card is used. **ALL SALES ARE TAX EXEMPT.** Individual detailed (showing the individual items) receipts are to be turned in monthly with reconciliation documents.

Disputed Items: It is the cardholder's responsibility to follow-up on erroneous charges, returns or adjustments and to ensure proper credit is given on subsequent statements.

Security: The Purchasing Card must be safeguarded to prevent fraudulent use. Sign it upon receipt and keep it in a secure place. Make sure it is returned to you after each charge and verify it is your card. **For a lost or stolen card, immediately notify JP Morgan Chase at 1-877-297-0774 and the Purchasing Card Administrator at 1-757-253-6646.**

The undersigned applicant and supervisor request that a James City County Purchasing Card be issued to the applicant. The applicant has read the above agreement and Purchasing Card Policy and Procedures and agrees to be bound by their terms and conditions. The applicant certifies s/he has attended the mandatory Purchasing Card Training.

_____ _____

Applicant's Signature **Date**

_____ _____

Applicant's Printed Name **Date**

_____ _____

Supervisor's Signature **Date**

Applicant and Supervisor keep one copy for their records and forward original to Purchasing c/o Purchasing CardAdministrator.

APPENDIX B
Dispute Form

CARDHOLDER NAME:_____DEPARTMENT:_____

(LAST 4) CARD NUMBER: _____

MERCHANT NAME: _____

Amount of disputed transaction: $ _____

Transaction date: _____

Transaction reference #:_____

JP Morgan Dispute #: 888-297-0768

(Please check the appropriate box and provide additional details as directed)

- ☐ I did not make nor authorize the above transaction.
- ☐ There is a difference in the amount I authorized and the amount that I was billed (Include copy of receipt/transaction slip)
- ☐ I only transacted one charge and I was previously billed for this transaction on date: _____
- ☐ The above transaction is mine, but I am disputing the transaction (State your reasons why in detail):

_____

- ☐ Please send me a copy of the sales draft/transaction (Your account will be charged $5 for each copy requested/supplied)
- ☐ I have received a credit for the above transaction but it has not yet appeared on my account (attach copy of credit/verification)
- ☐ My account has been charged for the above transaction but I have not received this merchandise. The date of expected delivery is/was:_____The details of my attempt to resolve the dispute with the merchant and the merchant response are (provide detail and/or attach documentation):

_____

_____

- ☐ My account has been charged for the above transaction, but the merchandise has since been returned. The details of my attempt to resolve the dispute with the merchant and the merchant's response are indicated below (attach

_____

documentation and provide details below):

- ☐ Other (Please explain):

_____

_____

_____

Cardholder Signature:_____ Date: _____

APPENDIX C

Notification of Lost or Stolen Card

Cardholder Name:	
Account Number:	
Date Lost:	**Date Discovered:**
Location of Loss:	
Last Known Legitimate Purchase: Date, Merchant, Item, Price	
Description of Incident and Other Relevant Information	
Signature:	**Date:**

SURPLUS POLICY

James City County 2/22/19

SURPLUS PROPERTY & DISPOSAL POLICY APPENDIX

Surplus Property Disposal

It is the intent of this section of the County's Procurement Policy entitled **SURPLUS PROPERTY & DISPOSAL** to protect County assets by actively seeking the most effective means available to dispose of all materials, supplies, equipment, or other personal property that are considered excess, obsolete, unusable, or extensively damaged in order to maximize the useful life of each of the County's assets. Personal property, as outlined in this procedures policy, shall include any excess obsolete, salvageable, or non-salvageable, Capital or Non-Capital property which is sold, replaced through the budget process, transferred or loaned to another department , auctioned, discarded, scrapped, traded in, or otherwise removed from service by any other means of disposal. Disposal of surplus property does not apply to real estate.

Department Responsibility

Department directors shall be responsible for the maintenance, care, custody and control of County property assigned to their department. Further, except as otherwise set forth herein, submittal of a County Surplus Form to the Purchasing Department is the authorized process to dispose of any surplus property. This does not include the disposition of salvageable or non-salvageable equipment, materials, and/or supplies purchased which are considered to be of no value or nominal value; this property may be disposed of at the discretion of the department director.

Authority

Unless otherwise directed by County Board of Supervisors or the County Administrator, the Purchasing Director or designee, shall have the sole authority to dispose of surplus property using the method of disposal deemed to be most cost effective to the County.

The Purchasing Director or designee shall maintain documentation and reports of final disposition and provide upon request to the Budget & Finance Director.

Reporting of Surplus Property

Surplus Forms shall be submitted to the Purchasing Department for the disposition of any surplus property. Copies of Capital Asset items submitted for surplus property disposal shall be sent to the Accounting department for their files and item management.

Methods of Disposal

The Purchasing Department may use any of the following methods to dispose of surplus property:

1. Public auction to be held utilizing an approved on-line auction site.
2. Sales, by utilizing

    1) Formal Sealed Bid - The property is sold using the formal sealed bid process for competitive bids. Surplus property sold using this method must be posted publicly on the Bid Board maintained by the Purchasing Department and County website.
    2) Request for Quotation - The property is sold using quotations as governed by small dollar procedures.

3) In the event that no offer is received in response to methods (1) and (2), the Purchasing Director or designee may accept any subsequent offer to purchase said surplus property deemed to be in the County's best interest.

C. Transfer of Surplus property, whether capital or non-capital assets, may be transferred as follows:

1) Transfer of property among divisions within the same department. A department director may transfer surplus property from one division to another division within their department. Whenever a Capital Asset is transferred to another division within the same department, the department director or designee shall submit a *Surplus Form* to the Purchasing Department.

2) Transfer of property among different departments within the County. A department director, or designee may submit a Surplus Form to the Purchasing Department who will facilitate the transfer of surplus property from one department to another department within the County. Capital Asset transfers will be forwarded to the Accounting/Finance accountant for record-keeping, management and inventory control.

3) Transfer of property to another public entity prior to placing an asset on the open market for sale, the Purchasing Department may transfer it to another public entity for a negotiated price or, with written justification, at no cost. The transfer of property to another public entity will be the sole responsibility of the Purchasing Department.

4) Surplus County property may be donated to charitable and other non-County activities where appropriate. The Purchasing Director shall evaluate the request for donation and first determine whether the requested item is needed by any County agency. Other factors to be considered in the evaluation are availability of the requested item, serviceability, compatibility to the intended use and potential benefits to the County, including public relations and goodwill.

D. **Trade-in**

Departments shall not use trade-in allowances to offset the cost of a new or replacement asset unless stated in the procurement process; however, the Purchasing Department may negotiate a trade-in allowance. In the event a trade-in is authorized by the Purchasing Department, the department will be charged for the gross cost of the item, and the trade-in allowance will be credited to the County's appropriate fund.

E. **Donations**

At the discretion of the Purchasing Director or designee, any surplus property which remains unsold may be donated to any local government, agency or school division, non-profit or historical organization. Surplus property may be donated directly to the organization without using other methods of disposal, if deemed in the best interest of the County.

F. **Loan**

The temporary use of a surplus asset may be granted to a department other than the owner department or, with written permission by the Purchasing Director or designee, to another public entity or non-profit organization.

G. **Cannibalization**

At the discretion of the department head of the owner department, obsolete, worn-out, inactive, or uneconomical operating equipment may be used for parts for the repair of other equipment.

H. **Scrap**

Should no additional offers for purchase be received or requests made for donation of surplus property, the Purchasing Designee may declare the asset void of any value to the

County and notify the department to dispose of the property as scrap at an appropriate landfill facility.

Damaged Surplus Property – Subject of Insurance Claim

When damage to an asset is the subject of an insurance claim, the Purchasing Department and Risk Management Division will coordinate the disposal of the asset.

Proceeds from Surplus Property Disposition

Proceeds from the disposition of surplus property shall be returned to the County's General Fund and not to the owner department's account code. Exceptions to this procedure include the following:

- Asset Forfeiture Vehicles/Equipment –
- Vehicles/equipment seized by the order of court through Federal and State Assets Forfeiture Program.
- Library book sales.

Purchase of Surplus Property by County Employees

No County employee, whether permanent or temporary, shall convert to personal use any surplus property, with or without salvage value.

No County employee, nor any member of their immediate family, may purchase surplus property. Surplus property may not be purchased by a County employee through a third party.

Surplus/Disposal

Please do not bring surplus to Purchasing: We will arrange for pickup. Thank You.

Date: _____

To: PURCHASING

Department: _____

Point of Contact: _____ Phone No.: _____

Subject: SURPLUS / DISPOSAL

Pickup Location: Building: _____ Room No.: _____

I, _____ will be present for surplus picture taking and pickup/delivery.

If not, I designate _____ in my place.

ITEM DESCRIPTION	QUANTITY	SERIAL NUMBER	CONDITION

****Items need to have a label indicating "SURPLUS" or they will not be picked up.****

COMMENTS:

GENERAL TERMS & CONDITIONS

James City County

8/11/2020

JAMES CITY COUNTY

GENERAL TERMS & CONDITIONS AND INSTRUCTIONS TO BIDDERS

These CONDITIONS AND INSTRUCTIONS TO BIDDERS shall be binding on all bidders or offerors and are incorporated by reference in all contracts resulting from any written Request for Quotes, Invitation to Bid or Request for Proposals issued, collectively the ("Request"), to which they are attached. Use of the term "bid" in these General Terms & Conditions and Instructions to Bidders is not intended to be restricted to an Invitation to Bid and shall also affect written Request for Quotes, Invitation to Bid or Request for Proposals. The Purchasing Office is responsible for the purchasing activity of James City County, a political subdivision of the Commonwealth of Virginia, and the James City Service Authority, herein referred to collectively as "James City County" or "County". Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder's/offeror's own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation including the County Purchasing Policy and the County Purchasing Manual, bids/proposals on all solicitations issued by the Purchasing Office will bind bidders/ offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

Cooperative Purchasing--James City County issues this solicitation in accordance with Section 2.2-4304 of the Virginia Public Procurement Act and Chapter 1, Section 5 of the James City County Purchasing Policy, and on behalf of the members of the Southeastern Virginia Governmental Purchasing Cooperative (SVGPC), as well as other public bodies, governmental jurisdictions and school divisions.

Bidders/Offerors are advised that all resultant contracts will be extended, with the authorization of the bidder/offeror, to other public bodies, governmental jurisdictions and school divisions as may be interested. Should other entities decide to use the final contract, the contractor shall deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payments. James City County acts only as the "Contracting Agent" for these jurisdictions and political subdivisions. Failure to extend a contract to any jurisdiction will have no effect on consideration of your bid or offer.

It is the responsibility of the contractor to notify the public bodies, jurisdictions and political subdivisions of the availability of the contract.

Each participating public body, jurisdiction and political subdivisions has the option of executing a separate contract with the contractor. Such contracts may contain general terms and conditions unique to those jurisdictions and political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the contractor, the contractor may withdraw its extension of the award to that jurisdiction.

James City County shall not be held liable for any costs or damages incurred by another public body or jurisdiction as a result of any award extended to that public body, jurisdiction or political subdivision by the contractor.

SVGPC members reserve the right to make awards to the lowest responsive and responsible offeror during the contract term. SVGPC members not explicitly named in the IFB are not obligated to participate, nor is the successful offeror obligated to contract with other SVGPC members.

City of Chesapeake
City of Hampton
City of Newport News
City of Norfolk
City of Portsmouth
City of Virginia Beach
City of Williamsburg
County of Gloucester
County of James City
County of King William
Thomas Nelson Community College
Newport News Redevelopment & Housing
DDS Tidewater Regional Office
Newport News Public Schools
Williamsburg/James City County Public Schools
York County Public Schools
Christopher Newport University
College of William & Mary
Norfolk State University
Tidewater Community College
Jamestown/Yorktown Foundation
Southeastern Public Service Authority
County of York
Portsmouth Redevelopment & Housing
CAS Norfolk Regional Office

1. **AUTHORITY AND COOPERATIVE PURCHASING**-The County Purchasing Director has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by James City County. In the discharge of these responsibilities, the County Purchasing Director may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Director, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of James City for an indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

2. **COMPETITION INTENDED:** It is the County's intent that this solicitation permit competition. It shall be the Bidder's/Offeror's responsibility to advise the Purchasing Director in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Director must receive such notification not later than five (5) business days after solicitation release date.

CONDITIONS OF BIDDING

3. **CLARIFICATION OF TERMS** –
   a. Questions. If any Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/ Offeror should contact the buyer whose name appears on the face of the solicitation no later than five (5) business days after solicitation release date Any revisions to the solicitation will be made only by addendum issued by the buyer. Notifications regarding specifications may not be considered if received more than five (5) business days of the release date of the solicitation.
   b. Exceptions:
      i. Information Technology procurements. Exceptions to liability provisions must be stated by the offeror in writing at the beginning of negotiations.

4. **Compliance with Contractual Terms and Financial Responsibility:** Architectural or Engineering services. i. Offerors shall provide relevant financial data demonstrating the firm's capability to successfully perform over the life of the contract. ii. Provide a definitive statement of intent to comply with the contract terms and conditions as delineated in the RFP. If proposed terms and conditions are not acceptable as described, provide a statement that the firm intends to take exception to the contract terms and conditions. After offerors are ranked for negotiation the County may request firms to note and explain any exceptions. Failure to agree to terms required by law or County purchasing regulations may be grounds for disqualification of the proposal. iii. Acknowledge and describe any proposed deviations from the Scope of Services.

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5. **USE OF COUNTY FORM AND TERMS AND CONDITIONS**: Failure to submit a solicitation on the official James City County form provided for that purpose or unauthorized modification of or additions to any portion of the solicitation documents may be a cause for rejection of the bid/proposal if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected. James City County reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject any bid or proposal which has been modified. The County shall not be responsible for any errors or omissions of the bidder/proposer. The solicitation shall be signed by a representative authorized to legally bind the firm. By signing the solicitation, the bidder/offeror agrees to the terms and conditions of the solicitation and certifies that they have inspected the job site(s) and are aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, shall not be considered by the County.

6. **LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/ PROPOSALS:**

   Any bid/proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/proposal/modification is considered a late bid/proposal/ modification.

   James City County is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder/Offeror to ensure their bid/proposal reaches the Purchasing Office by the designated date and hour.

   a. The official time used in the receipt of bids/ proposals is that time stamped by the automatic time stamp machine in the Purchasing Office. Date/time stamps marked after the designated time of receipt will be rejected.

   b. Late bids/proposals/modifications will be returned to the Bidder/Offeror UNOPENED, if solicitation number, acceptance date and Bidder/Offeror's return address is shown on the container.

   c. If the County closes its offices due to inclement weather scheduled bid openings or receipt of proposals will be extended to the next business day, same time.

   d. Vendors may modify their bids prior to the date and time specified for the bid opening. Facsimile modification of bids shall not be accepted unless the solicitation allowed such submission.

7. **WITHDRAWAL OF BIDS/PROPOSALS:**

   A bidder/offeror for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:

   a. Bids/Proposals may be withdrawn on written request from the Bidder/offeror received at the address shown in the solicitation prior to the time of acceptance.

   b. Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the County Purchasing Director, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.

   c. Bids/proposals shall not be withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a solicitation or resulting contract or purchase order shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder/offeror as a result of the breach or nonperformance of such contract or purchase order.

   No Bid/Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another Bid/Proposal of the same bidder/offeror or of another bidder/offeror in which the ownership of the withdrawing bidder/offeror is more than five percent. In the case of Invitation for Bids, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No bidder/offeror who is permitted to withdraw a bid/proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.

8. **CANCELLATION OF BIDS/PROPOSALS**
   If James City County intends to issue another Solicitation within a reasonable time after cancellation of the bid/proposal for the same materials, services or construction, any responses received under the canceled solicitation shall be retained in the Procurement file,

and James City County shall withhold responses from public inspection, if the Purchasing Director makes a Written Determination that such action is advantageous to James City County. After Award of a Contract under a subsequent solicitation, responses submitted in response to the canceled solicitation shall be open for public inspection.

9. **ERRORS IN BIDS/PROPOSALS** – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids/proposals must be initialed by the bidder/offeror. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Bidder/Offeror of his responsibilities to provide the good or service. Bidders/Offerors are cautioned to recheck their bids/proposals for possible errors. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.

10. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

    ADDRESSED AS INDICATED ON PAGE 1
    IFB/RFP NUMBER
    TITLE
    BID/PROPOSAL DUE DATE AND TIME
    VENDOR NAME AND COMPLETE MAILING ADDRESS (RETURN ADDRESS)

    If a bid/proposal is not addressed with the information as shown above, the Bidder/Offeror takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

11. ACCEPTANCE OF BIDS/PROPOSALS: Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of ninety (90) calendar days following the date established for acceptance. At the end of the ninety (90) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

12. **PRICING:**

    a. Bidder warrants by virtue of bidding that prices, terms, and conditions quoted in his bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the County or Bidder.

    b. Prices should be stated in units of quantity as specified in the bid form.

    c. Life cycle cost analysis may be considered when determining the lowest responsive and responsible bid. This analysis may consider, in addition to purchase price, any proposed upward or downward escalator clauses proposed for the initial contract term and any potential renewal terms; operating and related costs over the life of the item including maintenance, down time, energy costs, salvage value, etc.

    d. Bid prices shall be for complete installation ready for the County's use and shall include all applicable freight and installation charges; extra charges will not be allowed.

    e. When an annual contract is not requested by the County, and the bid is for products or services to be delivered on a one-time only or staggered basis, only firm pricing shall be given consideration. General terms such as "price in effect at time of delivery" shall not be considered for award.

13. **CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected.

14. **OPENING:** At the time fixed for the opening of responses to a bid, all bids will be opened and the names of the bidders and the amount bid shall be read aloud and made readily available to the public.

    If a public opening of a Request for Proposals is held, only the names of the offerors will be read publicly.

15. **RESPONSE TO SOLICITATIONS**: In the event a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid on these requirements. Because of the large number of firms listed on the County's Bidders List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the County's Bidder's List.

16. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.

17. **TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder/Offeror.

18. **DEBARMENT/ENJOINMENT STATUS:** By submitting their bids/proposals, Bidders/Offerors certify that they are not currently debarred or enjoined by James City County, the Commonwealth of Virginia, the Federal Government, any local government or government agency/entity/ authority 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 or enjoined.

19. **ETHICS IN PUBLIC CONTRACTING**: The provisions contained in Sections 2.2-4367 through 2.2-4377, Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by James City County. By submitting their bids/proposals, all Bidders/Offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on 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 Bidder/Offeror certifies that to the best of his knowledge, no employee of the County, nor any member thereof, nor any public agency or official impacted by the solicitation or resulting contract has any pecuniary interest in the business of the Bidder/Offeror, and that no person associated with the Bidder/Offeror has any interest that would conflict in any manner with the performance of the contract resulting from this solicitation.

20. **VENDOR REWARDS/GIFT PROGRAMS:** It is the policy of the County not to participate in any rewards programs offered by vendors and not to accept any gifts or gift cards, or other rewards from vendors for purchases made by the County. If you customarily provide, or if you plan to provide, rewards programs, gifts or gift cards, or other rewards to your customers for purchases made by such customers, you must identify this fact in your bid and demonstrate in the bid how you have applied the value of such rewards to a reduction in the price of the goods and/or services being offered to the County.

21. **PERFORMANCE BOND**: When requested in the bid, the County shall require the successful bidder to furnish a performance bond and labor and material payment bond with surety satisfactory to the County Attorney in the amount of the contract price at a time of or prior to execution of the contract.

22. **NO CONTACT POLICY:** No Bidder/Offeror shall initiate or otherwise have contact related to the solicitation with any County employee, other than the Purchasing Office, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeror with any County representative, other than the Purchasing Office, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Offeror from this procurement process.

23. **LICENSES, PERMITS, AND FEES**: All bids submitted shall have included a list of any business and professional licenses, permits, or fees required by James City County or the Commonwealth of Virginia.

24. **QUALIFICATIONS OF BIDDERS AND SUBCONTRACTORS:** The apparent low Bidder shall submit to the Owner a list of all Subcontractors who will be performing work on the project. An experience statement with shall accompany such list pertinent information as to similar projects and other evidence of experience and qualification for each such Subcontractor, person and organization and documented work history of the subcontractor with the Bidder. If the Owner, after due investigation, has reasonable objection to any proposed Subcontractor, other person or organization, the Owner may, before giving the Notice of Award, request the apparent low Bidder to submit an acceptable substitute without an increase in Bid price. If the apparent low Bidder declines to make any such substitution, the contract shall not be awarded to such Bidder, but his declining to make any such substitution will not constitute grounds for sacrificing his Bid Security. For any Subcontractors, other person or organization so listed and to whom Owner does not make written objection prior to the giving of the Notice of Award, it will be deemed the Owner has no objection.

SPECIFICATIONS

25. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable James City County to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data to enable James City County to determine if the product offered meets the requirements of the solicitation may result the bid being declared non-responsive. Unless the Bidder clearly indicates in its bid/proposal that the product offered is "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

26. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

27. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

    The Bidder/Offeror shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances., etc., shall be construed as to the minimum requirements of these specifications.

28. **EQUIPMENT STANDARDS.** Any equipment delivered shall be standard new equipment, latest model, the best quality, and the highest grade work, except as otherwise specifically stated in bid. Any part of nominal appurtenances which are usually provided in the manufacturer's stock model shall be furnished.

29. **ANNUAL CONTRACT USAGE REQUIREMENTS:** Whenever a bid is sought seeking a source of supply for an annual contract for products or services, the quantities or usage shown are estimates only. No guarantee or warranty is given or implied by James City County as to the total amount that may not be purchased from any resulting contracts. These quantities are for Bidder's information only and will be used for tabulation and presentation of bid.

AWARD

30. **AWARD OR REJECTION OF BIDS:** The Purchasing Director shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Director reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders/offerors as deemed necessary to fulfill the anticipated requirements of James City County. The Purchasing Director reserves the right to negotiate with the lowest responsive, responsible bidder should bids exceed available funds. The Purchasing Director shall reject the bid if the bidder is deemed to be a non-responsible or non-responsive bidder.

31. **PUBLIC INSPECTION OF CERTAIN RECORDS**:
    Shall be per the Virginia Public Procurement Act (VPPA) 2.2-4342

32. **QUALIFICATIONS OF BIDDERS OR OFFERORS:** James City County may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeror to perform the work/furnish the item(s) and the Bidder/Offeror shall furnish to James City County all such information and data for this purpose as may be requested. James City County reserves the right to inspect Bidder's/Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeror's capabilities. James City County further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Bidder/Offeror fails to satisfy James City County that such Bidder/Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

33. **TIE BIDS**: In the case of a tie bid, the County may give preference to goods, services and construction produced in the County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to Code of Virginia § 2.2-4324. If no County or Commonwealth choice is available, the tie shall be decided by lot.

42. **FACTORS OTHER THAN PRICE IN AWARD DECISION:** The following factors, in addition to price (as they apply), shall be a consideration in the award decision:

a. The quality of performance/workmanship of previous contracts, services or products, or references which attest to other specific experiences;

b. The timely completion of previous contracts or services or the timely delivery of past orders; or references which attest to other specific experiences;

c. The sufficiency of financial resources and its impact on ability of the bidder to perform the contract or provide the services;

d. The County reserves the right to conduct on-site inspections of any bidder's facilities prior to award. The results of said inspection will be considered by the County in determining bidder's capabilities of successfully administering to this contract;

e. The ability and availability of the bidder to provide both quality and timely maintenance, service, and/or parts;

f. The resale value, life cycle costing, and value analysis of a product;

g. The availability and capability of local and regional vendor support as it affects the quantity, quality, and timeliness of the work or products required;

h. Delivery of a product and timely completion of a project as stated by vendor in bid;

i. Substantial compliance or noncompliance with specifications set forth in bid as determined by the County;

j. Product or parts inventory capability as it relates to a particular bid; and

k. Results of product testing.

CONTRACT PROVISIONS

35. **APPLICABLE LAW AND COURTS**: Any contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court or General District Court of James City County, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.

36. **IMMIGRATION REFORM AND CONTROL ACT OF 1986**: By entering into this contract, vendor certifies that it does not and will not during the performance of this contract knowingly employ an unauthorized alien as defined in, or otherwise violate the provisions of, the federal Immigration Reform and Control Act of 1986, as amended.

37. **OBLIGATIONS OF COUNTY AND CONTRACTOR**: County: The County shall furnish to the contractor all available information as listed in the solicitation that may be useful for the contract work. The County shall assist the contractor in obtaining access to enter upon public and private property as required to perform the contract work. The County shall designate a representative who shall serve as the principal contact and give direction to the contractor throughout the duration of the contract. Contractor: The contractor represents that he has, or shall secure at his expense, all personnel, including subcontractors, required to perform and complete the Scope of Work.

38. **CONFIDENTIALITY AND OWNERSHIP OF DATA**: Any reports, information, intellectual property, data, drawings, specifications, estimates and summaries given to or prepared or assembled by the contractor under the Scope of Work of the contract, shall not be made available to any individual or organization by the contractor without prior written approval of the County. All of these items shall become the property of the County upon payment of fees as required by the contract.

39. **REPORTS OF WORK**: The County and the contractor shall schedule progress meetings at appropriate intervals throughout the duration of the contract. These meetings shall provide for the exchange of information related to the status of the Scope of Work, anticipated progress and any problems that have occurred.

40. **ANTI-TRUST**: By entering into a contract, the contractor conveys, sells, assigns, and transfers to James City County all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and James City County, relating to the particular goods or services purchased or acquired by James City County under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Director and/or investigation for Anti-Trust violations.

41. **PAYMENT TERMS**: Unless otherwise provided in the solicitation payment will be made thirty (30) days after receipt of a proper invoice with complete supporting documentation, or thirty (30) days after receipt of all goods or acceptance of work, whichever is the latter. For construction projects, the County may retain five percent (5%) of the total amount of each partial progress payment to assure faithful performance of the contract by the contractor. The County will release all retainage upon final payment.

a. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.

b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

c. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.

42. **PAYMENT TO SUBCONTRACTORS**: A contractor awarded a contract under this solicitation is hereby obligated:

a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from James City County for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

b. To notify James City County and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent 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 James City County, except for amounts withheld as stated in b above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not by construed to be an obligation of James City County.

43. **ASSIGNMENT OF CONTRACT**: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Director.

44. **DEFAULT**: In case of failure to deliver goods or services in accordance with the contract terms and conditions, James City County, 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 another remedies which James City County may have.

45. **AVAILABILITY OF FUNDS**: It is understood and agreed between the contractor and the County herein that the County shall be bound hereunder only to the extent of the funds available or which hereafter become available for the purpose of the contract.

46. **ANTI-DISCRIMINATION**: By submitting their bids/proposals, Bidders/Offerors certify to James City County that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and the Code of Virginia § 2.2-4311, as amended. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts shall be subject to audit by the public body . (Code of Virginia § 2.2-4343.1.E).

    In every contract over $10,000 the provisions in a and b below apply:

    a. During the performance of this contract, the Contractor agrees as follows:

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

        2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

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

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

47. **NONDISCRIMINATION OF CONTRACTORS:** A bidder/offeror, or contractor shall not be discriminated against in the solicitations or award of this contract because of race, religion, color, sex, national origin, age or disability or against faith-based organizations. If the award of this contract is made to a faith- based organization and an individual who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, James City County shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, service, or disbursements from an alternative provider.

48. **INVOICES**: Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the IFB/RFP number and/or purchase order number.

49. **PRECEDENCE OF TERMS:** In the event there is a conflict between the General Terms and Conditions and any Special Terms and Conditions, the Special Terms and Conditions shall apply.

50. **CHANGES TO THE CONTRACT**: There shall be no extra work allowed on the contract without prior written authorization in the form of a change order signed by the Purchasing Director or the County Administrator. No officer, agent or employee of the County is authorized to give verbal instructions to increase the Scope of Work and the contractor shall not use verbal instructions as the basis for additional costs. Changes can be made to the contract in any of the following ways by the issuance of a Change Order:

    a. The parties may agree to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

    b. James City County may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the County a credit for any savings. Said compensation shall be determined by one of the following methods.

        1) By mutual agreement between the parties in writing; or

        2) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the County's right to audit the Contractor's records and/or determine the correct number of units independently; or

        3) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the County with all vouchers and records of expenses incurred and savings realized. The County shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Office within thirty (30) days from the date of receipt of the written order from the Purchasing Office. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of the contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the County or with the performance of the contract generally.

    c. No modification for a fixed price contract may be increased by more than 25% or $50,000, whichever is greater, without the advanced written approval of the Board of Supervisors.

51. **AUTHORIZATION TO TRANSACT BUSINESS, STATE REGISTRATION OF CONTRACTORS (IF APPLICABLE) AND COUNTY BUSINESS LICENSE:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

Pursuant to competitive sealed bidding or competitive negotiation, all bidders or offerors organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 are required to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

Attention is directed to Chapter 11, title 54.1 of the Code of Virginia (Re: State registration of contractors), which requires that all bidders must show evidence of the proper license under the provision of this chapter before such bid is considered.

All firms doing business in James City County are required to be licensed in accordance with the County's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in James City County are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Business License Inspector, telephone (757) 253-6698.

52. **PROPRIETARY INFORMATION:** Section 2.2-4342F of the Code of Virginia states: "Trade secrets of proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary." Declaring an entire bid or proposal response as proprietary is unacceptable.

53. **INDEMNIFICATION**: The Contractor hereby binds himself and his successors to indemnify, defend, and save harmless James City County, its officers, agents or employees, from all suits and actions of every name and description brought against it or them, and all costs or damages to which it or they may be put, on account of, or by reason of any injury or alleged injury to the person or property of another, resulting from or on account of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor or his agents in the performance of the contract; and that the whole or so much of the moneys due to the contractor under and by virtue of this Contract, as such or may be considered necessary by the County, shall and may be retained until all such suits and claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of the County. The said Contractor further agrees to indemnify and save harmless James City County against any and all claims, suits or demands that may accrue to, be suffered by, or adjudicated against it by reason of any injury sustained by any of the Contractor's employees in and about the said work, under and pursuant to the provisions of the Workman's Compensation Law or any amendments thereto, and the Contractor shall produce certificates or other satisfactory evidence of ample protection against such liability.

54. **NOTICE OF REQUIRED DISABILITY LEGISLATION**: The County government is required to comply with State and Federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) of 1990 Title II and the Virginia with Disabilities Act of 1990. Specifically, the County, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II or the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act 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 Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

55. **DRUG-FREE WORKPLACE:** 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, 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.

56. Non-Responsive Performance:
    Delivery Delays: James City County reserves the right to procure goods and/or services to be provided under this contract from other sources in the event Successful Bidder fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in this contract. Unacceptable Deliveries (Rejections): Upon notification by James City County that goods and/or service deliverables provided by the Successful Bidder under this contract are damaged and/or not of the quality specified by James City County, such goods and/or service deliverables will be rejected. Successful Bidder shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by James City County. Successful Bidder shall remove all rejected materials, equipment or supplies from the premises of James City County within ten (10) days of notification. Rejected goods and/or service deliverables not removed from James City County premises within ten (10) days will be regarded as abandoned, shall become the property of James City County, and James City County shall have the right to dispose of such items. James City County Purchase From Alternate Sources: James City County reserves the right to authorize immediate purchase from other sources against delayed deliveries and/or rejections. The Successful Bidder shall reimburse James City County promptly for excess costs incurred by James City County for such purchases. Any such purchases will be deducted from the contract amount. In the event James City County cost of obtaining goods and/or service deliverables from other sources be less, Successful Bidder shall have no claim to the difference.
    Liability: Successful Bidder shall be liable to James City County for all costs incurred by James City County as a result of Successful Bidder's failure to perform in accordance with the contract. Successful Bidder's liability shall include, but not be limited to: Damages and other delay costs, to include costs to procure goods/services from alternate suppliers. Increased costs of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Successful Bidder and/or rejections of Successful Bidder's goods and/or service deliverables. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by James City County due to non-responsive performance of Successful Bidder.

57. **BREACH OF CONTRACT:** Successful Bidder shall be deemed in breach of this contract if the Successful Bidder: Fails to comply with any terms of this contract; Fails to cure such noncompliance within five (5) calendar days from the date of the Owner written notice or such other time frame, greater than five (5) calendar days, specified by the JCC Contract Administrator in the notice; Successful Bidder fails to submit a written response to the Owner notification of noncompliance within five (5) calendar days after the

date of the Owner notice. All notices under this contract shall be submitted, by email followed up with hard copy by certified mail, return-receipt requested, to the respective contract administrator. Successful Bidder shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Successful Bidder and its sub-contractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of Owner in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

58. **TERMINATION:** Subject to the provisions below, the County upon thirty (30) days advance, written notice to the other party may terminate the contract. Upon receipt of a notice of termination, the contractor shall cease all work underway on behalf of the County unless advised by the County to do otherwise. In the event of termination, Contractor shall be compensated only for the services as set forth in the contract provided to the satisfaction of the County and expenses incurred as of the date of termination. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

    a. Termination for Convenience**:** In the event that the contract is terminated upon request and for the convenience of the County, without the required thirty (30) days advance notice, then the County shall be responsible for payment of services up to the termination date.

    b. Termination for Cause: Termination by the 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. However, pursuant to the Default paragraph of these General Conditions, the County may hold the contractor responsible for any resulting additional purchase and administrative costs. Any payment due to the contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the County by reason of the contractor's default. The thirty (30) 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 canceled.

59. **CONTRACTOR RESPONSIBILITY FOR COUNTY PROPERTY:** The Contractor shall be responsible for damages to County property caused by work performed by itself or its subcontractors. The Contractor shall be responsible for maintaining the area surrounding and adjoining the work site in their current condition. Property damage to surrounding or adjoining areas caused directly or indirectly by actions or omissions of the Contractor shall be replaced or remedied by the Contractor, to the satisfaction of the County, at the Contractor's expense.

60. **COPYRIGHTS OR PATENT RIGHTS:** The bidder certifies by submission of bid that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the product or services shipped or ordered as a result of this bid. The successful bidder shall, at his own expense, defend any and all actions or suits charging such infringement, and will save James City County, its officers, employees, and agents harmless from any and all liability, loss, or expense occasioned by any such violation.

61. **DELIVERY:** In the appropriate space, the bidder shall state the time of proposed delivery or project completion in number of calendar days. Unless otherwise specified, calendar days shall be presumed. Unless otherwise specified, quote the earliest delivery possible, as this may be considered a factor in making award. Delivery expressed in calendar days may be given preference over such general terms as "stock immediately," and "as soon as possible." As time will be of the essence for any orders places as a result of this bid, the County reserves the right to cancel such orders, or any part thereof, without obligation, if delivery is not made at the time(s) specified on bid form.

62. **INDEPENDENT CONTRACTOR:** The contractor shall be legally considered an independent contractor and neither the contractor nor its employees shall, under any circumstances, be considered servants or agents of James City County or James City Service Authority; and the County shall be at no time legally responsible for any negligence or other wrongdoing by the contractor, its servants, or agents. The County shall not withhold from the contract payments to the contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the contractor. Further, the County shall not provide to the contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the County for its employees.

63. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Director. In the event that the contractor desires to subcontract some part of the work, the contractor shall furnish the Purchasing Director the names, qualifications and experience of the proposed subcontractors. The contractor shall remain fully liable and responsible for the work to be done by its subcontractors and shall assure compliance with all requirements of the contract.

64. **HOLIDAYS:** The Contractor shall receive approval of the County, in advance, of any work to be performed on Holidays. James City Service Authority/James City County observes the following Holidays:

New Year's Day	1st day of January
Martin Luther King's Birthday	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Juneteenth	19th day in June
Independence Day	4th day in July
Labor Day	1st Monday in September
Veteran's Day	11th day in November
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving	4th Friday in November
Christmas Eve	24th day in December
Christmas Day	25th day of December

DELIVERY PROVISION

65. **SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of **8:00 a.m. – 3:00 p.m**. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the contractor to insure compliance with these instructions for items that are drop-shipped.

66. **RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, and a physical inspection is made and material is requested or rejected, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

67. **TESTING AND INSPECTIONS:** James City County reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

68. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Office when not in conflict with the bid/contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Office, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the contractor shall not be entitled to claim damages of extra compensation for such delay or suspension. These conditions may vary for construction contracts.

69. **POINT OF DESTINATION:** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract. The materials must be delivered to the "Ship To" address indicated on the purchase order.

70. **REPLACEMENT:** the Contractor at no cost to the County shall replace Materials or components that have been rejected by the Purchasing Office, in accordance with the terms of the contract.

71. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

    a. Purchase Order Number/Contract Number
    b. Name of Article and Stock Number,
    c. Quantity Ordered,
    d. Quantity Shipped,
    e. Quantity Back Ordered,
    f. The Name of the Contractor.

    Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

72. **SAMPLES:** Evidence in the form of samples may be requested if brand being quoted upon is other than as specified. The County reserves the right to request that such samples be furnished at the time of bid opening. The County also reserves the right to request samples after the date of bid opening. Requested samples must be furnished free of expense to the County and if not used in testing or destroyed, will, upon request, be returned at the bidder's expense.

BIDDER/CONTRACTOR REMEDIES

73. **PROTEST OF AWARD OR DECISION TO AWARD**: Any Bidder/ Offeror who desires to protest the award or decision to award a contract, by James City County shall submit such protest in writing to the County no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected bidder/Offeror is not a responsible Bidder/Offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Director shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder/offeror appeals within ten (10) days of the written decision by instituting legal action. Nothing in this paragraph shall be construed to permit an offeror to challenge the validity of the terms or conditions of the solicitation.

74. **DISPUTES:**
    Claims. Written notice of the Contractor to file a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such claims, whether for money or other relief, shall be submitted in writing to the County's Purchasing Director no later than sixty (60) days after final payment. The Purchasing Director shall give written notification of the final decision on such claim to the Contractor within thirty (30) days of the date the claim was received. The Contractor may not institute legal action before receiving the Purchasing Director's final written decision, unless the Purchasing Director fails to render such decision within the specified time. Pendency of claims shall not delay payment of amounts agreed due in the final payment. (Code of Virginia, § 2.2-4363).

75. Claims Relief. Under certain circumstances beyond the control of the Contractor, such as acts of God, sabotage, and fire or explosion not caused by negligence of the Contractor or its agent, the Purchasing Director may extend the time limit for performance required by this Contract. Any such extension must be issued in writing and signed by the Purchasing Director.

76. **ADDITIONAL REQUIREMENTS APPLICABLE TO PROCUREMENTS MADE USING FUNDING FROM FEDERAL GRANTS.** As required by the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal Awards, Final Rule Title 2 of Federal Regulations; 2 CFR 200, if funding for this purchase Order (contract) is provided in whole or in part by one of more Federal Grants, then the following provisions shall apply, as applicable:
    a. this Purchase Order (contract) is more than $150,000 and the Vendor (Contractor) violates or breaches contract terms, the County shall, if not otherwise specified in contract documents, issue a cure letter to the Vendor (Contractor) identifying the breach and specifying a deadline by which the Vendor (Contractor) is to cure the breach. Failure of the Vendor (Contractor) to cure the breach by the specified time may result in the County's determination that the Contract is in default. The County may thereafter make a claim against the Vendor's (Contractor's) bond, if any, or withhold funds from payments due to the Vendor (Contractor) or from escrow or retainage amounts held. The County reserves the right to take legal action for any Vendor (Contractor) breach or default.
    b. Termination procedures shall be as specified in Section, "General Terms and Conditions", #58, Termination, of the James City County Purchasing Policy.
    c. Except as otherwise provided under 41 CFR Part 60, if this Purchase Order (Contract) meets the definition of "federally assisted construction contract", it includes by reference the equal opportunity clause provided under 41 CFR 60-1-4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CCFR Part 1964-1965 Comp., p.339), as amended by Executive Order 11375, "Amending Executive Order 11246, relating to Equal Employment Opportunity", and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor".
    d. When required by Federal program legislation, if this Purchase Order (Contract) is a prime construction contract in excess of $2,000 awarded by non-Federal entities, the Vendor (Contractor) shall comply with the Davis-Bacon Act as supplemented by the Department of Labor regulations.
    e. Where applicable, if this Purchase Order (contract) is more than $100,000 and involves the employment of mechanics or laborers, the Vendor (Contractor) shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations.
    f. If the Federal award meets the definition of "funding agreement" under 37 CFR 401.2 (a) and the recipient

or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement”, the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements”, and by any implementing regulations issued by the awarding agency.

g. If this Purchase Order (Contract) is in excess of $150,000, the Vendor (Contractor) shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act as amended.

h. This Purchase Order (Contract) includes by reference all mandatory standards issued in compliance with the Energy and Conservation Act.

i. The Vendor (Contractor) shall notify the Purchasing Office if it is listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines.

j. The Vendor (Contractor) shall comply with the Byrd Anti-Lobbying Amendment (31.US.C.1352) . Contractors that apply or bid for an award of $100,000 or more must file the required certification.