AN ORDINANCE ESTABLISHING A PURCHASING SYSTEM AND PURCHASING AND CONTRACTING POLICIES, PROCEDURES, AND REGULATIONS FOR MIDDLESEX COUNTY, VIRGINIA; PROVIDING PROCEDURES FOR QUALIFICATION AND DISQUALIFICATION OF BIDDERS, CONTRACTORS, AND SUPPLIERS; SETTING STANDARDS FOR ETHICS IN PURCHASING AND CONTRACTING; AND PROVIDING PENALTIES FOR VIOLATION OF THE PROVISIONS OF THE ORDINANCE.

BE IT ORDAINED by the Board of Supervisors of Middlesex County, Virginia as follows:

ARTICLE 1: GENERAL PROVISIONS

1-A Purpose.

The purpose of this ordinance is to increase public confidence in purchasing by this County, to encourage competition in public purchasing among vendors or contractors, to administer fairly and equitably purchasing policies among bidders, and to obtain high quality goods and services at the lowest possible price.

1-B Short Title.

This ordinance shall be known and may be cited as the "Middlesex County Purchasing and Contracting Ordinance."

1-C Application.

This ordinance applies to contracts for the procurement of goods, services, insurance, and construction entered into by this County involving every expenditure for public purchasing irrespective of its source.

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 ordinance. Nothing in this ordinance shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest which are otherwise consistent with law.

1-D Effective Date of Ordinance.

This ordinance shall be in full force and effect at and after 12:01 a.m., May 4, 1983.

1-E Severability.

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

ARTICLE 2: DEFINITIONS

2-A Definitions.

Words and terms used in this ordinance shall have the meanings set forth below, unless a different meaning is clearly indicated by the context in which a word or term is used:
BLIND TRUST: An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

BRAND NAME SPECIFICATIONS: A specification limited to one or more items by manufacturers' names or catalogue numbers.

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.

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

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 authorize the Purchasing Agent to order without the consent of the contractor.

CHIEF ADMINISTRATOR: The County Administrator of Middlesex County, Virginia.

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.

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

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

CONTRACT: All types of County agreements, regardless of what they may be called, for the procurement of goods, services, insurance, or construction.

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.

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

COST ANALYSIS: The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

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.

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 ordinance, and a fee or profit, if any.

COUNTY: The County of Middlesex, Virginia.

COUNTY PURCHASING AGENT OR AGENT: The Purchasing Agent of Middlesex County, Virginia.

DIRECT OR INDIRECT PARTICIPATION: Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification of procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
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.

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

GOODS: All material, equipment, supplies, printing, and automated data processing hardware and software.

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

INSURANCE: A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.

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.

NOMINAL VALUE: 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 ten dollars ($10.00).

NONPROFESSIONAL SERVICES: Any services not specifically identified as professional services in the following definition.

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.

PERSON: Any business, individual, union, committee, club, other organization, or group of individuals.

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.

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, historical selling prices, and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

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 the ordinance.

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.

REQUEST FOR PROPOSALS: All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

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.

RESPONSIVE BIDDER: A person who has submitted a bid which conforms in all material respects to the Invitation to Bid.
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.

SHELTERED WORKSHOP: A work-oriented rehabilitative facility with 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.

SMALL BUSINESS: A United States 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.

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.

USING AGENCY: Any department, agency, commission, bureau, or other unit in the County government, including constitutional offices, but not including the School Board or Department of Social Services, requiring goods, services, insurance, or construction as provided for in this ordinance.

**ARTICLE 3: PURCHASING SYSTEM**

3-A Establishment of Purchasing System.

There is hereby created a purchasing system to implement the policies and procedures set forth in this ordinance.

3-B Designation of Purchasing Agent.

The County Administrator shall be the Purchasing Agent for all using agencies.

3-C Authority.

The Purchasing Agent shall serve as the principal public purchasing official for this County, and shall be responsible for the procurement of goods, services, insurance and construction, in accordance with this ordinance as well as the management and disposal of supplies.

3-D Duties.

In accordance with this ordinance, the Purchasing Agent shall:

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

(b) Exercise direct supervision over all inventories of goods belonging to the County;

(c) Sell, trade, or otherwise dispose of surplus goods belonging to the County; and

(d) Establish and maintain programs for specifications development, contract administration, and inspection and acceptance, in cooperation with the public agencies using the goods, services, and construction.

3-E Operational Procedures.

Consistent with this ordinance and with the approval of the Board of Supervisors, the Purchasing Agent may
adopt operational procedures relating to the execution of his duties.

3-F Delegation.

With the approval of the Board of Supervisors, 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.

3-G 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 ordinance other than by and through the Purchasing Agent, and any purchase order or contract made contrary to the provisions hereof is not approved and the County shall not be bound thereby.

ARTICLE 4: COOPERATIVE PROCUREMENT

4-A Conditions for Use.

The County may participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more 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 ordinance.

When so provided by separate resolution, agreement, or other appropriate legal action by the Board of Supervisors, these policies shall apply to procurements and dispositions for any volunteer fire or rescue company.

ARTICLE 5: CONTRACT FORMATION AND METHODS OF SOURCE SELECTION

5-A Competitive Sealed Bidding.

All public contracts with non-governmental contractors for purchase or lease of goods or for purchase of services, insurance, or construction shall be awarded after competitive sealed bidding or competitive negotiation as provided in this article, unless otherwise authorized by law.

5-A-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 $100,000.00 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.

5-A-2 Public Access to Procurement Information.

Except as provided herein, all proceedings, records, contracts, and other public records relating to procurement
transactions shall be open to the inspection of any citizen or any interested person, firm, or corporation in accordance with the Virginia Freedom of Information Act. Cost estimates relating to a proposed transaction prepared by or for the County shall not be opened to public inspection. Any bidder or offeror, upon request, shall be awarded 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 inspection of procurement transaction records under this section shall be subject to reasonable restrictions to insure the security and integrity of the records. Trade secrets or proprietary information submitted by a bidder, or offeror, or contractor, in connection with a procurement transaction, shall not be subject to a 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.

5-A-3 Employment Discrimination by Contractor Prohibited.

Every contract of over $10,000.00 shall include the provisions in (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, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to a 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 or 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 $10,000.00 so that the provisions would be binding upon each subcontractor or vendor.

5-A-4 Prequalification of Bidders.

The Purchasing Agent is authorized to prequalify 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 ordinance.

The Purchasing Agent may refuse to prequalify any prospective contractor provided that written reasons for refusing to prequalify are made a part of the record in each case. A decision of the Purchasing Agent shall be final.

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 Invitation 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 nonresponsible 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-A-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 ten (10) days proceeding the last day set for the receipt of proposals.

The newspaper notice required herein, shall include a general description of the articles to be purchased or sold, shall state where bid blanks and bid 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 Purchasing Agent shall maintain by sending other notice as will 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.

5-A-6 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 named; 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.

5-A-7 Comments on Specifications.

For complex equipment, supplies or repair, pre-bid conferences with the 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 using agency representative and if necessary, the Commonwealth's Attorney.

5-A-8 Bid Bonds on Construction Contracts.

Except in cases of emergency, all bids or proposals for construction contracts in excess of ~ 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 a contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

No forfeiture under a bid bond shall exceed the lesser of (1) the difference between the bid for which the bond was written and the next low bid, or (2) the face amount of the bid bond.

5-A-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 will 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 insure the satisfactory completion of the work for which a contract or a purchase order
is awarded.

**5-A-10 Rejection of Bids.**

An Invitation to Bid, a Request for Proposals, any other solicitation or any and all bids or proposals, may be cancelled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Board of Supervisors may waive informalities in bids.

**5-A-11 Bid Opening.**

Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid and such other relevant information as the Purchasing Agent deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.

**5-A-12 Withdrawal of Bid due to Error.**

(A) A bidder for a public 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 judgement 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 computation of a bid, which unintentional arithmetic error, or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn.

The procedure for bid withdrawal must be stated in the advertisement for bids. The Purchasing Agent shall select one of the following procedures for withdrawal of bids:

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

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

(B) Procedures for the withdrawal of bids for other than construction contracts, may be established by the Purchasing Agent.

(C) No bid may be withdrawn under this section when the result would be the awarding of the contract 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 Governing Body 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.

In determining the "lowest responsible bidder", in addition to price, the following factors shall be considered:

1. The ability, capacity, and skill of the bidder to perform the contract or 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, judgement, experience, and efficiency of the bidder;
4. The quality of performance of previous contracts or service;
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.

5-A-14 Bid Award.

Bids shall be awarded to the lowest responsive 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.

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.

5-A-15 Tie Bids.

In case of tie bid, preference shall be given to goods, services, and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.

Whenever any bidder is a resident of any other state, and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.

If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder.

In the event that none of the foregoing provisions of this section resolve the tie, the Purchasing Agent may cancel the solicitation and rebid. Records shall be kept of any proceeding connected with tie bids.

5-A-16 Multi-Step Sealed Bidding.
When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation to Bid may be issued requesting that submission of unpriced offers to bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

5-A-17 Contract Pricing Arrangement.

Except as prohibited herein, public contracts may be awarded on a fixed price or cost reimbursement basis or on any other basis that is not prohibited.

Except in case of emergency affecting the public health, safety, or welfare no public contract shall be awarded on the basis of cost plus a percentage of cost. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative cost and retention stated in whole or part as a percentage of such claims shall not be prohibited by this section.

5-A-18 Multi-Term Contracts.

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 therefore.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.


A public contract may include provisions for modification of the contract during performance, but no fixed price contract may be increased without the advance written approval of the Governing Body.

5-A-20 Retainage Retainers on Construction Contracts.

In any public contract for construction, which provides for progress payments and 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.

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

5-A-21 Performance and Payment Bonds.

A. Upon the award of any construction contract exceeding ~ 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 materials 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 the periods when the equipment rented is actually used at the site.

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

C. Bonds shall be made payable to the County.

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

E. Nothing in this section shall preclude the Purchasing Agent from requiring payment or performance bonds for construction contracts below

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.

5-A-22 Action on Performance Bond.

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

5-A-23 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 had not been paid in full therefor before the expiration of ninety days after the date 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 judgement and have execution on the judgement. The obligee named in the bond need not be named a party to such action.

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

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

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

5-B Competitive Negotiation.

5-B-1 Definition of Competitive Negotiation.


5-B-2 Conditions for Use.

Upon a determination in writing that competitive sealed bidding is either not practicable, or not advantageous to the public, goods, services, insurance, or construction may be procured by competitive negotiation. The writing shall document the basis for this determination.

5-B-3 Request for Proposals.

Requests for Proposals shall be in writing and indicate 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.

5-B-4 Public Notice.

At least ten (10) days prior to the date set for receipt of proposals, public notice shall be given by publication in a newspaper of general circulation in the County. In addition, proposals may be solicited directly from potential contractors.

5-B-5 Evaluation Factors and Award.

Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the factors involved in the Request for Proposals including price if so stated in the Request for Proposals. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered but may not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Governing Body shall select the offeror which, in its opinion, has made the best proposal and shall award the contract to that offeror. Should the Governing 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 than the others under consideration, a contract may be negotiated and awarded to that offeror.
5-C Contracting for Professional Services by Competitive Negotiation.

5-C-1 Authority.


5-C-2 Discussion and Award.

The Purchasing Agent 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 cost. 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 discussions outlined herein on the basis of evaluation factors published in the Request for Proposals, and all information developed in the selection process to this point, the Purchasing Agent shall select in the order of preference two or more offerors whose professional qualification 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 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 a contract can be negotiated at a fair and reasonable price. Should the Purchasing Agent determine in writing and in his 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.

5-D Sole Source Procurement.

Upon a determination in writing that there is only one source practically 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.

5-E Emergency Purchases.

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 loss of life or property.

If any emergency occurs at times other than regular business hours, the using department may purchase directly the required goods or contractual services. The department shall, however, whenever practicable secure competitive telephone bids and order delivery to be made by lowest responsible bidder. The Department shall also, not later than the next regular County business day thereafter, submit to the Purchasing Agent a requisition, a tabulation of bids received, if any, a copy of the delivery record, and a brief written explanation of the circumstances of the emergency.

5-F Small Purchases.
All purchases of goods, contractual services, insurance, and capital improvements estimated to be less than $10,000.00 in value shall not be subject to the requirements of the competitive bidding section of this ordinance; provided, however, that contract requirements shall not be artificially divided so as to constitute a small purchase under this section; and provided, however, that the Purchasing Agent shall, whenever the amount thereof exceeds $1,000.00 secure three or more proposals in the commodity area of the transaction.

Written quotations from vendors shall be obtained where practical, although verbal quotations will be permitted provided the Purchasing Agent shall cause a written record of such verbal quotations to be made and filed with the records of the transactions.

5-C Miscellaneous Sources.

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

1. Purchases from the State Penitentiary, State contracts, or from the State Purchasing Department Warehouse.

2. Legal services associated with actual or potential litigation.

3. Purchases for special police work when the Sheriff certifies to the Purchasing Agent that items are needed for undercover police operations.

ARTICLE 6: DISPOSAL OF SURPLUS PROPERTY

6-A Procedure.

All using agencies shall submit to the Purchasing Agent at such time and in such form as he shall prescribe reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out, or scrapped.

The Purchasing Agent shall have the authority to transfer surplus stock to other using agencies.

The Purchasing Agent shall have the authority to sell all supplies which have been unsuitable for public use, or to exchange the same for, or trade-in the same on new supplies.

Sales under this section shall be made to the highest responsible bidder.

ARTICLE 7: DEBARMENT

7-A Authority to Debar or Suspend.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Governing Body, after consulting with the Commonwealth's 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 Commonwealth's Attorney, the Governing Body is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall 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 anti-trust 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 Governing Body to be so serious as to justify debarment action;

   (a) Deliberate failure without good cause to perform in accordance with 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 term 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 Governing Body determines to be so serious and compelling as to affect responsibility as a County contractor including debarment by another governmental agency for any cause in this ordinance; and for violation of the ethical standards set forth in this ordinance.

7-B Decision to Debar or Suspend. The Governing Body shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his rights concerning judicial or administrative review.

7-C Notice of Decision. A copy of the decision required by Section 7-B shall be mailed or otherwise furnished immediately to the debarred or suspended person.

7-D Finality of Decision. A decision under Section 7-B shall be final and conclusive unless the debarred or suspended person within ten (10) days after the receipt of the decision takes an appeal to the Governing Body or commences a timely action in court in accordance with applicable law.

ARTICLE 8: APPEALS AND REMEDIES FOR BID PROTESTS

8-A Ineligibility of Bidder, Offeror, or Contractor.

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 bidder, offeror, or contractor appeals within thirty (30) days of receipt by invoking administrative procedures established by the Governing Body or in the alternative by instituting legal action as provided in Section 8-H of this ordinance.

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

8-B Appeal of Denial of Withdrawal of Bid.

A decision denying withdrawal of bid under the provisions of Section 5-A-13 shall be final and conclusive unless the bidder appeals the decision within ten (10) days after the receipt of the decision by invoking administrative procedures established by the Governing Body or in the alternative by instituting legal action as provided in Section 8-H of this ordinance.

If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of Section 5-A-13 prior to appealing shall deliver to the Purchasing Agent a certified check or cash bond in the amount of the difference
between the bids sought to be withdrawn and the next lowest bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

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

**8-C Determination of Nonresponsibility.**

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 (10) days by invoking administrative procedures established by the Governing Body or in the alternative by instituting legal action as provided in Section 8-H of this ordinance.

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 Section 8-D.

A bidder contesting a determination that he is not a responsible bidder for a particular contract, shall proceed under this section and may not protest the award or proposed award under Section 8-D of this ordinance.

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

**8-D Protest of Award or Decision to Award.**

Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the Governing Body 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 Governing Body 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 invoking administrative procedures established by the Governing Body or in the alternative by instituting legal action as provided in Section 8-H of this ordinance.

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

Where the Governing Body or other Appeals Board determines after a hearing held following reasonable notice to all bidders that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of the ethics in public contracting article of this ordinance, the Governing Body or other Appeals Board may enjoin the award of the contract to a particular bidder.

**8-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 ordinance shall not be affected by the fact that a protest or appeal has beenfiled.

**8-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.

**8-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 claims shall not delay payment of amounts agreed due in the final payment.

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

A contractor may not invoke administrative procedures meeting the standards established by the Governing Body or institute legal action as provided in Section 8-H of this ordinance prior to receipt of the decision on the claim, unless the Governing Body fails to render such decision within the time specified in the contract.

The decision of the Governing Body shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final decision on the claim by the Governing Body, by invoking administrative procedures established by the Governing Body, or in the alternative by instituting legal action provided in Section 8-H of this ordinance.

**8-H Legal Actions.**

A bidder or offeror, actual or prospective, who is refused permission or disqualified from participating 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 appropriate Circuit Court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious.

A bidder denied withdrawal of a bid under Section 8-B of this ordinance, may bring an action in the appropriate Circuit Court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the County was clearly erroneous.

A bidder, offeror, or contractor may bring an action in the appropriate Circuit Court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes, regulations, or the terms and conditions of the Invitation to Bid or Request for Proposals.

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

A contractor may bring an action involving a contract dispute with the County in the appropriate Circuit Court.

A bidder, offeror, or contractor need not utilize administrative procedures established by the Governing Body, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction, unless the Governing Body agrees otherwise.

Nothing herein shall be construed to prevent the County from instituting legal action against a contractor.
ARTICLE 9: ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES

9-A Establishment of Programs to Expand Participation.

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

9-B Discrimination Prohibited.

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

ARTICLE 10: ETHICS IN PUBLIC CONTRACTING

10-A 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, the Virginia Governmental Fraud Act, and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia. The provisions of this article apply notwithstanding the fact that conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

10-B Definitions.

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

IMMEDIATE FAMILY: A spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

OFFICIAL RESPONSIBILITY: 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: A material financial interest as defined in the Virginia Conflict of Interests Act.

PROCUREMENT TRANSACTION: 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: Any person employed by the County, including elected and appointed officials.

10-C Proscribed Participation by Public Employees in Procurement Transactions.

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

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

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.

**10-D Solicitation or Acceptance of Gifts.**

No public employee having official responsibility for procurement transactions shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loans, 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.

**10-E Disclosure of Subsequent Employment.**

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with a 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 Governing Body prior to commencement of employment by a bidder, offeror, or contractor.

**10-F 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.

**10-G Kickbacks.**

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 of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

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

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

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

**10-H 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.

**10-I Penalty for Violation.**
Willful violation of any provision of this article shall constitute a class 1 misdemeanor and shall be punishable by a fine of up to $1,000.00 and/or twelve (12) months in jail. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

**ADOPTION**

Duly adopted at a regular meeting held on May 3, 1983, upon a motion by Mr. Jessie, seconded by Mr. Gill.

Voting For: Mr. Jessie, Mr. Gill, Mr. Handley, Mr. Crittenden
Voting Against: None
Absent: Mr. Revere