



**PITTSYLVANIA COUNTY
BOARD OF SUPERVISORS**

PROCUREMENT POLICY

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

May 20, 2014

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

PITTSYLVANIA COUNTY
BOARD OF SUPERVISORS
PROCUREMENT POLICY

I. INTRODUCTION:

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

II. PURPOSE:

The purpose of this policy is to ensure that:

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

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

III. GENERAL PROVISIONS:

A. Application.

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

When the procurement involves the expenditure of state or federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal laws

and regulations which are not reflected in this Policy.

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

B. Effective Date.

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

C. Severability.

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

D. Definitions.

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

requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, or delivery schedule for the goods, services or construction being procured.

10. Invitation for Bid. All documents, whether attached or incorporated by reference, used for solicitation of competitive sealed bids. Also referred to as “IFB.”
11. Nonprofessional Services. Any services not specifically identified as professional services within this policy, or by the Virginia Public Procurement Act, as amended.
12. Professional Services. Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering.
13. Public Body. Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this policy.
14. Purchasing Agent. The official in charge of procurement as designated by the Pittsylvania County Board of Supervisors, presently the County Administrator.
15. Request for Proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals. Also referred to as “RFP.”
16. Responsible Bidder or Offeror. A bidder or offeror that has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been pre-qualified, if required.
17. Responsive Bidder. A bidder that has submitted a bid which conforms in all material respects to the Invitation for Bid.
18. Services. Any work performed by an independent contractor which does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
19. Supplies, Materials, Equipment and Commodities. Any goods or articles which will be used by or furnished to any department of the County.
20. Using Departments. All departments, agencies, boards and commissions of the County, including unified support services, and offices supported from funds approved by the County.

IV. PURCHASING AUTHORITY:

A. Establishment and Appointment.

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

Pittsylvania County Board of Supervisors.

B. Authority of the Purchasing Agent.

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

C. Delegation.

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

D. Revisory Authority.

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

V. COOPERATIVE PROCUREMENT

Conditions for Use.

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

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

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

VI. CONTRACT FORMATION AND METHODS OF SOURCE SELECTION

A. Competitive Sealed Bidding.

1. Conditions for Use. All contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services (other than professional services), insurance, or construction in excess of One Hundred Thousand Dollars (\$100,000) shall be awarded after competitive sealed bidding, or by such other procedures required or authorized by this Policy.

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

2. Pre-Qualification of Bidders. Bidders may be pre-qualified prior to any solicitation of bids, whether for goods, services, insurance or construction. The pre-qualification process shall be consistent with the provisions of § 2.2-4317 of the Virginia Code, 1950, as amended. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. Such form shall allow the prospective contractor seeking pre-qualification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor be considered a trade secret or proprietary information subject to the requirements of § 2.2-4342 of the Virginia Code, 1950, as amended. In all instances in which pre-qualification of potential contractors is required for construction projects, advance notice shall be given of the deadline for the submission of pre-qualification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in the provisions of § 2.2-4317 of the Virginia Code, 1950, as amended, to be accomplished.

3. Public Notice of Invitation for Bid (IFB). Public notice of the Invitation for Bid shall be posted in a public area in the County Administration Building and on the County's website (www.pittgov.org), at least ten (10) days prior to the last day set for the receipt of bids. The County may choose to publish the Invitation to Bid in a newspaper of general circulation.

The posting shall include a general description of the proposed purchase or sale and where solicitation documents may be obtained.

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

4. Use of Brand Names. Unless otherwise provided in the Invitation for Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand name, make or manufacturer, but rather conveys the general style, type, character, and quality of the articles desired, and any article which is determined to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The County has the sole authority in deciding what is accepted as an equal.
5. Cancellation, Rejection of Bids, and Waiver of Informalities. An Invitation for Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals may be canceled or rejected in whole or in part. The reasons for cancellation shall be made part of the contract file. Informalities may be waived when the determination is made that it is in the best interest of the County to do so.
6. Bid Opening. All bids must be opened in public.
7. Negotiation with Lowest Responsible Bidder. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, negotiation may commence with the apparent low bidder to obtain a contract price within available funds; however, such negotiation may be undertaken only under conditions and procedures described in writing prior to issuance of the Invitation for Bid and summarized therein.
8. Withdrawal of Bid Due to Error.
 - a. A bidder for a construction contract may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

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

materials delivered as required herein.

- b. Procedures for the withdrawal of bids for other than construction contracts may be established.
 - c. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%).
 - d. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
 - e. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
 - f. The County shall notify the bidder in writing within five (5) business days of its decision regarding the bidder's request to withdraw its bid. If withdrawal of a bid is denied under the provisions of this section, the bidder shall be notified in writing stating the reasons for the decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, The County shall return all work papers and copies thereof that have been submitted by the bidder.
9. Bid Award. Bids shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of the invitation for bid provide that multiple awards may be made, awards may be made to more than one bidder.

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

When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared and filed with the other papers relating to the transaction.

10. Tie Bids.

- a. In the case of a tie bid, preference shall be given to goods, services and construction produced in the County or provided by persons, firms or corporations having principal places of business in the County, if such a choice is available.
- b. Except as provided in subsection (a.) above, in the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or

provided by Virginia persons, firms, or corporations, if such a choice is available.

- c. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.
 - d. Notwithstanding the provisions of subsections (b.) and (c.), in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.
 - e. In the event that none of the foregoing provisions of this section resolve the tie, the tie is decided by lot, or the solicitation is cancelled and rebid.
11. Authority to Transact Business in Virginia. If required by law, any awarded bidder or offeror shall maintain a valid certificate of authority or registration to transact business in Virginia with the Virginia State Corporation Commission as required by Title 13.1 or Title 50 of the Virginia Code, 1950, as amended, during the term of the contract or any contract renewal. The contractor as awarded shall not allow registration to lapse at or its certificate of authority or registration to transact business in the Commonwealth of Virginia to be revoked or cancelled at any time during the term(s) of the contract. If the awarded contractor fails to remain in compliance with the provisions of this section, the contract may be voided at the sole discretion of the County.
12. Contract Pricing Arrangement. Except in case of an emergency affecting the public health, safety, or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section. Architect/engineer and similar contracts which are based on a percentage of construction cost shall not be prohibited by this section, providing the construction contract is not awarded by or to that architect/engineer or similar contracts.
13. Multi-Term Contracts.
- a. Specified Period. Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interest of the County provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

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

14. Modification of the Contract.

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

15. Retainage on Construction Contracts.

- a. In any contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent (95%) of the earned sum when payment is due, with not more than five (5%) being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.
- b. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.
- c. Nothing in this section shall preclude the establishment of retention for contracts other than construction.

16. Bid Bonds on Construction Contracts. Except in cases of emergency, all bids or proposals for construction contracts in excess of One Hundred Thousand Dollars (\$100,000) shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent (5%) of the amount bid. Nothing in this section shall preclude a requirement of bid bonds to accompany bids or proposals for construction contracts anticipated to be less than One Hundred Thousand Dollars (\$100,000).

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

17. Performance and Payment Bonds for Construction Contracts.

- a. Upon the award of any construction contract exceeding One Hundred Thousand Dollars (\$100,000) awarded to any prime contractor or as otherwise required in §2.2-4337 of the Virginia Code, 1950, as amended, such contractor shall furnish to the County the following bonds:
 - 1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.
 - 2) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.
- b. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.
- c. Bonds shall be made payable to the County as appropriate.
- d. Each of the bonds shall be filed in the contract file.
- e. Nothing in this section shall preclude the County from requiring payment or performance bonds for construction contracts below One Hundred Thousand Dollars (\$100,000).
- f. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

18. Action on Performance Bonds. No action against the surety on a performance bond shall be brought unless brought within one (1) year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, that give rise to the action.

19. Action on Payment Bonds.

- a. Any claimant who has a direct contractual relationship with the contractor and who has performed labor or furnished material in accordance with the contract documents in the prosecution of work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of ninety (90) days after the day on which such claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.
- b. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within ninety (90) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished.

Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainage with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

- c. Any action on a payment bond must be brought within one (1) year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.
- d. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

20. Alternative Forms of Security.

- a. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check, or cash escrow in the face amount required for the bond.
- b. If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a

corporate surety's bond.

21. Bonds for Other than Construction Contracts. At the discretion of the County, bidders may be required to submit with their bid, a bid bond in an amount previously determined and specified in the Invitation to Bid, as a guarantee that if the contract is awarded to such bidder, that the bidder will enter into the contract for the work mentioned in the bid. Additionally, The County may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation for Bid or Request for Proposal.

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

B. Competitive Negotiation.

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

a. Conditions for Use.

1) 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, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

2) 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:

a) through a fixed price or not-to-exceed price design-build or construction management basis in accordance with §2.2-4308 of the Virginia Code, 1950, as amended; or

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

b. Request for Proposal. The Purchasing Department shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions,

including any unique capabilities or qualifications which will be required of the contractor. The Purchasing Department shall work with the Using Department to select evaluation committee members tasked with the evaluation of proposals.

- c. Public Notice. Public notice of the Request for Proposal shall be given at least ten (10) days prior to the date set for receipt of proposals by publication in a newspaper with general circulation in the County, posted in a public area in the County Administration Building and on the County's website (www.pittgov.org). In addition, proposals may be solicited directly from potential contractors.
- d. Receipt of Proposals. Proposals shall not be made public and shall be handled so as to not permit disclosure of the contents of any proposal to competing offerors or the general public during the process of negotiation. At the time fixed for receipt of proposal responses, the Purchasing Department will read, and make available to the public on request, only the names of the offerors.
- e. Selection and Award. Selection shall be made of two (2) or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposal, including price if so stated in the request for proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the evaluation committee shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Contracts shall be awarded to multiple offerors if so stated in the original Request for Proposals. Should the evaluation committee determine in writing and in its sole discretion that only one (1) offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

2. Competitive Negotiation for Professional Services.

- a. Conditions for Use. Contracts for professional services, as defined in Section III (D.12) of this Policy, where the aggregate cost is expected to exceed Sixty Thousand Dollars (\$60,000), shall be entered into in the following manner:
- b. Request for Proposals. The Purchasing Department shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. Professional Services Request for Proposals shall not, however, request that offerors furnish estimates of man-hours or cost for services.

- c. Public Notice. Public Notice of the Request for Proposal shall be given at least ten (10) days prior to the date set for receipt of proposals by publication in a newspaper of general circulation in the County, posted on the public notice board in the County Administration Building and on the County's website (www.pittgov.org). In addition, proposals may be solicited directly from potential contractors.
- d. Selection and Award. The County shall engage in individual discussions with two (2) or more offerors deemed fully qualified, responsible and suitable on the basis of initial response and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used in the review of the professional competence of the offeror. At the discussion stage, the County may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, non-binding estimates of prices for services.

Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of the discussions, and upon the basis of evaluation factors published in the request for proposal and all information developed in the selection process, the County shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed the most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

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

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

The County shall be authorized to enter into public-private partnerships pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code Section 56-575.1 *et seq*, as amended, and in accordance with County adopted regulations related hereto. RESOLUTION 2015-10-02 Procedures /Guidelines updated 10/20/2015. See exhibit A.

Design and Build

The County shall be authorized to enter into a contract for construction on a fixed price or not

to exceed price design-build basis, Virginia Code 2.2-4308, as amended, and accordance with County adopted regulations related hereto.

RESOLUTION 2015-10-01 Procedures /Guidelines updated 10/20/2015. See exhibit B.

D. Sole Source Procurement.

A contract may be awarded without competition when it is determined in writing, after conducting a good faith review of available sources, that there is only one source practicably available for the required good, service, insurance or construction item. Negotiations shall be conducted, as appropriate, to obtain the best price, delivery, and terms. A written notice shall

be issued stating that only one source was determined to be practicably available, identify that which is being procured, the contractor selected and the date on which the contract will be awarded. For purchases exceeding One Hundred Thousand Dollars (\$100,000), a notice of sole source shall be posted on the Public Notice Board in the County Administration Building and on the County's website (www.pittgov.org) on the day of award or the decision to award is announced, whichever occurs first.

E. Emergency Purchases.

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

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

F. Small Purchases.

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

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

1. Purchases from nongovernmental sources where the estimated total cost of the goods or services are \$10,000 or greater but less than \$100,000 may be made after soliciting a minimum of three (3) written quotations.
2. Purchases from nongovernmental sources where the estimated total cost of the goods or services is \$1,000 or greater but less than \$10,000 may be made after soliciting a minimum of three (3) written, or documented verbal or telephonic quotations.
3. Purchases where the estimated total cost of the goods or services is less than \$1,000 may be made upon receipt of one (1) fair and reasonable price.
4. Purchase of used equipment, defined as equipment which has been previously owned and used where the estimated total cost is \$5,000 or greater but less than \$100,000, may be made after soliciting a minimum of two (2) written quotations; award shall be based on the offer deemed to be in the best interest of Pittsylvania County. Prior to the award of a contract for used equipment, a person technically knowledgeable of the type of equipment sought shall document the condition of the equipment stating that this purchase would be in the best interest of the County as part of the purchase documentation; price reasonableness shall be considered in determining award.
5. Nothing in this section shall preclude requiring more stringent procedures for purchases made under the small purchase method.

G. Use of County Credit Cards for Small Purchases.

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

H. Exemptions and Exceptions.

The County may not enter into contracts without competition, except those exemptions outlined in §§2.2-4344 and 2.2-4346, Virginia Code, 1950, as amended. The County may enter into contracts

without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which Pittsylvania County is a member, if the

association was formed and is maintained for the purpose of promoting the interest and welfare of, and developing close relationships with, similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that a determination is made in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

I. Exemptions to Competitive Procurement Requirements

1. Dues and Professional Licenses: Professional organization membership dues and fees to maintain professional licenses.
2. Honoraria/Entertainment: Payment for a service, such as authors, speakers, lecturers, musicians, and performing artists.
3. License Agreements: License agreements with the owner of the source code for existing software and/or manufacturer of sophisticated scientific equipment.
4. Perpetual Software Support: Competitively purchased software that requires annual support including upgrades to keep the product current, is considered both proprietary and perpetual, as support cannot be provided by anyone other than the source code or current program/software holder. For that reason, software support does not require the same competitive justification as other purchases so long as the original purchase is competitive and the same company provides the support, until that product/software is no longer utilized. Using Departments must verify that the pricing is fair and reasonable and that the product/software is still available through the current provider with each purchase.
5. Media Purchases: Advertisements and legal notices such as in newspapers, magazines, journals, radio, and television.
6. Other Agencies: purchases from the federal government, other states and their agencies or institutions, and public bodies. Care must be exercised to verify pricing as fair and reasonable.
7. Training:
 - a. Training provided by professional organization: Classes, workshops, or conferences provided by a professional organization rather than a training vendor or individual. This exemption is limited to organizations that are associated with professional accreditation or certification.
 - b. Specialized training: Training that is specialized, proprietary, and not typically available to the general public for which competition is generally unavailable.

Specialized technical training provided by a vendor for their equipment is included in this category. Justification must be prepared to document verification of exclusivity.

8. Books, printed materials, reprints and subscriptions: Books, printed materials, reprints, and subscriptions, pre-recorded audio and video material, when only available from the publisher/producer.

J. Collusion Among Bidders.

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

K. Contract Award Approval.

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

L. Unauthorized Purchases.

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

M. Public Access to Procurement Information.

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§2.2-3700 *et seq.*, Virginia Code, 1950, as amended). Cost estimates relating to a proposed transaction prepared by or for the County shall not be open to public inspection.

Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to

award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

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

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

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

N. Employment Discrimination by Contractor Prohibited.

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

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

every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

O. Drug-Free Workplace

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

VII. DEBARMENT:

A. Authority to Debar or Suspend.

After ten (10) days written notice as provided for in VII (B) to the person involved and with no legal action taken by that person per VIII (H) of this Policy, a person may be debarred for cause from consideration for award of contracts. The debarment shall be and remain effective for a period commensurate with the seriousness of the cause as determined. A person may be suspended from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding six (6) months. When debarment or suspension occurs, such debarment or suspension shall be considered to be just cause for cancellation of any existing contracts held by the person or business debarred or suspended.

The causes for debarment or suspension shall include:

1. Conviction for commission of a criminal offense relating to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. Conviction under state or federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
5. A recent record of failure to perform or of unsatisfactory performance in accordance

with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; and

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

B. Decision to Debar or Suspend.

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

C. Notice of Decision.

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

VIII. APPEALS AND REMEDIES FOR BID PROTESTS:

A. Ineligibility of Bidder, Offeror or Contractor.

As provided for in §2.2-4357 of the Virginia Code, 1950, as amended, any bidder, offeror or contractor refused permission to participate, or disqualified from participating, in contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror or contractor appeals within thirty (30) days of receipt by instituting legal action as provided in VIII (H) of this Policy.

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

B. Appeal of Denial of Withdrawal of Bid.

A decision denying withdrawal of bid under the provisions of Section VI (A.8) of this Policy shall be final and conclusive, unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in Section VIII (H.2) of this Policy.

If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of Section VI (A.8) of this Policy, prior to appealing, shall deliver to the Purchasing Department a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next lowest bid. Such security shall be released only upon a final

determination that the bidder was entitled to withdraw the bid.

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

C. Determination of Non-Responsibility.

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

If, upon appeal, it is determined that the decision was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulation or the terms and conditions of the Invitation for Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder or offeror is a responsible bidder for the contract in question or directed award as outlined in the Invitation for Bid. If it is determined that the decision was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation or the terms and conditions of the Invitation for Bid, and the award has been made, the relief shall be as set forth in Section VIII (D) of this Policy. A bidder or offeror contesting a determination that he is not a responsible bidder or offeror for a particular contract shall proceed under this section, and may not protest the award or proposed award under Section VIII (D) of this Policy.

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

D. Protest of Award or Decision to Award.

1. Any bidder or offeror who desires to protest the award or decision to award of a contract shall submit such protest in writing to the County Administrator as defined in the Terms and Conditions of the IFB or RFP, as applicable, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Administrator shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of the written decision by instituting legal action as provided in Section VIII (H.3) of this Policy.
2. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The proposed award shall be cancelled or revised to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as

hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the contract may be declared void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event, shall the performing contractor be entitled to lost profits.

3. When it is determined, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article X of this Policy, award of the contract to a particular bidder may be enjoined.

E. Effect of Appeal upon Contract.

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

F. Stay of Award During Protest.

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

G. Contractual Disputes.

Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment, however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claim shall not delay payment of amounts agreed due in the final payment.

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

The decision of the County Administrator shall be final and conclusive unless the contractor initiates legal action as provided in § 2.2-4364 of the Virginia Code, 1950, as amended, within six (6) months of the date of the final decision on a claim.

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

H. Legal Actions.

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

IX. ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES:

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

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

B. Discrimination Prohibited.

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

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

X. ETHICS IN PUBLIC CONTRACTING

A. Purpose.

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

B. Definitions.

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

"Immediate family" shall mean spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

"Official responsibility" shall mean administrative or operating authority, whether intermediate or final, to initiate, approve, and disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

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

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

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

C. Prohibited Participation by Employees in Procurement Transactions.

No employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body, except as noted in §2.2-3112 of the Virginia Code, 1950, as amended, when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement transaction; or
2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent (5%); or
3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with the bidder, offeror or contractor.

D. Solicitation or Acceptance of Gifts.

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

E. Disclosure of Subsequent Employment.

No employee or former employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one (1) year from the cessation of employment by the County, unless the employee or former employee provides written notification to the County prior to commencement of employment by that bidder, offeror or contractor.

F. Gifts by Bidders, Offerors, Contractors or Subcontractors.

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

G. Kickbacks.

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

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

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

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

H. Participation in Bid Preparation.

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

I. Misrepresentations Prohibited.

No employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

J. Penalty for Violation.

Any person convicted of a willful violation of any provision of Section X of this policy shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his/her employment.

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

XI. SALE OF SURPLUS PROPERTY

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

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

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

EXHIBIT A

**Public-Private Education Facilities and Infrastructure Act of
2002**



**Procedures/Guidelines for the County of
Pittsylvania, Virginia**

2015

I. INTRODUCTION:

The Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”) (Virginia Code §§ 56-575.1 *et seq.*) authorizes local governments to create public-private partnerships for the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of education facilities, technology infrastructure, and other public infrastructure and government facilities that serve a public need and purpose. By working in public-private partnerships, local governments and private entities have greater flexibility in contracting the development of qualifying public projects so as to help promote the completion of such projects in a more timely and less costly fashion.

A. Guideline Overview

Pittsylvania County is a political subdivision of the Commonwealth of Virginia with the authority to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, and install a wide range of projects for public use. It therefore is a “Responsible Public Entity” as that term is defined by the PPEA.

The PPEA requires local governments to adopt and make publicly available guidelines for development of projects under the PPEA. The guidelines detailed in this document were adopted by the Pittsylvania County Board of Supervisors by Resolution Number 2015 – 10-01 on October 20, 2015, and are thereby incorporated by reference into Pittsylvania County Code.

The person designated as the primary point of contact for information on these guidelines and for submission of solicited or unsolicited proposals under the PPEA is:

County Administrator
Pittsylvania County
1 Center Street
P.O. Box 426
Pittsylvania, Virginia 24531

If the PPEA is amended in a manner that either conflicts with these guidelines or concerns material matters not addressed by these guidelines, the County Attorney shall approve conforming amendments to the guidelines. If the guidelines are not amended prior to the effective date of the new law, the guidelines nonetheless shall be interpreted in a manner to conform to the new law. The County Attorney also may approve such amendments tailoring these guidelines for optimal use by Pittsylvania County as are consistent with State law.

B. Qualifying Facilities and Projects

Qualifying facilities and projects under the PPEA include:

1. An educational facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education.
2. Any building or facility that meets a public purpose and is developed or operated by or for any public entity.
3. Any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity.
4. Utility and telecommunications and other communications infrastructure.
5. A recreational facility.
6. Technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods, and services.
7. Any services designed to increase the productivity or efficiency of the responsible public entity through the use of technology or other means.
8. Any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas.
9. Necessary or desirable improvements to unimproved publicly-owned real estate.
10. Any solid waste management facility that produces electric energy derived from solid waste.

C. Reservation of County Rights

In considering any proposal, the County shall have all rights available to it by law in administering these guidelines, including without limitation, the right in its sole and unfettered discretion to:

1. Reject any or all proposals at any time, for any reason, solely within the discretion of the County. Proposers shall have no recourse against the County for such rejection. Proposers will be notified in writing of such rejection in accordance with these guidelines.
2. Terminate the evaluation of a proposal at any time.
3. Suspend, discontinue, or terminate comprehensive or interim agreement negotiations.
4. Negotiate with a proposer without being bound by any provision in its proposal.
5. Request or obtain additional information about any proposal.
6. Issue addenda to or cancel any request for proposals (“RFP”) or invitation for bids (“IFB”).

7. Revise, supplement, or withdraw all or any part of these guidelines at any time.
8. Modify any standard fee schedule as stated herein for a specific proposal or for all future proposals.
9. Decline to return any and all fees required to be paid by proposers, except for initial fees paid by proposers with an unsolicited conceptual proposal where the County declines to accept the proposal for consideration.
10. Request revisions to conceptual or detailed proposals.
11. Treat any proposal which may have certain characteristics in common yet differs in meaningful ways from a previously received proposal as either a competing proposal or a noncompeting unsolicited proposal and proceed accordingly.
12. Arrange for review of a proposal by outside consultants or advisors selected by the County without notice to the proposer. Such consultants or advisors shall be advised of and contractually required to agree to maintain the confidentiality of information that has been designed as confidential pursuant to an agreement between the County and the proposer, and to refer all requests for such information to the County.
13. Modify the stated timeline for consideration, review or negotiation of proposals when deemed necessary by the County in its sole discretion. Written notice will be provided to any affected proposers when such departures from a stated timeline are deemed significant.

The County shall not be liable for, or reimburse, costs incurred by proposers, whether or not selected for negotiations, in developing proposals or in negotiating agreements. Any and all information the County makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquires. If a proposer has a question regarding application of these guidelines or regarding a project, the proposer must submit the question in writing to the County Purchasing Agent who shall respond in writing.

II. DEFINITIONS:

The following terms shall have the meaning ascribed to them in this section whether they appear in capitalized or uncapitalized form in these Guidelines.

“Affected Jurisdiction” means any county, city, or town in which all or a portion of a qualifying project is located.

“Appropriating body” means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

“Comprehensive Agreement” means the comprehensive agreement between the private entity and the responsible public entity that is required prior to the development or operation of a qualifying project.

“County” means Pittsylvania County.

“Develop” means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

“IFB” means invitation for bids.

“Interim Agreement” means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

“Lease payment” means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project.

“Lifecycle cost analysis” means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset.

“Material default” means any default by the private entity in the performance of its duties that jeopardizes adequate service to the public from a qualifying project.

“Operate” means to finance, maintain, improve, equip, modify, repair, or operate.

“Private entity” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

“Proposal” means a proposal submitted under these guidelines for development of a qualifying project.

“Proposer” means a private entity that submits a solicited or unsolicited proposal to the County.

“Public entity” means the Commonwealth or any agency or authority thereof, any county, city, or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.

“Responsible public entity” means a public entity that has the power to develop or operate a specific qualifying project.

“Revenues” means all revenues, including but not limited to income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project, including without limitation, funds received as grants or otherwise from the federal government, from any public entity, or from any agency or instrumentality of the foregoing in support of the qualifying project.

“RFP” means request for proposals.

“Service contract” means a contract entered into between a public entity and the private entity for the delivery of services to be provided as part of a qualifying project in exchange for such service payments and other consideration as such public entity may deem appropriate.

“Service payments” means payments to the private entity in connection with the development or operation of a qualifying project pursuant to a service contract.

“State” means the Commonwealth of Virginia.

“User fees” means the rates, fees, or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.

III. GENERAL PROVISIONS:

A. Proposal Submission and Consideration

The County may solicit proposals or a private entity may submit an unsolicited proposal. In either case, proposers may be required to follow a two (2)-part process consisting of submission of an initial conceptual proposal followed by submission of a more detailed proposal.

Proposals generally should be prepared simply and economically, providing a concise description of the proposer’s capabilities to complete the proposed qualifying project and the benefits to be derived by the County. Proposals should include a 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.

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

The County shall use County staff or shall engage the services of qualified professionals, such as architects, professional engineers, or certified public accountants, to provide independent analysis regarding the specific components, advantages, disadvantages, and the long and short-term costs of any proposal.

The County shall make County staff available to meet with private entities considering submission of a proposal.

The County may authorize accelerated selection and review and documentation timelines for proposals involving a qualifying project that the County deems a priority for development.

B. Virginia Freedom of Information Act

Proposal documents submitted by a private entity are generally subject to the Virginia Freedom of Information Act (“VFOIA”). Any inspection of procurement transaction records

generally shall be subject to reasonable restrictions to ensure the security and integrity of the records, and the provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement. Notwithstanding these provisions, the County shall comply with the terms of any court order relating to the protection or production of documents involved in any procurement transaction.

1. Documents that must be disclosed.

Except as they are exempt in accordance with these guidelines, the County must disclose the following documents in response to a request under the VFOIA:

- ❖ Procurement records.
- ❖ Public records disclosing the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the County and the private entity.
- ❖ Public records disclosing the terms and conditions of any financing arrangement that involves the use of any public funds.
- ❖ Public records relating to the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.
- ❖ Any public records included in a proposal that the parties agree should be incorporated into a comprehensive or interim agreement upon execution of the agreement.

2. Exemptions the County can invoke.

The County can choose to withhold from public inspection the following documents:

- ❖ Documents implicating public safety concerns, pursuant to Virginia Code § 2.2-3705.2.
- ❖ Memoranda, staff evaluations, or other records prepared by the County, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, the financial interest or bargaining position of the County would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the County.
- ❖ Cost estimates relating to a proposed procurement transaction prepared by or for the County.
- ❖ 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 County or private entity would be adversely affected.
- ❖ Any other document that the County determines is properly exempted from disclosure by the VFOIA.

3. Exemptions the proposer can ask the County to invoke.

The proposer may request that the County protect as confidential:

- ❖ Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code §§ 59.1-336 *et seq.*).
- ❖ 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.
- ❖ 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 County or private entity would be adversely affected.

The County may consider these exemptions only if the proposer makes a written request to the County:

- ❖ Invoking such exemption upon submission of the data or other materials for which protection from disclosure is sought;
- ❖ Identifying with specificity the data or other materials for which protection is sought by marking each affected page or portion thereof “Confidential – Not Subject to VFOIA”; and
- ❖ Stating the reasons protection is necessary.

The County shall determine whether exempting the records is necessary to protect the trade secrets or financial records of the proposer, or whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the County or proposer.

The County shall prepare a written determination describing the nature and scope of the protection it will afford the affected documents. The proposer shall be allowed to withdraw its proposal if the written determination provides less protection than the proposer requested.

The Purchasing Agent shall take reasonable precautions to protect the confidentiality of any documents afforded protection under a written determination, and shall not make any disclosures beyond that reasonably necessary to carry out the procurement. Nothing contained herein shall constitute a waiver of sovereign immunity, a consent to suit, or a contractual undertaking, and it is a condition of submitting proposals that no cause of action, in contract or otherwise, shall arise against the County or its Board of Supervisors, County Attorney, County Administrator, officers, employees, or agents for any failure to maintain confidentiality of information.

C. Affected Jurisdictions

Any private entity submitting a conceptual or detailed proposal to the County shall provide, by certified mail, express delivery, or hand delivery, a copy of the proposal to any other affected jurisdiction. Affected jurisdictions have sixty (60) days from the receipt of the proposal to submit written comments to the County and to indicate whether the proposed project is compatible with the affected jurisdiction’s (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other government spending plan.

The County shall consider any comments received within the sixty (60)-day period but shall not draw any negative inferences from the absence of comment.

D. Applicability of Other Laws

1. Use of Public Funds.

Virginia constitutional and statutory requirements applicable to appropriation and expenditure of public funds shall apply to any interim or comprehensive agreement entered into pursuant to these guidelines. The processes and procedural requirements associated with the expenditure or obligation of public funds therefore shall be incorporated into planning for any PPEA project or projects and restrictions on County expenditures of public funds shall be deemed incorporated into any agreement executed under these guidelines.

2. Virginia Public Procurement Act.

The provisions of the Virginia Public Procurement Act., Virginia Code §§ 2.2-4300, *et seq.*, shall not apply to procurement under these guidelines except as follows:

- i. As used in these guidelines, “competitive sealed bidding” and “competitive negotiation” shall have the same meaning as the definitions in Virginia Code § 2.2-4301.
- ii. The provisions of Virginia Code § 2.2-4310 shall apply to all procurements under these guidelines.
- iii. The provisions of the Ethics in Public Contracting Act, Virginia Code §§ 2.2-4367 through 2.2-4377, shall apply to all procurements under these guidelines.
- iv. The provisions of Virginia Code § 2.2-4336 shall apply to bonds or letters of credit for any components of a qualifying project involving construction.

E. Proposal Review and Analysis Fee

1. To assist its decision regarding entry into an agreement with a private entity, the County shall arrange for review and analysis of any unsolicited or solicited proposal from County staff or from outside advisors or consultants with relevant experience.
2. The County shall not charge a fee for any review and analysis of proposals solicited by a request for proposal or invitation for bid.
3. The County shall charge fees for review and analysis of an unsolicited proposal accepted for conceptual phase review. Such fees may include reasonable attorney’s fees and fees for financial, technical, and other necessary advisors or consultants, and shall be based on the direct cost’s the County reasonably anticipates it will incur in review and analysis of the proposed qualifying project. "Direct costs" may include (i) the cost of materials, supplies and internal staff time required to process,

evaluate, review and respond to the proposal; and (ii) the out-of-pocket costs for attorneys, consultants, and financial advisors engaged by the County in its sole discretion to assist in the review and analysis.

4. Fees initially may be assessed in accordance with the following schedule:
 - (i) Initial or Conceptual Phase Review Fee: The initial or conceptual review fee shall not exceed five thousand dollars (\$5,000) and must be submitted with the unsolicited proposal.
 - (ii) Detailed Phase Review Fees. Upon the County's decision to proceed with a detailed phase proposal, the proposer shall pay an additional review fee calculated at the rate of two and one-half percent (2.5%) of the reasonably anticipated total cost of the proposed project, but not more than \$50,000 at the time of the submittal of the detailed phase proposal. Additional fees may be imposed on and paid by the proposer throughout the processing, review, and evaluation of the unsolicited proposal to the extent the County reasonably anticipates incurring costs in excess of the initial detailed phase review fee. The County shall notify the applicant of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue to process, review, and evaluation of the proposal.
5. The County may at its sole discretion at any time before or during the detailed phase review enter into an interim agreement with the proposer under which the County may compensate the proposer for detailed phase proposal activities described therein.
6. If the total fees paid exceed the County's actual direct costs incurred in processing, reviewing, and evaluating the proposal, the County shall refund the difference.

F. County Debt Financing

If a project is financed through the issuance of obligations that are deemed to be tax-supported debt of the County, or if financing such a project may impact the County's debt rating or financial position, the County shall retain full discretion to select the finance team, source, and financing vehicle.

IV. SOLICITED PROPOSALS:

The County may issue an RFP or IFB for development of a qualifying project. Any proposal submitted pursuant to these guidelines that is not received in response to an IFB or RFP shall be deemed an unsolicited proposal described under Part V. of these guidelines. This shall include proposals received in response to (a) a notice issued by the County that it has received another unsolicited proposal, and (b) publicity by the County concerning particular needs, where the County has not issued an IFB or RFP.

A. Professional Services

For procurement of professional services, the County may proceed under an RFP in a manner consistent with Virginia Code § 2.2-4301.

B. Good or Service Other than Professional Services

1. For procurement of any good or service other than professional services, the County may proceed under an RFP only if the Purchasing Agent makes a written determination pursuant to subdivision two (2) of Virginia Code § 56-575.16, that such proceeding is likely to be advantageous to the County based on (i) the probable scope, complexity, or priority of the project; (ii) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available.
2. If the County proceeds under an RFP to procure a good or service other than professional services, it shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience, and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under these guidelines; (v) local citizen and government comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; and (ix) other criteria that the County deems appropriate.
3. The procedures and requirements applicable to any solicited bid or proposal shall be specified in the solicitation and may include requirements as to the following:
 - ❖ Contractor qualifications and project selection criteria;
 - ❖ Information and documents that must accompany the proposal;
 - ❖ Evaluation factors;
 - ❖ Whether a pre-proposal conference will be held;
 - ❖ Proposal format and structure; and
 - ❖ Any other applicable terms and conditions, including unique qualifications the County may require of the private entity.

C. Public Notice

1. Public notice of the solicitation of proposals shall be posted at least thirty (30) days prior to the date set for receipt of proposals by posting in a public area of the Pittsylvania County Administration Building, posting on the County website, and by publication in one (1) or more newspapers of general circulation in Pittsylvania County. Notices also may be advertised in *Virginia Business Opportunities* and

posted on the Commonwealth's electronic procurement site. The County also may contact specific private entities to request that they submit proposals.

2. Within ten (10) days of accepting a solicited proposal for conceptual phase consideration, the Purchasing Agent shall post and publish notice of the acceptance. The notices shall be posted at the County Administration Building and on the County website for a period of not less than forty-five (45) days. The Purchasing Agent also may publish the notice in one (1) or more newspapers of general circulation in the County, in *Virginia Business Opportunities*, and on the Commonwealth's electronic procurement website. Notices shall state that the County: (i) has received and accepted a solicited proposal; (ii) intends to evaluate the proposal; and (iii) may negotiate an interim or comprehensive agreement with the proposer. The notice shall describe the proposed qualifying project and identify its proposed location, and shall indicate where copies of the proposal are available for public inspection.
3. None of the procurement records referenced in subdivisions 2 and 3 of section B of Part III of these Guidelines shall be made available for public inspection under this section except as the proposer and the County may mutually agree.

V. UNSOLICITED PROPOSALS:

The County may publicize its needs by means other than issuance of an RFP or IFB, and may receive, evaluate, and select for negotiations unsolicited proposals from private entities submitted in response to that publicity or other basis. The following four (4)-step procedure for evaluating Unsolicited Proposals shall serve as the County's general process for encouraging the receipt and consideration of proposed qualifying projects. If the County determines that it is in the County's interest to do so with respect to any unsolicited proposal, the County may cease or eliminate review at the conceptual phase and proceed directly to the detailed review phase.

If the County rejects a proposal initiated by a private entity that purports to develop specific cost savings, the County shall specify the basis for the rejection.

A. Step One (1): Submission of Unsolicited Proposal

1. Delivery of Initial Submission. Any private entity seeking to submit an unsolicited proposal shall deliver six (6) complete copies of the proposal, containing the information detailed in subdivision 2, to the Purchasing Agent, 1 Center Street, Pittsylvania, Virginia, 24531. The envelope or package must be clearly labeled "Public Private Education Facilities and Infrastructure Proposal" and must include a list of all affected jurisdictions being provided a copy of the proposal that indicates the name and address of the recipient and the delivery date.
2. Contents of Unsolicited Proposal: Initial Submission. An unsolicited proposal shall contain information on the proposer's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. A suggested format and information to satisfy these requirements are included in Section V.C.5., below. 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 (2)-part proposal process consisting of an initial conceptual submission (Step Three (3) below) to be followed by a more detailed submission (Step Four (4) below).

B. Step Two (2): Decision to Proceed With Conceptual Phase Review Notice

1. If the County Administrator decides not to accept an Unsolicited Proposal for Conceptual Phase consideration, he shall notify the proposer and the Board of Supervisors, explaining why no further consideration is warranted, and shall promptly return the proposal, together with all fees and accompanying documentation, to the proposer.
2. If the County Administrator decides to accept an unsolicited proposal for conceptual phase consideration, he shall notify the proposer and, within ten (10) days of acceptance, shall post and publish notice of the acceptance in order to encourage submission of competing proposals. The notices shall be posted at the County Administration Building and on the County website for a period of not less than forty-five (45) days. The Purchasing Agent also may publish the notice in one (1) or more newspapers of general circulation in the County, in *Virginia Business Opportunities*, and on the Commonwealth's electronic procurement website. Notices shall state that the County: (i) has received and accepted an unsolicited proposal; (ii) intends to evaluate the proposal; (iii) may negotiate an interim and/or comprehensive agreement with the proposer; and (iv) will accept for simultaneous consideration, within a specific period of time of not less than forty-five (45) days, any competing proposals that comply with County regulations. The notice shall summarize the proposed qualifying project and identify its proposed location, and shall indicate where copies of the proposal are available for public inspection. The Purchasing Agent may take such additional steps to post and publish an unsolicited proposal that he deems necessary.
3. The Board of Supervisors may establish a committee to review and evaluate the proposal.
4. The County may require additional submissions to clarify information previously provided or to address other areas of concern to the County.
5. During the forty-five (45) day period for receiving competing unsolicited proposals, the County may continue to evaluate the original unsolicited proposal. County staff shall answer in writing any questions from private entities contemplating submission of a competing unsolicited proposal, and shall post the written responses on the County website.

C. Step Three (3): Conceptual Phase Review

1. The County will consider for further review at the conceptual phase only those proposals which (i) are compliant with the requirements of these guidelines, (ii) contain sufficient information for a meaningful evaluation, and (iii) are provided in an appropriate format.

2. The County will determine at this point whether it will proceed using procedures associated with competitive sealed bidding or procedures associated with competitive negotiation.
3. After reviewing the unsolicited proposal and any competing unsolicited proposals submitted during the notice period, the County may determine: (i) not to proceed further with any proposal; (ii) to proceed to the detailed review phase with the original proposal; (iii) to proceed to the detailed review phase with a competing proposal; or (iv) to proceed to the detailed review phase with multiple proposals.
4. Discussions between the County and the private entity about the need for infrastructure improvements shall not limit the County's ability at some later date to use standard procurement procedures to meet its infrastructure needs.
5. Unsolicited Proposals at the conceptual phase shall contain information in the following areas: (i) qualifications and experience; (ii) project characteristics; (iii) project financing; and (iv) anticipated public support or opposition. The following are suggestions for the format and content of the conceptual phase proposal. The County may request such additional information as it deems appropriate.
 - (i) Qualification and Experience
 - a. Identify the legal structure of the firm or consortium of firms making the proposal (*i.e.* corporation, partnership, joint venture, limited liability corporation). Identify the organizational structure for the project, the management approach, and how each principal (*i.e.* major shareholder, member, partner) and major subcontractor in the structure fit into the overall team.
 - 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. Describe the length of time in business, business experience, public sector experience, and other engagements of the firm or consortium of firms. 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. Provide the names, addresses, and telephone numbers of persons who may be contacted for further information.
 - d. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent (20%) or greater.
 - e. Identify any persons known to the applicant who would be obligated to disqualify themselves from participation in any transaction arising from

or in connection to the project pursuant to Virginia State and Local Government Conflict of Interest Act (Va. Code §§ 2.2-3100 *et seq.*).

(ii) 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 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 private 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. Specify the strategies or actions to mitigate such impacts of the project.
- e. Identify the anticipated positive social, economic, and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- g. Describe the proposed allocation of risk and liability for work completed beyond the project 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 (including, where appropriate, historic district considerations), building, engineering, or other applicable standards that the proposed project will meet.
- k. Describe the method by which all necessary property interests, including rights-of-way or easements, are to be secured. Include the names and addresses of current property owners, if known, the nature of property to

be acquired, and a description of any property that the County is expected to condemn.

(iii) Project Financing

- a. Provide a preliminary estimate and describe the 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 such funds.
- c. Include a list and discussion of assumptions underlying all major elements of the plan.
- d. Identify the proposed risk factors and methods for dealing with these factors.
- e. Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify of each such source) and the timing of any anticipated commitment.
- f. Identify the amounts and the terms and conditions for any revenue sources, including any third parties that the applicant contemplates will provide financing for the project, and describe the nature and timing of each such commitment.
- g. Identify any aspect of the project that could disqualify the project from eligibility for tax-exempt financing.

(iv) Project Benefit and Compatibility

- a. Describe the anticipated benefits to the community, region, or state, including anticipated benefits to the economic condition of the County, and identify who will benefit from the project and how they will benefit.
- b. Identify any anticipated public support or opposition as well as any anticipated government support or opposition, for the project.
- c. Explain the strategy and plans 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 the project is likely to attract or maintain industries and businesses to the County or the surrounding region and, if so, explain how.

- e. Explain whether the project is compatible with the County's comprehensive plan, infrastructure development plans, capital improvements budget, or other government spending plan and, if so, explain how.

D. Step Four (4): The Detailed Review Phase

If the County decides to proceed to the detailed review phase with one (1) or more unsolicited proposals, the proposer shall provide all of the following information not supplied in the conceptual phase proposal unless waived by the County in writing:

1. A topographic map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity;
3. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
4. A statement and strategy setting out the plans for securing all necessary property. The statement shall include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the County to condemn;
5. A detailed listing of all firms that will provide specific design, construction, and completion guarantees and warranties, and a brief description of such guarantees and warranties;
6. A total lifecycle cost specifying methodology and assumptions of the project or projects 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 lifecycle 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;
7. A detailed discussion of assumptions about user fees or rates, and usage of the projects;
8. 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;

9. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;
10. Explanation of how the proposed project would impact local development plans of each affected local jurisdiction;
11. Identification of any known conflicts of interest or other disabilities that may impact the County's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to Virginia State and Local Government Conflict of Interest Act, Chapter 31 (Virginia Code §§ 2.2-3100 *et seq.*);
12. Information relating to the current plans for development of facilities or technology infrastructure to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction;
13. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
14. A statement setting forth the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity;
15. The names and addresses of the persons who may be contacted for further information concerning the request;
16. 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 financial 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 applicant of the financing plan proposed for the project; and,
17. Additional material and information as the County may request.

VI. PROPOSAL EVALUATION AND SELECTION CRITERIA:

In addition to evaluation of materials and information described in Section V., the County may consider some or all of the following matters in the evaluation and selection of unsolicited and solicited proposals.

A. Qualifications and Experience

Factors to be considered in either the conceptual or detailed phase of the County's review to determine whether the proposer possesses the requisite qualifications and experience include:

1. Experience with similar projects;
2. Demonstration of ability to perform work;
3. Leadership structure;
4. Project manager's experience;
5. Management approach;
6. Financial condition; and
7. Project ownership.

B. Project Characteristics

Factors to be considered in evaluating project structure and characteristics include:

1. Project definition;
2. Proposed project development schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to laws, regulations, 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 include:

1. Cost and cost benefit to the County as determined through a cost-benefit analysis;
2. Financing and the impact on the debt burden of the County or other appropriating body;
3. Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
4. Opportunity costs assessment;

5. Estimated cost;
6. Lifecycle cost analysis;
7. The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable; and
8. 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 include:

1. Community benefits;
2. Community support or opposition;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities; and
5. Compatibility with local, regional, and state economic development efforts.

E. Other Factors

Other factors that may be considered by the County in the evaluation and selection of 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 financial and nonfinancial;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents;
9. The recommendation of a committee of representatives of members of the County and the appropriating body which may be established to provide advisory oversight for the project; and
10. Other criteria that the County deems appropriate.

F. Public Private Partnership Oversight Advisory Committee

The County may establish criteria for the creation of and the responsibilities of a public-private partnership oversight committee with members representing the County and any appropriating body different from the County Board of Supervisors. Such criteria shall include the scope, costs, and duration of the qualifying project, as well as whether the project involves or impacts multiple public entities. The oversight committee shall function as an advisory committee to review the terms of any proposed interim or comprehensive agreement;

G. Appropriating Body

If a responsible public entity separate from the County is appropriating or authorizing funding to pay for a qualifying project, the County shall establish a mechanism allowing that appropriating body to review any proposed interim or comprehensive agreement prior to execution. When a school board is the responsible public entity, review by the Board of Supervisors shall satisfy this requirement.

VII. INTERIM AND COMPREHENSIVE AGREEMENTS:

1. Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with the County. Prior to entering into a comprehensive agreement, the County and private entity may enter into an interim agreement that permits the private entity to perform compensable activities related to the project.
2. The Purchasing Agent may designate a working group to be responsible for negotiating any interim or comprehensive agreement.
3. The County may enter into an interim or comprehensive agreement only with the approval of the Board of Supervisors subsequent to its review of the proposed agreement. Such review shall include examination of the results of any cost-benefit analysis, assessment of opportunity costs, and any other studies and analyses related to the proposed qualifying project.
4. The Board may approve agreements providing for the development or operation of the education facility, technology infrastructure or other public infrastructure or government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if it determines that the project serves the public purpose, because:
 - a. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;
 - b. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and
 - c. The private entity's plans will result in the timely development or operation of the qualifying project.

In evaluating any request, the Board may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

5. The County shall electronically file a copy of all interim and comprehensive agreements and any supporting documents with the Auditor of Public Accounts within thirty (30) days from the execution of the interim or comprehensive agreement.
6. Any changes in the terms of the interim or comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the interim or comprehensive agreement by written amendment.
7. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

A. Interim Agreement Terms

Prior to executing a comprehensive agreement, the County may execute with the private entity an interim agreement which permits the private entity to perform compensable activities related to the project. An interim agreement shall provide for at least the following, if applicable:

1. A description of activities related to:
 - ❖ Project planning and development.
 - ❖ Design and engineering.
 - ❖ Environmental and archeological analysis and mitigation.
 - ❖ Surveying.
 - ❖ Ascertaining the availability of financing for the proposed facility through financial and revenue analysis.
2. Provisions establishing a process and timing of the negotiation of the comprehensive agreement.
3. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate prior to the execution of a comprehensive agreement.

B. Comprehensive Agreement Terms

The comprehensive agreement shall provide for at least the following, if applicable:

1. The 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.

2. The review of plans and specifications for the qualifying project by the County.
3. The rights of the County to inspect the qualifying project to ensure compliance with the comprehensive agreement.
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and any tort or workers compensation liability to the public and employees and to enable the continued operation of the qualifying project.
5. The monitoring of the practices of the private entity by the County to ensure proper maintenance.
6. The terms under which the private entity will reimburse the County for services provided.
7. The policy and procedures that will govern the rights and responsibilities of the County and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity including the conditions governing assumption of the duties and responsibilities of the private entity by the County and the transfer or purchase of property or other interests of the private entity by the County.
8. The terms under which the private entity will file appropriate financial statements on a periodic basis.
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that is the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project.
 - i. A copy of any service contract shall be filed with the County.
 - ii. A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.
 - iii. Classifications according to reasonable categories for assessment of user fees may be made.
10. The terms and conditions under which the County may contribute financial resources, if any, for the qualifying project.
11. 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.
12. The terms and conditions under which the County will be required to make any payments to the private entity, and the amount of any such payments.

13. The date for the commencement of activities related to the qualifying project, which date the County may extend from time to time.
14. Other requirements of the PPEA or other applicable law.
15. Such other terms and conditions as the County may deem appropriate.

C. Comprehensive Agreement Provisions Relating to Construction Projects

With respect to construction projects considered under the PPEA, the County generally anticipates addressing the following in the comprehensive agreement. Private entities are encouraged to include a discussion of these matters in proposals relating to construction projects.

1. In design-build construction projects the private entity will be expected to assume single-point responsibility and liability for all design and construction activities.
2. To the fullest extent possible, the County expects the private entity to perform its own geotechnical investigation of subsurface conditions at the project site. The risk of inadequate geotechnical investigation or improper interpretation of the results of the geotechnical investigation will be allocated to the private entity in the comprehensive agreement. The County will consider assuming part or all of the risk of subsurface conditions that could not reasonably be foreseen notwithstanding the performance of a geotechnical investigation meeting the ordinary standard of care of geotechnical engineers working under similar conditions.
3. The County encourages private entities to propose a formula for the mutual sharing of cost savings realized during construction. Mutually agreed upon terms for the sharing of such savings will be incorporated in the comprehensive agreement.

D. Comprehensive Agreement Provisions Relating to Private Entity Legal Structure

The County is willing to enter comprehensive agreements with private entities who have formed business associations such as joint ventures and limited liability corporations ("LLC"). In such cases, however, the County will expect one (1) or more of the principal members of the association to provide a performance guaranty of all obligations undertaken in the comprehensive agreement. This requirement is in addition to the statutory requirement for a performance bond. Individuals, corporations and other businesses interested in entering public-private partnerships with the County under the PPEA or PPTA must be willing to provide this security if their proposal is submitted as part of a joint venture, LLC, or other business entity that limits the liability of its members, owners or partners.

E. Public Notice

1. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, the County shall post the proposed agreement for thirty (30) days at the County Administration Building and on the County website. The Purchasing Agent also may publish such notice in *Virginia Business Opportunities* and on the Commonwealth's electronic procurement website. Notices shall (i) state that the County has negotiated an interim or comprehensive agreement with the proposer; (ii) state that the County intends to execute the agreement by a date certain; (iii) summarize the proposed agreement; and (iv) indicate where copies of the proposal are available for public inspection. The Purchasing Agent may take such additional steps to publicize the proposal that he deems necessary.
2. At least one (1) copy of the proposal 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 Virginia Code § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the County and the private entity. Also, any documents that fall under Virginia Code § 2.2-3705.2 may be excluded by the County.
3. Any studies and analyses considered by the County in its review of a proposal shall be disclosed to the Board of Supervisors prior to the execution of an interim or comprehensive agreement.
4. At least thirty (30) days prior to entering into an interim or comprehensive agreement, the County shall hold a public hearing on the proposals that have been received.
5. Once the County has executed an interim agreement or a comprehensive agreement, the County shall make procurement records available for public inspection, upon request. For the purposes of this subdivision, except as the proposer and the County may mutually agree, procurement records shall not include:
 - ❖ Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code §§ 59.1-336 *et seq.*).
 - ❖ 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.
 - ❖ Cost estimates prepared by or for the County.
 - ❖ Those documents the County may choose not to disclose in accordance with the VA FOIA.

If the agreement proposed for execution is a comprehensive agreement, procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents prior to execution of an interim or comprehensive

agreement would have an adverse affect on the financial interest or bargaining position of the County or private entity as provided by in subdivision 3 of section B in part II of these guidelines.

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

VIII. MATERIAL DEFAULT; REMEDIES:

1. In the event of a material default by the private entity, the County may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title, and interest in such qualifying project, subject to any liens on revenues previously granted by the private entity to any person providing financing thereof.
2. The County may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has provided financing for the qualifying project, and the private entity, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.
3. The County may terminate, with cause, the interim or comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity.
4. The County may make or cause to be made any appropriate claims under the maintenance, performance, or payment bonds; or lines of credit required by Virginia Code § 56-575.9(A)(1).
5. In the event the County elects to take over a qualifying project pursuant to subdivision 1, the County may develop or operate the qualifying project, impose user fees, impose and collect lease payments for the use thereof and comply with any service contracts as if it were the private entity. Any revenues that are subject to a lien shall be collected for the benefit of and paid to secured parties, as their interests may appear, to the extent necessary to satisfy the private entity's obligations to secured parties, including the maintenance of reserves. Such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the County may use revenues to pay current operation and maintenance costs of the qualifying project, including compensation to the responsible public entity for its services in operating and maintaining the qualifying project. The right to receive such payment, if any, shall be considered just compensation for the qualifying project. The full faith and credit of the County shall not be pledged to secure any financing of the private entity by the election to take over the qualifying project. Assumption of operation of the qualifying project shall not obligate the County to pay any obligation of the private entity from sources other than revenues.

EXHIBIT B

Design-Build Contracts



**Procedures/Guidelines for the
County of Pittsylvania, Virginia**

2015

I. INTRODUCTION:

While emphasizing that the competitive sealed bid process is the preferred method of construction procurement in the Commonwealth, Virginia Code § 2.2-4308 authorizes local governments to enter into a contract for construction on a fixed price or not-to-exceed price design-build basis, so long as the local government complies with certain requirements, including adopting design-build procedures consistent with those promulgated by the Secretary of Administration.

A. Adoption and Use of Procedures

Pittsylvania County is a political subdivision of the Commonwealth of Virginia with the authority to develop a wide range of projects for public use. The County wishes to adopt design-build contract procedures to maximize its flexibility in procuring construction of public facilities in a manner consistent with State law. The County therefore has incorporated these procedures into its procurement process by adoption of Resolution 2015-10-01 on October 20, 2015.

B. Benefits

Design-build contracts help minimize project risk for the project owner, and to reduce the delivery schedule, by providing for an overlap of the design phase and construction phase of a project. Specific benefits of the design-build process in comparison to traditional bid process are as follows:

1. *Faster Project Completion Time*

- ❖ Bid time will be shortened significantly because construction bids can be accepted during the design process.
- ❖ Construction can begin before the design process is completed.
- ❖ Overall design/construction time can be shortened by as much as thirty (30) to forty (40) percent.
- ❖ Building occupancy can occur at an earlier date.

2. *Single Point Responsibility*

- ❖ The design/build process fosters the concept of a team that will work together to develop the project.
- ❖ The team process promotes early discussion of the best and most economical construction practices and materials to be used in the proposed project.
- ❖ The design/build process allows the owner to work with the general contractor as the single point of contact, which helps ensure that the decision making process during design and construction is much more efficient and cost effective.

3. *Cost Control*

- ❖ Construction costs are more realistic and project materials are more practical and more accurately reflect the owner's needs, because the general contractor and the owner are in direct communication during the design process.
- ❖ Budget determinations can be more realistically accommodated and adjusted in a dynamic process during the design phase through team communication.

C. Governing State Law

If applicable State law is amended in a manner that either conflicts with these procedures or establishes new requirements not addressed by these procedures, the County Attorney shall approve conforming amendments to the procedures. If the procedures are not amended prior to the effective date of the new law, the procedures nonetheless shall be interpreted in a manner to conform to the new law. The County Attorney also may approve such amendments tailoring these procedures for optimal use by Pittsylvania County as are consistent with State law.

D. Point of Contact

The person designated as the primary point of contact for information on these procedures is:

Clarence C. Monday, County Administrator
1 Center Street
P.O. Box 426
Chatham, Virginia 24531

II. DEFINITIONS:

The following terms shall have the meaning ascribed to them in this section, whether they appear in capitalized or uncapitalized form in these procedures.

“Design-Build Committee” or “Committee” means the committee established, or to be established, by the Pittsylvania County Board of Supervisors, containing two (2) members of the Board of Supervisors, a citizen member, and up to two (2) representatives of public or private entities that will be directly affected by the proposed construction project.

“County” means Pittsylvania County.

“Develop” means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

“Proposal” means a proposal submitted under these procedures for development of a construction project through a design-build contract.

“Proposer” means a private entity that submits a proposal to the County.

“RFP” means request for initial proposals.

“RFTCP” means request for technical and cost proposals.

“State” means the Commonwealth of Virginia.

III. PRELIMINARY STEPS:

A. Advice Regarding Use of Design-Build or Contract Management

Prior to deciding whether to use a design-build approach for a construction project, the County shall solicit the opinion of a licensed engineer or architect with professional competence appropriate to the project. The engineer or architect shall advise the County whether a design-build approach would be appropriate and beneficial to the project. If the engineer or architect advises the County that a design-build approach would be appropriate and beneficial, he/she shall assist the County with both

preparations of the RFP and RFTCP, with evaluation of any proposals submitted in response.

B. Written Determination

Prior to issuing an RFP for any design-build contract for a construction project, the County shall document in writing the following findings:

- (i) A design-build contract is more advantageous than a competitive sealed bid construction contract;
- (ii) There is a benefit to the County by using a design-build contract; and
- (iii) Competitive sealed bidding is not practical or fiscally advantageous.

The written findings shall be made a part of the RFP and shall be posted on the County's webpage, along with other project documentation.

C. Appointment of Members to the Design-Build Committee

The Board may appoint representatives of public or private entities that will be directly affected by the proposed construction project to the Design-Build Committee, confirm the existing Board members who are Committee members, and appoint new or additional members as may be deemed desirable. The Design-Build Committee shall assist in preparation of the RFP and RFTCP, evaluation of proposals, and shall make a recommendation to the Board of Supervisors as to final selection of a contractor.

IV. AWARD OF DESIGN-BUILD CONTRACTS:

For projects approved for development through a design-build contract, the County shall undertake a two (2) step competitive negotiation process in order to award the contract.

A. Step One (1): Selection of Qualified Proposers (Prequalification)

The County shall prepare an RFP that (i) describes the scope of the proposed construction project and facility requirements, (ii) specifies the building and site criteria and criteria that the County will use to evaluate proposals, and (iii) details other relevant information, including any unique capabilities or qualifications that the proposer must have in order to successfully complete the project.

The County shall publish a notice of its RFP at least ten (10) days prior to the deadline for receipt of proposals (i) on the County website, (ii) in a public area normally used for posting public notices, and (iii) in one (1) or more newspapers of general circulation in the County so as to provide sufficient notice to the maximum number of contractors that can be reasonably anticipated to submit proposals. The County may also directly solicit proposals from potential contractors.

The Design-Build Committee with the assistance of the architect or engineer, shall evaluate each proposal and shall identify a short list of proposers who are fully qualified and suitable to undertake and complete the project.

The Design-Building Committee, may find that a proposer is not qualified for the following reasons:

1. The proposer does not have sufficient financial ability to perform the contract. If a bond is required to ensure performance of a contract, evidence that the

proposer can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type the County requires shall be sufficient to establish the requisite financial ability.

2. The proposer does not have appropriate experience to undertake or complete the construction project.
3. The proposer or any officer, director, or owner thereof has had judgments entered against him within the past ten (10) years for the breach of contracts for governmental or nongovernmental construction.
4. The proposer has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the County has not contracted with a proposer in any prior construction contracts, the County may deny prequalification, if the proposer has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. A public body may not utilize this provision to deny prequalification, unless the facts underlying such substantial noncompliance are documented in writing in the prior construction project file and such information relating thereto given to the proposer at that time, with the opportunity to respond.
5. The proposer or any officer, director, owner, project manager, procurement manager, or chief financial official thereof has been convicted within the past ten (10) 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 Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§§ 18.2-498.1 *et seq.*, of the Code of Virginia), (iii) Chapter 4.2 §§ 59.1-68.6 *et seq.* of Title 59.1 of the Code of Virginia, or (iv) any substantially similar law of the United States or another state.
6. The proposer or any officer, director, or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state, or agency of the federal government.
7. The proposer failed to provide the County in a timely manner any information the County requested relevant to subdivisions one (1) through six (6) above.

At least thirty (30) days prior to the date established for the submission of additional proposals under Step 2, *infra*, the County shall advise all proposers in writing as to whether they have prequalified. The written notification to any proposer denied prequalification shall state the reasons for such denial of prequalification and the factual basis for such reasons.

B. Step Two (2): Selection of Design-Build Contractor

The County shall send an RFTCP to the proposers that are prequalified, requesting that they submit Technical and Cost Proposals. The RFTCP shall identify specific project requirements, and the criteria by which those requirements will be evaluated, in 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 shall identify other requirements as the Design-Build Committee deems necessary.

Technical and Cost proposals shall be due no earlier than thirty (30) days and no later than sixty (60) days from the date the County notifies the proposers that they have been selected for Step two (2).

The Design-Build Committee will evaluate the Technical proposals based on the criteria contained in the RFTCP. It will inform each proposer of any adjustments necessary to make its Technical proposal fully responsive to the requirements of the RFTCP. In addition, the Design-Build Committee may require that proposers make design adjustments necessary to incorporate project improvements or additional or changed requirements identified by the Design-Build Committee during design development.

Based on changes negotiated to a Technical proposal, a proposer may submit modifications to its original Cost proposal. A proposer also may submit modifications to its original Cost proposal, which are not based on revisions to the Technical proposal, but which otherwise result from the negotiation process.

The Design-Build Committee shall evaluate and rank the proposals, and shall thereafter make its recommendation for the selection of a design build contractor to the Board of Supervisors. The recommendation shall identify the proposer whom the Design-Build Committee finds is fully qualified, and whose proposal offers the best value for construction of the project. When the terms and conditions of multiple awards are so provided in the RFP or RFTCP, the Design-Build Committee may recommend selection of more than one proposer.

The Board of Supervisors may thereafter vote to award the contract to one (1) or more proposers recommended by the Design-Build Committee.

V. POST AWARD ACTIONS:

The Board of Supervisors shall notify all proposers in writing which contractor it selected to construct the project.

Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.