

RESOLUTION

ARTICLE 1 - GENERAL PROVISIONS

PART A - Purpose and Application

Sec. 1-101 Preamble

Be it resolved by the Rockbridge County Board of Supervisors in regular session that the following resolution is enacted establishing purchasing policies for the County of Rockbridge.

The purpose of this resolution is to provide for the fair and equitable treatment of all persons involved in public purchasing by this County to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

Sec. 1-103 Application

This resolution applies to contracts for the procurement of goods, services, insurance and construction entered into by this County involving applicable expenditures for public purchasing.

When the procurement involves the expenditure of Federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation which are not reflected in this resolution. Nothing in this resolution shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest which are otherwise consistent with law.

Sec. 1-104 Effective Date of Resolution

This resolution shall become effective January 1, 1983. The provisions of this resolution shall not apply to those contracts entered into prior to January 1, 1983, which shall continue to be governed by the procurement policies and regulations of the County in effect at the time those contracts were executed.

Sec. 1-105 Severability

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

PART B - Definitions

Sec. 1-201 (All starred definitions are found in \*Sec. 11-37 of the Procurement Act).

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

(2) Brand name specification. A specification limited to one or more items by manufacturers' names or catalogue numbers.

(3) Brand name or equal specification. A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet County requirements and which provides for the submission of equivalent products.

(4) \*Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

(5) Change order (unilateral). A written order signed and unilaterally issued by the (purchasing agent) directing the contractor to make changes which the "changes" clauses of the contract authorizes the purchasing agent to order without the consent of the contractor.

(6) Chief administrator. County Administrator of Rockbridge County.

(7) County. County of Rockbridge.

(8) Board. Rockbridge County Board of Supervisors.

(9) County purchasing agent or agent. Any person designated by the Board.

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

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

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

(13) Contract. All types of County agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.

(14) Contract modification. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties of the contract.

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

(16) Cost analysis. The evaluation of cost data for the purpose of arriving at cost actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

(17) Cost data. Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

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

(19) Direct or indirect participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(20) Disadvantaged business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

(21) Employee. An individual drawing a salary or wages from the County whether elected or not; any non-compensated individual performing personal services for the County or any department, agency, commission, council, board of any other entity established by the executive or legislative branch of this County and non-

compensated individual servicing as an elected official of the County.

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

(23) Governing body. The Board of Supervisors

(24) \*Informality. A minor defect or variation of a bid or proposal form the exact requirements of the invitation to bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

(25) Insurance. A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.

(26) Invitation for bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any Invitation for Bids.

(27) Nominal value. A sum so small, slight, or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name but in no case to be more than \$25,000 dollar(s).

(28) \*Nonprofessional services. Any services not specifically identified as professional services in the following definition.

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

(30) Person. Any business, individual, union, committee, club, other organization, or group of individuals.

(31) Price analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

(32) Pricing data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offer or proposed selling prices. The definition refers to data relevant to both prime and subcontract prices.

(32.1) Purchasing agent. Any person(s) designated by the Board.

(33) \*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 to perform some governmental duty, and empowered by law to undertake the activities described in this resolution.

(34) Qualified products list. An approved list of goods, services or construction items described by model or catalogue number, which prior to competitive solicitation, the County has determined will meet the applicable specification requirements.

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

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

(37) \*Responsive bidder. A person who has submitted a bid which conforms in all material respects to the Invitation to Bid.

(38) \*Services. Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

(39) \*Sheltered workshop. A work-oriented rehabilitative facility within a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

(40) Small business. An American-owned business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

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

(42) Using agency. Any department, agency, commission, bureau, or other unit in the County government requiring goods, services, insurance or construction as provided for in this resolution.

ARTICLE 2 - OFFICE OF THE PURCHASING AGENT

Sec. 2-101 Establishment, Appointment, and Bond.

(1) There is hereby created a purchasing system to operate under the direction and supervision of the County Administrator. Nothing contained in this resolution shall prevent the County Administrator from designating a responsible person(s) to perform the duties of purchasing agent, subject to his direction.

(2) The Purchasing Agent shall be appointed by the Board and shall be subject to its general direction and control.

(3) Board may require that the purchasing agent be bonded.

Sec. 2-102 Authority and Duties.

(1) Principal Public Purchasing Official. The County Administrator or other person(s) designated by the County Administrator shall serve as the principal public purchasing official for this County and shall be responsible for the procurement of goods, services, insurance and construction in accordance with this ordinance, as well as the management and disposal of supplies.

(2) Duties. In accordance with this resolution, and subject to the supervision of the County Administrator, the purchasing agent shall:

(a) purchase or supervise the purchasing of all goods, services, insurance and construction needed by this County.

(b) sell, trade or otherwise dispose of surplus goods belonging to the County.

(3) Operational Procedures. Consistent with this resolution and with the approval of the County Administrator, the purchasing agent may adopt operational procedures relating to the execution of his/her duties.

Sec. 2-103 Delegation.

With the approval of the County Administrator the purchasing agent may delegate authority to purchase certain supplies, services, or construction items to other County officials, if such delegation is deemed necessary for the effective procurement of those items.

Sec. 2-104 Unauthorized Purchases.

Except as herein provided no official elected or appointed, or any employee shall purchase or contract for any goods, services, insurance, or construction within the purview of this resolution and any purchase order or contract made contrary to the provisions hereof is not approved and the County shall not be bound thereby.



ARTICLE 3 - COOPERATIVE PROCUREMENT

Sec. 3-101 Conditions for Use.

The County may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Any public body which enters into a cooperative procurement agreement with the County shall comply with the policies and procedures adopted by this resolution.

ARTICLE 4 - CONTRACT FORMATION AND METHODS OF SOURCE SELECTION

Sec. 4-101 Competitive Sealed Bidding.

(1) Sec. 11-41. Conditions for Use. All public contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

Sec. 11-41-1. Competitive Bidding on State-aid Projects.

No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of \$100,000 or more, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive bidding. The procedure for the advertising for bids and letting of the contract shall conform, mutatis mutandis, to this ordinance. No person or firm shall be eligible to bid on any such contract nor to have the same awarded to him or it who has been engaged as architect or engineer for the same project.

(2) Sec. 11-52. 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 interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Cost estimates relating to a proposed transaction prepared by or for the County shall not be open to public inspection. Any bidder or offeror, upon request, shall be afforded the opportunity to inspect bid and proposal 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 and proposal records shall be open to public inspection only after award of the contract. Any in section of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not

be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

(3) Sec. 11-51 Employment Discrimination by Contractor Prohibited.

No contractor shall discriminate against any employee or applicant because of race, religion, color, sex or national origin.

(4) Prequalification of Bidders.

The purchasing agent is authorized to requalify bidders prior to any solicitation of bids, whether for goods, services, insurance or construction, by requiring prospective bidders to submit such information as the purchasing agent shall deem appropriate, including samples, financial reports, and references; provided, however, that opportunity to prequalify shall be given to any prospective bidder who has not been suspended or debarred under this resolution.

The purchasing agent may refuse to prequalify any prospective contractor, provided that written reasons for refusing to prequalify are made a part of the records in each case. The decision of the purchasing agent may be appealed to the Board.

In considering any request for prequalification, the purchasing agent shall determine whether there is reason to believe that the bidder possesses the management, financial soundness, and history of performance which indicate apparent ability to successfully complete the plans and specifications of the invitations for bid. The purchasing agent may employ standard forms designed to elicit necessary information, or may design other forms for that purpose.

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

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

(5) Notice of Invitation to Bid.

Notice inviting bids shall be published once in at least one official newspaper in the County and at least 7 days preceding the last day set for the receipt of proposals for all contracts over \$10,000.00.

The newspaper notice required herein shall include a general description of the articles to be purchased or sold, shall state where bid blanks and/or specifications may be secured, and the time and place for opening bids.

The purchasing agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "bidders list" which the agent shall maintain, by sending such other notice as will reasonably acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the 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.

(6) Sec. 11-49 Use of Brand Names.

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

(7) Comments on Specifications.

For complex equipment, supplies or repair, pre-bid conferences with prospective bidders are desirable after draft specifications have been prepared. Such conferences help to detect unclear provisions and tend to widen competition by removing unnecessarily restrictive language. Conferences on purchasing bids

will be called by the purchasing agent and attended by a department representative and, if necessary, the County Attorney.

(8) Sec. 11-57 Bid Bonds on Construction Contracts.

A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$25,000 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 of the amount bid.

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

(9) Bonds for other than Construction Contracts.

At the discretion of the purchasing agent, bidders may be required to submit with their bid a bid bond, or a certified check, in an amount to be determined by the purchasing agent and specified in the invitation to bid, which shall be forfeited to the County as liquidated damages upon the bidder's failure to execute a contract awarded to him or upon the bidder's failure to furnish any required performance or payment bonds in connection with a contract awarded to him.

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

An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part when the Board determines that it is the best interest of the County to do so. The reasons therefore shall be made a part of the record in the matter.

(10) Sec. 11-37 Bids shall be submitted sealed to the agent and shall be identified as bids on the envelope.

(11) Bids shall be opened in public at the time and place stated in the public notices.

(12) Sec. 11-54. Withdrawal of Bid Due to Error.

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

The procedure for bid withdrawal must be stated in the specifications or in the advertisement for bids. The procedure for withdrawal of bids is:

The purchasing agent shall select one of these procedures.

1. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure; or

2. The bidder shall submit to the agent his original work papers, documents and material used in the preparation of the bid within one day after the date fixed for submission of bids. The bids shall be opened one day following the time fixed by the County or the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the County until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

B. Procedures for the withdrawal of bids for other than construction contracts may be established by the purchasing agent.

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

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

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

F. If the agent or County Administrator denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision.

(13) Sec. 11-37. In determining the "lowest responsible bidder", in addition to price, the agent shall consider:

1. The ability, capacity and skill of the bidder to perform the contract provide the service required;

2. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

4. The quality of performance of previous contracts or services;

5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

6. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

7. The quality, availability and adaptability of the goods, or services to the particular use required;

8. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

9. The number and scope of conditions attached to the bid.

(14) Sec. 11-37. Competitive Bidding (5). Bid Award.

Bids shall be awarded the lowest responsible and responsible bidder. When the terms and conditions of multiple bids are so provided in the invitation to bid, awards may be made to more than one bidder.

Sec. 11-53. Unless cancelled or rejected, a responsible bid from the lowest responsible bidder shall be accepted as submitted except that if the bid from the lowest responsible bidder exceeds available funds, the County may negotiate with the apparent low bidder to obtain a contract price within available funds.

(17) Sec. 11-43. Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the County may be used; provided that the use of a cost-plus-a-percentage-of-construction-cost contract are prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the County than any other type or that it is impracticable to obtain the supply, service, or construction item required except under such a contract.

(17a) 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 out the time of contracting. Payment and performance obligations for succeeding fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.



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

(18) Sec. 11-55. Contract Modification.

A public 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 of the amount of the contract or \$10,000, whichever is greater, without the advance approval of the governing body.

(19) Sec. 11-56. Retainage on Construction Contracts.

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

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

(20) Sec. 11-58. Performance and Payment Bonds.

A. Upon the award of any public construction contract exceeding \$25,000 awarded to any prime contractor, 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. Bond shall be made payable to the County.

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

E. Nothing in this section shall preclude the purchasing agent from requiring payment or performance bonds for construction contracts below \$25,000.

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.

(21) Sec. 11-59. Action on Performance Bond. No action against the surety on a performance bond shall be brought more than one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, if the action be for such.

(22) Sec. 11-60. Actions on Payment Bonds.

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

execution on the judgment. The obligee name in the bond need not be named a party to such action.

B. Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under (Sec. 4-101 (20) ) but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under (Sec. 4-101(30)) but who has no contractual relationship with a subcontractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performance or materials furnished, shall not be subject to the time limitations stated in this subsection.

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

(23) Sec. 11-61. Alternative Forms of Security.

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

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

Sec. 4-102. Competitive Negotiation

(1) Conditions for Use. When the purchasing agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the County a contract may be entered into by use of the competitive sealed proposal method.

(2) Request for Proposals. Proposals shall be solicited through a Request for Proposals.

(3) Public Notice. Adequate public notice of the Request for Proposals shall be given in the same manner as provided for competitive sealed bids.

(4) Receipt of Proposals. No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation.

(5) Evaluation Factors. The Request for Proposals shall state the relative importance of price and other evaluation factors.

(6) Discussion with Responsible Offerors and Revision to Proposals. As provided in the Request for Proposals, discussion may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions maybe permitted after submissions and prior to award the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.

(7) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the County taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in evaluation. The contract file shall contain the basis on which the award is made.

Sec. 4-102. Contracting for Professional Services by Competitive Negotiation.

(1) Sec. 11-41. Authority. Professional services may be procured by competitive negotiation. The process includes Sec. 4-101 (2) (3) (4) (6) (7) (10) (17) (18) and Sec. 4-102 (3) and (4).

(2) Sec. 11-37. Competitive Negotiation (3a). Discussion and Award.

The public body shall engage in individual discussions with all offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. These discussions may encompass nonbinding estimates of total project costs, including, where appropriate, design, construction and life cycle costs. Methods to be utilized in arriving at price for services may also be discussed. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this paragraph above, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, 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 public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

Sec. 4-104 Sole Source Procurement.

Sec. 11-41 (D). Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination.

Sec. 4-105 Emergency Purchases.

Sec. 11-41 (E). In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

An emergency shall be deemed to exist when a breakdown in machinery or equipment and/or a threatened termination of essential services or a dangerous condition develops, or when any unforeseen circumstances arise causing curtailment or diminution of an essential service or where materials or services are needed to prevent injury, loss of life or property.

Sec. 4-106. Small Purchases Procedure.

The following minimum guidelines shall apply to single or term contracts (i) for goods and nonprofessional services in which the aggregate cost or the sum of all phases is not expected to exceed \$50,000, (ii) for non transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$50,000, and (iii) for professional services in which the aggregate cost or the sum of all phases is not expected to exceed \$30,000. Qualifying small purchases shall not require competitive sealed bids or competitive negotiation, although competition is encouraged, wherever practicable. This procedure may be used only when there are budgeted, unencumbered, and appropriated funds sufficient to pay for the proposed procurement.

Split Purchasing - A split purchase is one in which the original purchase requirement for the same or similar goods or services is broken into multiple smaller purchases in order to avoid going through the formal procurement process. Split

purchases are strictly prohibited. If the Purchasing Agent deems a department to be conducting split purchasing, the Purchasing Agent may require such department to go through the Finance Department to procure all expenditures, regardless of amount.

The use of eVA's Quick Quote, or a successor state program, is recommended, especially when there are few local vendors from whom to purchase a particular good or service. If at any time fewer than the required number of quotes or sources cannot be obtained, a written statement of the reasons why obtaining such quotes was not possible shall be placed in the purchasing file and the small purchase may proceed.

Reasonable investigation into price and other terms as may be necessary to protect the interests of the County is required. Competitive pricing is encouraged in accordance with the following minimum standards:

(1) Procurement of goods, non-professional services, and non transportation-related construction not expected to exceed \$50,000.

(a) Procurement of \$500 or less.

Procurements of \$500 or less may be made directly by the using department. Prices may be compared in a vendor establishment or by telephone, catalogue, on-line, or other similar means. Only one (1) quote is required; departments should determine if the quote is reasonable, and if not, should obtain a second quote. Retainage of price-comparison documentation by the using department is recommended for the remainder of the fiscal year, but not required.

(b) Procurement of more than \$500 and less than \$2,500.

Procurement for more than \$500 and less than \$2,500 may be made directly by the using department. Price quotes shall be obtained from at least two (2) suppliers, if practicable. Written documentation of each obtained oral quote shall be made and maintained in the file, listing the item requested, date, time, supplier/vendor name, price quoted, and the individual providing the quote. Informal written requests for quotes may also be used. All records related to the procurement shall be maintained by the using department for the remainder of the fiscal year.

(c) Procurement of \$2,500 or greater and \$30,000 or less.

For procurement of \$2,500 or greater, but for \$30,000 or less, written price quotes shall be obtained by the using department head from at least three (3) suppliers, if available. Request for quotes may be verbal or written, provided the supplier's quote is in writing. Written quotes may be received by mail, fax, electronic mail or hand-delivery. All records related to the procurement shall be maintained in the file for five (5) fiscal years by the Purchasing Agent, including the quotes solicited, quotes received, and the supplier selected.

(d) Procurement exceeding \$30,000, but not to exceed \$50,000.

For procurement exceeding \$30,000, but not to exceed \$50,000, the Purchasing Agent shall informally solicit unsealed written bids, using a written description or brief scope of work provided by the using department and any terms and conditions, from a minimum of four (4) bidders, if available. Written bids may be received by mail, fax, electronic mail or hand-delivery. The solicitation shall be posted on the County's Bid Posting webpage. Notice of the solicitation may be posted on the Commonwealth of Virginia Department of General Services' central electronic procurement website, when feasible. Bids may be opened, recorded, and tabulated upon receipt; however, to be considered, bids must be received at the stipulated location by the date and hour specified. Bidding information shall not be made public or disclosed until after the date and hour set for receipt of bids. All records related to the procurement shall be maintained in the file for five (5) fiscal years by the Purchasing Agent, including the quotes solicited, written quotes received, and the supplier selected.

(e) When a procurement transaction is made under subsections (1)(a), (1)(b), (1)(c) or (1)(d) of this section, the purchase shall be made from, or the contract shall be awarded to, the supplier quoting or bidding the lowest price, or best value, unless the Purchasing Agent, upon evaluating any specifications or factors included in the solicitation and using the evaluation factors in this policy for competitive sealed bidding, documents in writing a determination that, in the best interest of the County, such procurement should be awarded to a supplier quoting



or bidding a higher price. Such determination for purchases at a higher price must be approved by the County Administrator.

(f) All county departments must submit a purchase requisition, with supporting procurement documentation, to the Purchasing Agent for purchases totaling \$2,500 or more.

(2) Procurement of professional services not expected to exceed \$30,000.

For the procurement of professional services not expected to exceed \$30,000, the end-user department head requesting professional services under this procedure shall submit a statement to the Purchasing Agent, detailing the services needed. Upon verification of the funding, the Purchasing Agent shall prepare a Request for Professional Services (RFPS), to include a brief description of the scope of work provided by the using department, the County's General Terms and Conditions, and any special terms and conditions including unique capabilities or qualifications that will be required. Requests for Professional Services shall be posted on the County Bid Posting webpage and may be sent to vendors that provide the service. The RFPS may be posted on the Commonwealth of Virginia Department of General Services' central electronic procurement website. Qualifications shall be solicited from a minimum of four (4) professional service providers. The Purchasing Agent and the department head together shall evaluate all proposals based on criteria as set out in the RFPS and then shall enter into negotiations with the offeror who, in their opinion, submitted the best proposal. Upon satisfactory negotiations, the County shall extend an offer of contract award. The Purchasing Agent may issue a Purchase Order for agreements less than \$10,000. If the contract price exceeds \$10,000, a contract will be executed by the professional service provider and the County Administrator, in lieu of a Purchase Order.

#### Sec. 4-107 Miscellaneous Sources

The following transactions are hereby exempt from the provisions of this ordinance:

Purchase from the state penitentiary or state contracts from the state purchasing department warehouse.

Legal services associated with actual or potential litigation.

Purchases for special law enforcement work when the Rockbridge County Sheriff certifies to the purchasing agent that items are needed for undercover police operations.

ARTICLE 5 - DISPOSAL OF SURPLUS PROPERTY

Sec. 5-101. Procedure.

All sales of property pursuant to this section shall be sold on the basis of competitive bids wherever feasible to obtain the highest price.

The purchasing agent may require sealed bids in his discretion.

ARTICLE 6 - DEBARMENT

Sec. 6-101. Authority to Debar or Suspend.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Board after consulting with the County attorney is authorized to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. After consultation with the County attorney, the County Administrator is authorized to suspend a person from consideration for award of contracts if there is probably 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 three months. The causes for debarment include;

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

2. Conviction under state and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;

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

4. Violation of contract provisions, as set forth below, of a character which is regarded by the Board to be so serious as to justify debarment action;

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

(b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by

acts beyond the control of the contractor shall not be considered to be a basis for debarment;

5. Any other cause the Board determines to be so serious and compelling as to affect responsibility as a County contractor including debarment by another governmental entity for any cause in this resolution and for violation of the ethical standards set forth in this resolution.

Sec. 6-102. Decision to Debar or Suspend

The Board shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

Sec. 6-103 Notice of Decision.

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

Sec. 6-104. Finality of Decision.

A decision under Sec. 6-102 (Decision to Debar or Suspend) shall be final and conclusive, unless the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the County or commences a timely action in court in accordance with the applicable law.

ARTICLE 7 -APPEALS AND REMEDIES FOR BID PROTESTS.

Sec. 7-101 Sec. 11-63. Ineligibility of Bidder, Offeror or Contractor.

A. Any bidder, offeror, or contractor refused permission to, or disqualified from, participating in public contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror, or contractor appeals within thirty days of receipt by invoking administrative procedures meeting the standards of, or in the alternative by instituting legal action as provided in (Sec. 7-108) of this resolution.

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

Sec. 7-102 Sec. 11-64. Appeal of Denial of Withdrawal of Bid.

A. A decision denying withdrawal of bid under the provisions of (Sec. 4-101 (12) ) shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of, or in the alternative by instituting legal action as provided in (Sec. 7-108) of this resolution.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of (4-101 (12) ), prior to appealing shall deliver to the purchasing agent a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next lowest bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

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

Sec. 7-103 Sec. 11-65. Determination of Non-responsibility.

A. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days by invoking administrative procedures meeting the standards of, or in the alternative, by instituting legal action as provided in (Sec. 7-108) of this resolution.

B. If, upon appeal, it is determined that the decision of the purchasing agent was arbitrary or capricious, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of the purchasing agent was arbitrary or capricious, the relief shall be as set forth in (Sec. 7-104 B).

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

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

Sec. 7-104 Sec. 11-66. Protest of Award or Decision to Award.

A. Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the County Administrator no later than ten days after the award or the announcement of the decision to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Administrator shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of the written decision by invoking administrative procedures, or in the

alternative by instituting legal action as provided in (Sec. 7-108) of this resolution.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The purchasing agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance not begun, the performance of the contract may be enjoyed. Where the award has been made and performance has begun, the Board may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where the Board determines, after a hearing held following reasonable notice to all bidders, that there is probably cause to believe that decision to award was based on fraud or corruption or on an act in violation of the Ethics in Public Contracting Article, the County Administrator may enjoin the award of the contract to a particular bidder.

Sec. 7-105 Sec. 11-67 Effect of Appeal upon Contract

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

Sec. 7-106 Sec. 11-68. 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.



Sec. 7-107 Sec. 11-69. Contractual Disputes.

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim 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 claims shall not delay payment of amounts agreed due in the final payment.

B. 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 Board.

C. A contractor may not invoke administrative procedures meeting the standards of (See Commentary after Sec. 7-107), or institute legal action as provided in (Sec. 7-101 (8)) of this Code prior to receipt of the decision of the claim, unless the Board fails to render such decision within the time specified in the contract.

D. The Decision of the Board shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Board by invoking appropriate administrative procedures or in the alternative by instituting legal action as provided in (Sec. 7-108) of this resolution.

1. Such administrative procedure shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The findings of fact shall be final and conclusive and shall not be set aside unless the same are fraudulent or arbitrary or capricious, or so grossly erroneous as to imply bad faith. No determination of an issue of law shall be final if appropriate legal action is instituted in a timely matter.

2. Any party to the administrative procedure, including the County shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

ARTICLE 9 - ETHICS IN PUBLIC CONTRACTING

Sec. 9-101 Sec. 11-72. Purpose

The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia Conflict of Interests Act (Sec. 2.1-348 et seq), the Virginia Governmental Frauds Act (Sec. 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

Sec. 9-120 Sec. 11-73. Definitions.

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

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

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

"Pecuniary interest arising from the procurement" shall mean a material financial interest as defined in the Virginia Conflict of Interests Act.

"Procurement interest arising from the procurement" shall mean a material financial interest as defined in the Virginia Conflict of Interests Act.

"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.

"Public employee" shall mean any person employed by a governing body, including elected officials or appointed members of governing bodies.

Sec. 9-103 Sec. 11-74 Prescribed Participation by Public Employees in Procurement Transactions.

No public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the governing body when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or

2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or

3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

Sec. 9-104 Sec. 11-75 Solicitation or Acceptance of Gifts

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

Sec. 9-105 Sec. 11-76 Disclosure of Subsequent Employment

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from

the cessation of employment by the County unless the employee, or former employee, provides written notification to the County Administrator prior to commencement of employment by that bidder, offeror or contractor.

Sec. 9-106 Sec. 11-77 Gifts by Bidders, Offerors, Contractors or Subcontractors.

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

Sec. 9-107 Sec. 11-78 Kickbacks

A. No contractor or subcontractor shall demand or receive from any of his suppliers or his 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.

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

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

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

Sec. 9-108 Sec. 11-79 Purchase of Building Materials, etc. from Architect or Engineer Prohibited

Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure, or from any partnership, association, or corporation in which such architect or engineer has a pecuniary interest.

Sec. 9-109 Sec. 11-80 Penalty for Violation

Willful violation of any provision of this article shall constitute a Class I misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law; shall forfeit his employment.

ROCKBRIDGE COUTNY POLICY CONCERNING WITHDRAWL  
OF BIDS UNDER ITS PUBLIC PROCUREMENT RESOLUTION

Pursuant to Section (12)-V, the following procedure is to be followed for the withdrawal of bids except for construction contracts:

(a) Any bidder who, after submission of his or her bid, may withdraw that bid only by submitting a letter of writing of his or her intention to do so to the County Administrator prior to the bid being formally considered by the Rockbridge County Board of Supervisors. If, in the opinion of the County Administrator, there is sufficient justification for the withdrawal of the bid, the bidder may be allowed to withdraw and the next lowest bid submitted will become the apparent low bid.