

AMHERST COUNTY PURCHASING MANUAL

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1.0 GENERAL PROVISIONS

1.1 Purpose

- 1.1.1 This Purchasing Manual for Amherst County has been prepared for the guidance and direction of all County employees, both directly and indirectly associated with the expenditure of County funds for services and supplies needed to accomplish the work of the various departments.
- 1.1.2 The goal of Purchasing shall be to acquire the maximum value possible for tax dollars spent.
- 1.1.3 County procurement procedures are designed to provide both goods and services at a reasonable price, with adequate quality and in a timely manner to accomplish their purpose.
- 1.1.4 The procedures as outlined in this manual are tried and proven methods in other localities and are in compliance with Code of Virginia, Title 2.2, Chapter 43, Virginia Public Procurement Act.

1.2 Scope

These regulations apply to all purchases made with County funds. All issues of interpretation are to be resolved by the County Administrator.

1.3 Policy

1.3.1 Definitions

- 1.3.1.1 *Act* means the Virginia Public Procurement Act, Code of Virginia, §2.2-4300 et seq.
- 1.3.1.2 *Business* means any corporation, association, limited liability company, general or limited partnership, individual, sole proprietorship, joint stock company, joint venture or other nongovernmental legal entity.
- 1.3.1.3 *Construction* means building, altering, repairing, improving or demolishing any structure, sewage or water main, building or highway; and any draining, dredging, excavation, grading or similar work upon real property.

- 1.3.1.4 *Contract* means all types of County agreements, regardless of what they may be called, for the procurement of goods, services, insurance, or construction.
- 1.3.1.5 *Contractor* means any business having a contract with the County or a using agency thereof.
- 1.3.1.6 *County* means Amherst County.
- 1.3.1.7 *Emergency* means situation involving a breakdown in an essential service, or any other circumstances when supplies are needed for immediate use in work which may vitally affect the safety, health or welfare of the public.
- 1.3.1.8 *Goods* means all materials, equipment, supplies, printing, and automated data processing hardware and software.
- 1.3.1.9 *Informality* means a minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid, or the request for proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services, or construction being procured.
- 1.3.1.10 *Insurance* means a contract under which one party undertakes to compensate the other for loss on a specified subject as a result of specified perils.
- 1.3.1.11 *Invitation to bid* means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
- 1.3.1.12 *Nonprofessional services* means any services not specifically identified as professional services in the definition of professional services.
- 1.3.1.13 *Procurement regulations* means the Amherst County procurement regulations.
- 1.3.1.14 *Professional services* means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law medicine, dentistry, optometry or professional engineering.

- 1.3.1.15 *Request for proposal* means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- 1.3.1.16 *Responsible bidder or responsible offeror* means a person who has the capability, in all respects, to perform fully the contract requirements, and has the moral and business integrity and reliability which will ensure good faith performance, and who has been prequalified, if required.
- 1.3.1.17 *Responsive bidder* means a person who has submitted a bid which conforms in all material respects to the invitation to bid.
- 1.3.1.18 *Services* means any work performed by an independent contractor which does not consist primarily of the acquisition of equipment or materials, or the rental of equipment, materials and supplies.
- 1.3.1.19 *Using agency* means any department, division, office, section, agency, commission, council, bureau, board or other unit in the County government requiring goods, services, insurance or construction as provided for in this Purchasing Manual.

1.3.2 The purpose of these Purchasing Regulations is to provide guidance relative to the County's policies pertaining to governmental procurement from nongovernmental sources; specifically to supply guidance for the implementation of Article III of Chapter 2 of the Amherst County Code.

1.3.3 The following policies relative to purchasing shall apply:

- 1.3.3.1 Purchases for the requirements and operation of all using agencies of the County are to be made through a Centralized Purchasing Department.
- 1.3.3.2 All purchases shall be of a quality to suit the intended purpose, at a reasonable price.

1.4 **Purchasing Agent Responsibilities**

1.4.1 To make purchases or contracts for supplies and services needed by any County agency, including the Amherst County School Board, Service Authority, Social Services, Courts, all Constitutional Officers, and Library Board.

- 1.4.2 To make sure that the purchasing process is conducted so as to conform to all regulations of local and state governments.
- 1.4.3 To maintain all records and information as deemed necessary.
- 1.4.4 To explore the possibilities of bulk purchasing to achieve full advantage of all available discounts by combining, where possible, the needs of various departments.
- 1.4.5 To enter into cooperative purchasing with other jurisdictions when it is in the best interest of the county.
- 1.4.6 To keep informed of current trends in the field of purchasing and marketing conditions.
- 1.4.7 To encourage open bidding and endeavor to obtain as full and open competition as possible on all purchases and sales.

1.5 Relationship of Purchasing To Other Departments

- 1.5.1 The Purchasing Department is a service agency for all other departments.
- 1.5.2 The duties of the Purchasing Department are to keep each department supplied with suitable goods and services at the lowest reasonable cost.
- 1.5.3 The duty of each department is to inform Purchasing of needed goods and services in sufficient detail to allow for fair and competitive open market bidding for the goods and services required, and far enough in advance to allow for the orderly implementation of that process. It is the duty of each department to determine its own needs.

1.6 Relations With Vendor's Representatives

- 1.6.1 Purchasing Department's Relationship: It is the responsibility of the Purchasing Department to establish a relationship of mutual confidence and satisfaction between the County and its suppliers. It is, therefore, necessary that the Purchasing Department be aware of all transactions that are conducted between the County and suppliers. The departments should not be burdened with visits from suppliers or with the routine of purchasing. Observing the following procedures will save the County's time and that of the suppliers.

1.6.2 Procedures:

- 1.6.2.1 All vendor's representative will be received initially by the Purchasing Department; when necessary for them to talk with Department Heads, the interview will be arranged by the Purchasing Department. If a vendor should contact a department directly, he shall be immediately referred to the Purchasing Department.
- 1.6.2.2 The Purchasing Department will inform or pass along to Department Heads useful information received from interviews, catalogs, advertising, etc.
- 1.6.2.3 When necessary for individual departments to correspond with vendors, copies of that correspondence should be sent to the Purchasing Department.
- 1.6.2.4 In the event that the requisitioning agency or the purchasing office feels that it would be advisable in determining the quality and type of any purchase, an interview will be arranged by the Purchasing Agent between the vendors and the requisitioning agency for a discussion of the merits and quality of the requisitioned items.

1.7 Follow-Up and Expediting

- 1.7.1 The process of procurement is not accomplished by simply issuing an order. Satisfactory delivery must also be made. To ensure that delivery will be received when required the Purchasing Director and the using departments must undertake certain tasks.
- 1.7.2 Purchasing Department's Responsibility:
 - 1.7.2.1 Follow-up or expediting, is essentially a part of the purchasing process and can be most effectively handled as such. The necessary delivery records and similar information are immediately available to the Purchasing Department.
 - 1.7.2.2 The basis for successful follow-up lies, first of all, in the proper stipulations of purchase. The necessary procurement cycle, time required for manufacture and delivery after an

order has been placed, are all important preliminary considerations on the part of the buyer.

1.7.2.3 The Purchase Order should state when delivery is wanted. Date and method of follow-up will depend on the nature of the order and the promised delivery date.

1.7.3 Department's Responsibility:

1.7.3.1 If the using department will plan their work carefully, many needless rush orders for materials will be eliminated and there will be no need for any particular follow-up other than routine. Constant requests to suppliers for rush service destroy effectiveness of such requests and add to both the buyer's and seller's costs. The using department should inform the Purchasing Department of delinquent deliveries.

1.8 **Buying the Right Quality**

1.8.1 Definition: Quality means suitability. It doesn't necessarily have to be the best or the highest quality, but the appropriate quality for the purpose intended.

1.8.2 Steps To Procure the Appropriate Quality:

1.8.2.1 Determine the exact quality needed by analysis, physical test, measurements, and performance when necessary.

1.8.2.2 Remember that quality is not measured by price.

1.8.2.3 Remember that anything purchased below the appropriate quality is not sufficient to meet the needs of the receiving department; and that anything exceeding the appropriate quality may incur additional costs, and such additional costs outweigh value for the purpose intended.

1.8.2.4 To secure proper quality, specifications must be written so that the supplier understands exactly what is wanted and that proper means of inspections, measurements, or tests are applied.

1.8.2.5 Under certain conditions, the desired quality may be secured by brand name, or equal.

1.8.2.6 The quality may be secured, under certain conditions, by matching samples.

1.8.2.7 Purchasing proper quality goods may be accomplished by use of market grades and commercial standards.

1.8.3 With the cooperation and coordination of the using agency, it is the responsibility of the Purchasing Department to use and develop specifications that will procure the right quality material.

1.9 **Buying the Right Quantity**

1.9.1 Scheduled requirements determines the quantity of material purchased. It is also affected by change in requirements, change in markets, storage facilities available, cost of storage, handling, loss, and depreciation.

1.9.2 Factors in Determining Quantity:

1.9.2.1 The time required for delivery from the time the order is issued until the goods are received.

1.9.2.2 Minimum economical manufacturing quantity. This will vary with different products. Transportation charges must be taken into account when considering quantity. Whenever possible, invoicing will be requested on an F.O.B. destination basis.

1.9.2.3 Storage facilities available and the cost of carrying the inventory will tend to set a maximum on quantity purchase.

1.9.2.4 Condition and trend of the market - during a market rise, the buying of larger quantities is indicated. During a falling market, smaller unit purchases are indicated.

1.9.3 Department's Responsibility: The using department shall supply the Purchasing Department with an estimate of the quantity required for the specific job or period.

1.10 **Buying at the Right Price**

1.10.1 Low ultimate cost is the objective and responsibility of the Purchasing Department.

- 1.10.2 Factors Affecting The Ultimate Cost:
 - 1.10.2.1 A low price paid to a distant supplier might be outweighed by transportation and packing charges.
 - 1.10.2.2 A low price paid for a large quantity may be outweighed by storage and handling costs.
 - 1.10.2.3 A low invoice price by reason of securing inferior materials may result in high ultimate cost due to inferior workability or difficulties in application.
 - 1.10.2.4 Attention to price comes after quality has been fully considered and decided upon.
- 1.10.3 In determining price, it is the responsibility of the Purchasing Department to analyze the following factors:
 - 1.10.3.1 Price should bear a reasonable relation to cost.
 - 1.10.3.2 Market conditions created by supply and demand.
- 1.10.4 Factors Affecting Net Cost:
 - 1.10.4.1 Price quoted.
 - 1.10.4.2 F.O.B. Destination (to be requested to the maximum extent).
 - 1.10.4.3 Discounts.
 - 1.10.4.4 Service offered by supplier.
 - 1.10.4.5 Delivery date.

1.11 Purchasing Department Records

- 1.11 The Purchasing Office shall maintain the following files:
 - 1.11.1 Individual files for each formal competitive bid or negotiation process.
 - 1.11.2 Departmental Requisitions.

- 1.11.3 Warehouse- Inventory and costs.
 - 1.11.4 Purchase Orders.
 - 1.11.5 Bidder's List
 - 1.11.6 Individual files for insurance claims.
 - 1.11.7 State contracts.
- 1.12 **Ethics.** It is the intent of the County that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety and it is to this end that the following sections of the Code of Virginia otherwise known as the Virginia Public Procurement Act are hereby adopted as the County's Code of Ethics: §2.2-4367 - §2.2-4377.

2.0 REQUISITION

- 2.1 **Purpose.** The requisition serves to inform the Purchasing Department of the needs of a using department, to correctly define the goods or services needed, and state the source of funding to be utilized.
- 2.2 **When to prepare a requisition.** Requisitions should be prepared far enough in advance to allow the Purchasing Department time to secure competitive prices and allow for delivery.
- 2.3 **How to prepare a requisition.** A properly processed requisition must contain the following information:
- 2.3.1 Department - Fill in the name of using department.
 - 2.3.2 Requisition number - this number is for departmental reference purposes. (Each department has a specific numeric code assigned by Purchasing)
 - 2.3.3 Requisition status - State whether the requisition is emergency or non-emergency. (See Section 6.0 Emergency Purchases.)
 - 2.3.4 Delivery location - State the complete address to which products are to be shipped.
 - 2.3.5 Date - Place the current date that the requisition was prepared.

- 2.3.6 Department code - Place the department's budget account number.
- 2.3.7 Delivery time - State the date that the goods or services are expected to be needed.
- 2.3.8 Quantity - Insert the number required, follow with an abbreviation for those materials that need clarification, such as dozen, linear feet, board feet, etc.
- 2.3.9 Description - Give a clear presentation of the item desired as to size, color, type, grade, etc. If necessary, such information may be transmitted to the Purchasing Department on a separate sheet which shall be attached to the requisition. If the purchase of the commodity requires formal and detailed specifications, the Purchasing Agent should receive from the officials of the using agency such technical assistance as may be required in preparing the specifications.
- 2.3.9.1 If the Department Head knows the last unit price, it should be inserted in this section. If not known, the unit price may be estimated.
- 2.3.9.2 Departments will state in descriptive form the purpose for which the material or service is to be used. In the case of requisitioning material or service for a specific piece of equipment, the identity of the equipment should be described i.e. "International Tractor 2002 Model ____".
- 2.3.10 Account number - State the specific budget line number to which the goods and/or services are to be charged.
- 2.3.11 Remarks - If possible, refer the Purchasing Agent to a particular vendor, or vendors, whose product was purchased in the past and was satisfactory. Any suggested vendor, or vendors will be given full consideration by the Purchasing Department. Any special "Ship To" Information should be furnished in this section. (A supplemental sheet may be attached.)
- 2.3.12 Department approval - The Department Head by signing the requisition certifies that the articles or services are necessary and that funds for these items have been provided in the current budget, or that a specific appropriation/transfer request has been made and granted for these additional articles or services. (Attach a copy of approved Requisition/Transfer.)

- 2.3.13 **Routing of requisition** - Prepare the requisition and forward one copy to the Purchasing Department. A copy should be retained in the files of the using agency. The Purchasing Department will prepare a Purchase Order for the items requisitioned and make distribution of copies of the Purchase Order as required.

3.0 FORMAL COMPETITION

- 3.1 **Policy** - All goods and services that are to be procured under the County's direction and control are to follow the County's competitive procurement policies and guidelines.

- 3.2 **Applicability** - All goods and service procurements other than professional services, to be made with an anticipated cumulative total cost of \$100,000 or more shall follow either of the following two formal methods of contractor selection. Professional service procurements with an anticipated cumulative total cost of \$60,000 or more shall follow the following formal method of contractor selection.

- 3.2.1 **Competitive Sealed Bidding**: Competitive sealed bidding is the preferred method of contractor selection and shall be accomplished by:

- 3.2.1.1 Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the County has provided for the pre-qualification of bidders, the Invitation to bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

- 3.2.1.2 Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting on the Department of General Service's Central Electronic Procurement website or other

appropriate websites (County website). In addition, the County also may publish in a newspaper of general circulation. Bids may be solicited directly from potential contractors.

3.2.1.3 Public opening and announcement of all bids received.

3.2.1.4 Evaluation of bids based upon the requirements set forth in the invitation which may include special qualifications of potential contractors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

3.2.1.5 Award to the lowest responsive and responsible bidder.

3.2.1.6 Competitive sealed bidding shall not be required for procurement of professional services.

3.2.2 **Competitive Negotiation:** Competitive Negotiation is a method of contractor selection that shall include the following elements:

3.2.2.1 Issuance of a written request for proposal indicating in general terms that which is sought to be procured specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions including any unique capabilities, specifications, or qualifications which will be required of the contractor.

3.2.2.2 Public notice of the Request for Proposal shall be given at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services Central Electronic Procurement website or other appropriate websites (County website). Additionally, the County shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number

of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Proposals may be solicited directly from potential contractors.

3.2.2.2.1 Procurement of Professional Services: The County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the County in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of manhours or cost for services. At the discussion stage, the County may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with Virginia Code §2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors, published in the Request for Proposal and all information developed in the selection process to this point, the County shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

3.2.2.2.2 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.

3.2.2.2.3 Procurement of Other Than Professional Services: 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 Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms, and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. 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 than the others under consideration, a contract may be negotiated and awarded to that offeror.

4.0 SMALL PURCHASES {Pursuant to VA Code Section 2.2 - 4304 (G)}

- 4.1 **Delegation of Authority** - The County Purchasing Agent may delegate authority to individual department heads to make specific small purchases in accordance with the County's policies as outlined in this manual. A requisition, however, for the purchase of all goods and services that will be charged into a County department budget line must be prepared and forwarded to the Purchasing Department.
- 4.2 **Purchases of less than \$2,500** - Individual purchases of goods and/or services of \$2,500 or less may be made without documented competitive pricing, however, due diligence shall be given to the County's Purchasing goal of acquiring the maximum value for tax dollars spent.

- 4.3 **Purchases between \$2,501 and \$10,000** - All Purchases of goods and services between \$2,501 and \$10,000 may be made after obtaining a minimum of three (3) telephone quotes that have been recorded with dates, vendor name, contact name, telephone number, description of goods/services requested and cost. (Telephone quote forms will be provided by Purchasing.) A combination of telephone and written quotes is acceptable documentation. If at least three quotes cannot be feasibly obtained, documentation stating efforts made to do so must be included with the purchase Requisition, along with the telephone quote form(s). A purchase order must be issued before the procurement is made.
- 4.4 **Purchases between \$10,001 and \$30,000** - All purchases of goods and services between \$10,001 and \$30,000 may be made after obtaining a minimum of four (4) written, e-mail, or faxed quotes that contain the date, vendor name, contact name, telephone number, address, description of the goods or services to be provided and cost for the same. A copy of all written quotes must be forwarded with the purchase requisition. If at least four (4) written quotes cannot be feasibly obtained, documentation stating efforts to do so must be included with the purchase requisition. A purchase order must be issued before a procurement is made.
- 4.5 **Purchases between \$30,001 and \$100,000** - All Purchases of goods and services between \$30,001 and \$100,000 may be made after a written informal solicitation of a minimum of four (4) bidders or offerors and posting notice of the solicitation on the County's website including a specified closing date for receipt of bids/proposals. Every reasonable effort must be made to obtain a minimum of four (4) responses. A copy of all written quotes/proposals must be forwarded with the purchase Requisition. If at least four (4) solicitations and responses cannot be accomplished, documentation stating efforts to do so must be included with the purchase Requisition.

The Purchasing Office will assist the Requisitioning department as needed with this process. A purchase order or more formal contract, as applicable, must be issued before a procurement is made.

- 4.6 **Purchases of Goods and Services that exceed \$100,000** - All purchases of goods and services that exceed \$100,000 shall be processed in accordance with Chapter 43, Title §2.2 - 4300 et seq., Virginia Public Procurement Act as amended and the Amherst County Code (except where the Virginia Code requires that its provisions be complied with, the Amherst County Code shall govern purchasing procedures pursuant to this manual), and handled by the County Purchasing Agent.
- 4.7 **Purchases of Professional Services** - All purchases of professional services that

are anticipated to result in total single or terms contract cost of less than \$60,000 may be made without competitive negotiation after due consideration of offeror qualifications and expertise, and the County's purchasing goal of acquiring the maximum value for tax dollars spent.

4.8 **Formal Procurement Not Prohibited** - Nothing in this Purchase Manual prohibits the use of formal competitive practices for procurement of goods and service contracts less than the respective small purchase thresholds. The decision to use formal competitive practices should be made by the County Purchasing Agent and based on such criteria as market competitiveness, time frame, and complexity of specifications to be used.

4.9 **Petty Cash Purchases**

4.9.1 Petty cash accounts have been approved by the Board of Supervisors for several departments. The purpose of the petty cash account is to reduce overhead cost and time frame of processing small purchases. The accounts are intended to be used for those small purchases and for those items that cannot be secured from the county warehouse, due to it not being stocked or in cases when the warehouse may be closed and cash is required by other available sources. If the item needed is one that recurring purchases will be made, the department head should notify purchasing department. The purchasing department may then decide to stock that item in the warehouse.

4.9.2 Competitive practices of purchasing should be used and so noted and documented on the petty cash ticket.

4.9.3 The County does not normally pay any taxes.

4.9.4 Approval for petty cash accounts and the amount of cash to be maintained shall be made by the governing body for the respective department.

5.0 SOLE SOURCE PURCHASES

5.1 Upon a determination by the Purchasing Director 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 Purchasing Director shall issue a written notice that (i) states that only one source was determined to be practicably available and identifies the basis for this determination, (ii) identifies that which is being procured, (iii) identifies the contractor selected, and (iv) identifies the date on

which the contract was or will be awarded. This notice shall be posted on the County's website and County Administration main bulletin board.

6.0 EMERGENCY PURCHASES

- 6.1 Upon a determination by the Purchasing Director that procurement is necessary on an emergency basis, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. The Purchasing Director shall issue a written notice that (i) states that procurement is necessary on an emergency basis and identifies the nature of the emergency, (ii) identifies that which is being procured, (iii) identifies the contractor selected, and (iv) identifies the date on which the contract was or will be awarded. This notice shall be posted on the County's website and County Administration main bulletin board.

7.0 PURCHASE ORDERS

- 7.1 The Purchasing Department issues purchase orders. Purchase orders are authorization documents to a vendor to deliver and invoice goods or services. They serve to prevent misunderstanding between the vendor and the County while satisfying internal budgeting and record keeping requirements.
- 7.2 Amherst County purchase order forms have four copies; white, yellow, pink, green. The white copy is sent to the vendor, the yellow copy to the department for which the good or services were ordered. Upon receipt of the invoice by the Purchasing Department the invoice number and date are recorded on the green copy and forwarded with the invoice to the using department for invoice approval by the department head which indicates that the goods have been delivered and are acceptable. The invoice and the green copy of purchase order that is attached will then be forwarded to Central Accounting for payment. The pink copy remains in the Purchasing Department for its records.
- 7.3 In the event of partial shipments, additional photo copies of the purchase order will be made by the Purchasing Office to repeat the same process as invoices are received.

8.0 RECEIVING & INVOICE

8.1 Invoices

- 8.1.1 An invoice is an itemized statement of merchandise shipped or sent and is a means of guiding the County in the settlement of financial obligations

incurred. The processing of invoices may favorably or unfavorably effect the relationship between the County and its vendors. An invoice is also the vendor's statement of his claim for payment to the County for materials or services rendered. These invoices are based upon the Purchase Order and should contain the same basic information.

8.1.2 Invoices should contain:

8.1.2.1 Purchase Order Number

8.1.2.2 Itemized listing of materials or services rendered.

8.1.2.3 Prices, terms, quantities, and any other charges contained in the Purchase Order.

8.1.2.4 Delivery charges or additional expenses must be listed separately from materials and supplies.

8.1.2.5 Local governments are tax exempt. Therefore, invoices should not reflect State or Federal Tax.

8.1.3 Invoice Handling Procedure

8.1.3.1 Invoices for all departments except the School Board, Social Services, and Service Authority should first be received by Purchasing. Invoices for those excepted departments will go directly to the fiscal designee for the particular department.

8.1.3.2 All other departmental invoices, which are processed by Purchasing will be coded with the department and budget line item code that was specified on the requisition and then forwarded to the appropriate department for approval. Those invoices along with the green copy of the Purchase Order should then be returned to Central Accounting for payment.

8.2 Inspection, Testing and Receiving

8.2.1 Inspection and authorization - The using agencies will check materials against a purchase order for conformance as to quantity, quality, and specifications and will so indicate on the receiving (yellow) copy of the purchase order.

8.2.2 Procedure in departments - The receiving agency will, upon receipt of

materials, inspect and verify quantity and quality to conform with Purchase Order. Any variation in quantity or condition shall be noted on the receiving copy of the Purchase Order. If the quantity received does not agree with the vendor's packing slip, the Purchasing Department shall be notified at once of the discrepancy. If the materials delivered are not in conformity with the specifications and are not acceptable to the receiving agency, they shall notify the Purchasing Department at once of the reasons for withholding acceptance. The Purchasing Department will take immediate action to compel replacement by the vendor or otherwise take action to supply the department with the needed materials. In cases when shipments appear to have been damaged in transit, the person accepting receipt of the goods shall take immediate action. Advise the Purchase Agent, so that office can take timely action to institute claim against the carrier or refuse shipment. Each department shall instruct persons designated to receive goods of the requirements of this section.

9.0 SURPLUS AND WAREHOUSE

9.1 Surplus and Obsolete Equipment and Material

- 9.1.1 Each department should report its surplus and obsolete material to the Purchasing Department.
- 9.1.2 County wide lists of surplus and obsolete property will be consolidated periodically and circulated to all departments. Any department wishing to obtain any of the listed property for its use must contact the Purchasing Department. Property will be redistributed on a first come first served basis.
- 9.1.3 Property that is not re-distributed will be consolidated periodically and sold to the public by either the process of sealed bidding or public auction.
- 9.1.4 Any proceeds from the sale of surplus and obsolete material will be deposited in the County's general fund. Proceeds from items sold that are replacements in the current budget may be credited to the respective department as an expenditure refund, if approved by the Board of Supervisors.
- 9.1.5 It is the policy of Amherst County not to sell County surplus or obsolete items to any County official, employee, or members of their immediate families unless sales are by public auction.
- 9.1.6 Public Auctions for the sale of surplus or obsolete county property shall be

advertised in a newspaper of local circulation at least two weeks in advance of the date set for the public auction.

9.2 **County Warehouse**

- 9.2.1 The County Warehouse has been set up to provide departments immediate access to needed supplies. It also enables the County to purchase items in quantity, thereby securing cost savings.
- 9.2.2 A list of items available in the warehouse will be provided to each department and periodically updated.
- 9.2.3 To secure items from the warehouse, a requisition should be completed in the normal manner. The using department may pick the items up or request the County's Maintenance Department to delivery them.
- 9.2.4 Invoices for warehouse supplies items are developed by the Purchasing Department coded, and forwarded directly to Central Accounting. The signed requisition is considered approval for payment of these invoices. The using department will receive a copy of the invoice for their records.

10.0 PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002 (PPEA) GUIDELINES

10.1 **INTRODUCTION**

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

10.1.1 Guideline Overview

Amherst County is a political subdivision of the Commonwealth of Virginia with the authority to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, and install a wide

range of projects for public use. It therefore is a "Responsible Public Entity" as that term is defined by the PPEA.

The PPEA requires local governments to adopt and make publicly available guidelines for development of projects under the PPEA. The guidelines detailed in this document were adopted by the Amherst County Board of Supervisors by ordinance number 2013-0001 on January 15, 2013, and are thereby incorporated by reference into Amherst County Code.

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

County Administrator
Amherst County
153 Washington Street
P.O. Box 390
Amherst, Virginia 24521

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

10.1.2 **Qualifying Facilities and Projects**

Qualifying Facilities and Projects under the PPEA include:

10.1.2.1 An educational facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education.

10.1.2.2 Any building or facility that meets a public purpose and is developed or operated by or for any public entity.

- 10.1.2.3 Any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity.
- 10.1.2.4 Utility and telecommunications and other communications infrastructure.
- 10.1.2.5 A recreational facility.
- 10.1.2.6 Technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, work processing and management information systems, and related information, equipment, goods and services.
- 10.1.2.7 Any services designed to increase the productivity or efficiency of the responsible public entity through the use of technology or other means.
- 10.1.2.8 Any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas.
- 10.1.2.9 Necessary or desirable improvements to unimproved publicly-owned real estate.
- 10.1.2.10 Any solid waste management facility that produces electric energy derived from solid waste.

10.1.3 Reservation of County Rights

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

- 10.1.3.1 Reject any or all proposals at any time, for any reason, solely within the discretion of the County. Proposers shall have no recourse against the County for such rejection. Proposers will be notified in writing of such rejection in accordance with these guidelines.
- 10.1.3.2 Terminate the evaluation of a proposal at any time.

- 10.1.3.3 Suspend, discontinue, or terminate comprehensive or interim agreement negotiations.
- 10.1.3.4 Negotiate with a proposer without being bound by any provision in its proposal.
- 10.1.3.5 Request or obtain additional information about any proposal.
- 10.1.3.6 Issue addenda to or cancel any request for proposals (“RFP”) or invitation for bids (“IFB”).
- 10.1.3.7 Revise, supplement, or withdraw all or any part of these guidelines at any time.
- 10.1.3.8 Modify any standard fee schedule as stated herein for a specific proposal or for all future proposals.
- 10.1.3.9 Decline to return any and all fees required to be paid by proposers, except for initial fees paid by proposers with an unsolicited conceptual proposal where the County declines to accept the proposal for consideration.
- 10.1.3.10 Request revisions to conceptual or detailed proposals.
- 10.1.3.11 Treat any proposal which may have certain characteristics in common yet differs in meaningful ways from a previously received proposal as either a competing proposal or a noncompeting unsolicited proposal and proceed accordingly.
- 10.1.3.12 Arrange for review of a proposal by outside consultants or advisors selected by the County without notice to the proposer. Such consultants or advisors shall be advised of any contractually required to agree to maintain the confidentiality of information that has been designed as confidential pursuant to an agreement between the County and the proposer, and to refer all requests for such information to the County.
- 10.1.3.13 Modify the stated timeline for consideration, review or negotiation of proposals when deemed necessary by the County in its sole discretion. Written notice will be provided to any affected proposers when such departures from a stated timeline are deemed significant.

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

10.2 DEFINITIONS

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

- 10.2.1 “Affected Jurisdiction” means any county, city, or town in which all or a portion of a qualifying project is located.
- 10.2.2 “Appropriating body” means the body responsible for appropriating or authorizing funding to pay for a qualifying project.
- 10.2.3 “Comprehensive Agreement” means the comprehensive agreement between the private entity and the responsible public entity that is required prior to the development or operation of a qualifying project.
- 10.2.4 “County” means Amherst County.
- 10.2.5 “Develop” means to plan, design, develop, finance, lease, acquire, install, construct or expand.
- 10.2.6 “IFB” means invitation for bids.
- 10.2.7 “Interim Agreement” means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on an part of the qualifying project.
- 10.2.8 “Lease payment” means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying

project.

- 10.2.9 “Lifecycle cost analysis” means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset.
- 10.2.10 “Material default” means any default by the private entity in the performance of its duties that jeopardizes adequate service to the public from a qualifying project.
- 10.2.11 “Operate” means to finance, maintain, improve, equip, modify, repair, or operate.
- 10.2.12 “Private entity” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.
- 10.2.13 “Proposal” means a proposal submitted under these guidelines for development of a qualifying project.
- 10.2.14 “Proposer” means a private entity that submits a solicited or unsolicited proposal to the County.
- 10.2.15 “Public entity” means the Commonwealth or any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.
- 10.2.16 “Responsible public entity” means a public entity that has the power to develop or operate a specific qualifying project.
- 10.2.17 “Revenues” means all revenues, including but not limited to income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project, including without limitation, funds received as grants or otherwise from the federal government, from any public entity, or from any agency or instrumentality of the foregoing in support of the qualifying project.
- 10.2.18 “RFP” means request for proposals.

- 10.2.19 “Service contract” means a contract entered into between a public entity and the private entity for the delivery of services to be provided as part of a qualifying project in exchange for such service payments and other consideration as such public entity may deem appropriate.
- 10.2.20 “Service payments” means payments to the private entity in connection with the development or operation of a qualifying project pursuant to a service contract.
- 10.2.21 “State” means the Commonwealth of Virginia.
- 10.2.22 “User fees” means the rates, fees, or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.

10.3 GENERAL PROVISIONS

10.3.1 Proposal Submission and Consideration

- 10.3.1.1 The County may solicit proposals or a private entity may submit an unsolicited proposal. In either case, proposers may be required to follow a two-part process consisting of submission of an initial conceptual proposal followed by submission of a more detailed proposal.
- 10.3.1.2 Proposals generally should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived by the County. Proposals should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project.
- 10.3.1.3 The County may require that any proposal be clarified. Such clarification may include, but shall not be limited to, the submission of additional documentation, responses to specific questions, and interviews with potential project participants.
- 10.3.1.4 The County shall use County staff or shall engage the services of qualified professionals - such as architects, professional engineers, or certified public accountants - to

provide independent analysis regarding the specific components, advantages, disadvantages, and the long and short-term costs of any proposal.

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

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

10.3.2 **Virginia Freedom of Information Act**

Proposal documents submitted by a private entity are generally subject to the Virginia Freedom of Information Act ("VFOIA"). Any inspection of procurement transaction records generally shall be subject to reasonable restrictions to ensure the security and integrity of the records, and the provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement. Notwithstanding these provisions, the County shall comply with the terms of any court order relating to the protection or production of documents involved in any procurement transaction.

10.3.2.1 **Documents that must be disclosed.**

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

- A. Procurement records.
- B. Public records disclosing the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the County and the private entity.
- C. Public records disclosing the terms and conditions of any financing arrangement that involves the use of any public funds.
- D. Public records relating to the performance of any

private entity developing or operating a qualifying transportation facility or a qualifying project.

- E. Any public records included in a proposal that the parties agree should be incorporated into a comprehensive or interim agreement upon execution of the agreement.

10.3.2.2 Exemptions the County can invoke.

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

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

10.3.2.3 Exemptions the proposer can ask the County to invoke.

The proposer may request that the County protect as confidential:

- A. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code §59.1-336 et seq.).
- B. Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements.
- C. Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the County or private entity would be adversely affected.

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

- A. Invoking such exemption upon submission of the data or other materials for which protection from disclosure is sought;
- B. Identifying with specificity the data or other materials for which protection is sought by marking each affected page or portion thereof "Confidential - Not Subject to VFOIA"; and
- C. Stating the reasons protection is necessary.
- D. The County shall determine whether exempting the records is necessary to protect the trade secrets or financial records of the proposer, or whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the County or proposer.
- E. The County shall prepare a written determination describing the nature and scope of the protection it will afford the affected documents. The proposer shall be allowed to withdraw its proposal if the written determination provides less protection than the proposer requested.

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

10.3.3 **Affected Jurisdictions**

Any private entity submitting a conceptual or detailed proposal to the County shall provide, by certified mail, express delivery, or hand delivery, a copy of the proposal to any other affected jurisdiction. Affected jurisdictions have 60 days from the receipt of the proposal to submit written comments to the County and to indicate whether the proposed project is compatible with the affected jurisdiction's (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other government spending plan. The County shall consider any comments received within the 60-day period but shall not draw any negative inferences from the absence of comment.

10.3.4 **Applicability of Other Laws**

10.3.4.1 **Use of Public Funds**

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

10.3.4.2 Virginia Public Procurement Act

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

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

10.3.5 Proposal Review and Analysis Fee

10.3.5.1 To assist its decision regarding entry into an agreement with a private entity, the County shall arrange for review and analysis of any unsolicited or solicited proposal from County staff or from outside advisors or consultants with relevant experience.

10.3.5.2 The County shall not charge a fee for any review and analysis of proposals solicited by a request for proposal or invitation for bid.

10.3.5.3 The County shall charge fees for review and analysis of an unsolicited proposal accepted for conceptual phase review. Such fees may include reasonable attorney's fees and fees for financial, technical and other necessary advisors or consultants, and shall be based on the direct costs the County reasonably anticipates it will incur in review and analysis of the proposed qualifying project. "Direct costs" may include (i) the cost of materials, supplies and internal

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

10.3.5.4 Fees initially may be assessed in accordance with the following schedule:

- A. Initial or Conceptual Phase Review Fee: The initial or conceptual review fee shall not exceed five thousand dollars (\$5000) and must be submitted with the unsolicited proposal.
- B. Detailed Phase Review Fees. Upon the County's decision to proceed with a detailed phase proposal, the proposer shall pay an additional review fee calculated at the rate of two and one half percent (2.5%) of the reasonably anticipated total cost of the proposed project, but not more than \$50,000 at the time of the submittal of the detailed phase proposal. Additional fees may be imposed on and paid by the proposer throughout the processing, review, and evaluation of the unsolicited proposal to the extent the County reasonably anticipates incurring costs in excess of the initial detailed phase review fee. The County shall notify the applicant of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue to process, review, and evaluation of the proposal.

10.3.5.5 The County may at its sole discretion at any time before or during the detailed phase review enter into an interim agreement with the proposer under which the County may compensate the proposer for detailed phase proposal activities described therein.

10.3.5.6 If the total fees paid exceed the County's actual direct costs incurred in processing, reviewing, and evaluating the proposal, the County shall refund the difference.

10.3.6 County Debt Financing

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

10.4 SOLICITED PROPOSALS

The County may issue an RFP or IFB for development of a qualifying project. Any proposal submitted pursuant to these guidelines that is not received in response to an IFB or RFP shall be deemed an unsolicited proposal described under Section 10.5 of these guidelines. This shall include proposals received in response to (a) a notice issued by the County that it has received another unsolicited proposal, and (b) publicity by the County concerning particular needs, where the County has not issued an IFB or RFP.

10.4.1 Professional Services

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

10.4.2 Good or Service Other than Professional Services

10.4.2.1 For procurement of any good or service other than professional services, the County may proceed under an RFP only if the Purchasing Agent makes a written determination pursuant to subdivision 2 of Virginia Code § 56-575.16 that such proceeding is likely to be advantageous to the County based on (i) the probable scope, complexity, or priority of the project; (ii) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available.

10.4.2.2 If the County proceeds under an RFP to procure a good or service other than professional services, it shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the

proposals received. Other factors that may be considered include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience, and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under these guidelines; (v) local citizen and government comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; and (ix) other criteria that the County deems appropriate.

10.4.2.3 The procedures and requirements applicable to any solicited bid or proposal shall be specified in the solicitation and may include requirements as to the following:

1. Contractor qualifications and project selection criteria;
2. Information and documents that must accompany the proposal;
3. Evaluation factors;
4. Whether a pre-proposal conference will be held;
5. Proposal format and structure; and
6. Any other applicable terms and conditions including unique qualifications the County may require of the private entity.

10.4.3 **Public Notice**

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

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

10.4.3.2 Within 10 days of accepting a solicited proposal for conceptual phase consideration, the Purchasing Agent shall post and publish notice of the acceptance. The notices shall be posted at the County Administration Building and on the County website for a period of not less than forty-five (45) days. The Purchasing Agent also may publish the notice in one or more newspapers of general circulation in the County, in *Virginia Business Opportunities*, and on the Commonwealth's electronic procurement website. Notices shall state that the County: (i) has received and accepted a solicited proposal; (ii) intends to evaluate the proposal; and (iii) may negotiate an interim or comprehensive agreement with the proposer. The notice shall describe the proposed qualifying project and identify its proposed location, and shall indicate where copies of the proposal are available for public inspection.

10.4.3.3 None of the procurement records referenced in Sections 10.3.2.2 and 10.3.2.3 of these guidelines shall be made available for public inspection under this section except as the proposer and the County may mutually agree.

10.5 UNSOLICITED PROPOSALS

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

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

10.5.1 Step One: Submission of Unsolicited Proposal

10.5.1.1. Delivery of Initial Submission. Any private entity seeking to submit an unsolicited proposal shall deliver six (6) complete copies of the proposal, containing the information detailed in Section 10.5.1.2, to the Purchasing Agent, 153 Washington Street, Amherst, Virginia, 24521. The envelope or package must be clearly labeled "Public Private Education Facilities and Infrastructure Proposal" and must include a list of all affected jurisdictions being provided a copy of the proposal that indicates the name and address of the recipient and the delivery date.

10.5.1.2. Contents of Unsolicited Proposal: Initial Submission. An unsolicited proposal shall contain information on the proposer's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. A suggested format and information to satisfy these requirements are included in Section 10.5.3.5, below. The information should be adequate to enable the County to evaluate the practicality and sufficiency of the proposal. The private entity may request that the County consider a two part proposal process consisting of an initial conceptual submission (Step Three below) to be followed by a more detailed submission (Step Four below).

10.5.2 Step Two: Decision to Proceed With Conceptual Phase Review Notice

10.5.2.1 If the County Administrator decides not to accept an Unsolicited Proposal for Conceptual Phase consideration, he shall notify the proposer and the Board of Supervisors, explaining why no further consideration is warranted, and shall promptly return the proposal, together with all fees and accompanying documentation, to the proposer.

10.5.2.2 If the County Administrator decides to accept an unsolicited proposal for conceptual phase consideration, he shall notify the proposer and, within 10 days of acceptance, shall post and publish notice of the acceptance in order to encourage submission of competing proposals. The notices shall be posted at the County Administration Building and on the County website for a period of not less than forty-five (45) days. The Purchasing Agent also may publish the notice in one or more newspapers of general circulation in

the County, in *Virginia Business Opportunities*, and on the Commonwealth's electronic procurement website. Notices shall state that the County: (i) has received and accepted an unsolicited proposal; (ii) intends to evaluate the proposal; (iii) may negotiate an interim and/or comprehensive agreement with the proposer; and (iv) will accept for simultaneous consideration, within a specific period of time of not less than forty-five (45) days, any competing proposals that comply with County regulations. The notice shall summarize the proposed qualifying project and identify its proposed location, and shall indicate where copies of the proposal are available for public inspection. The Purchasing Agent may take such additional steps to post and publish an unsolicited proposal that he deems necessary.

10.5.2.3 The Purchasing Agent may designate a group to review and evaluate the proposal.

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

10.5.2.5 During the forty-five (45) day period for receiving competing unsolicited proposals, the County may continue to evaluate the original unsolicited proposal. County staff shall answer in writing any questions from private entities contemplating submission of a competing unsolicited proposal, and shall post the written responses on the County website.

10.5.3 Step Three: Conceptual Phase Review

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

10.5.3.2 The County will determine at this point whether it will proceed using procedures associated with competitive sealed bidding or procedures associated with competitive negotiation.

- 10.5.3.3 After reviewing the unsolicited proposal and any competing unsolicited proposals submitted during the notice period, the County may determine: (i) not to proceed further with any proposal; (ii) to proceed to the detailed review phase with the original proposal; (iii) to proceed to the detailed review phase with a competing proposal; or (iv) to proceed to the detailed review phase with multiple proposals.
- 10.5.3.4 Discussions between the County and the private entity about the need for infrastructure improvements shall not limit the County's ability at some later date to use standard procurement procedures to meet its infrastructure needs.
- 10.5.3.5 Unsolicited Proposals at the conceptual phase shall contain information in the following areas: (i) qualifications and experience; (ii) project characteristics; (iii) project financing; and (iv) anticipated public support or opposition. The following are suggestions for the format and content of the conceptual phase proposal. The County may request such additional information as it deems appropriate.

(i) Qualification and Experience

- a. Identify the legal structure of the firm or consortium of firms making the proposal (i.e. corporation, partnership, joint venture, limited liability corporation.). Identify the organizational structure for the project, the management approach, and how each principal (i.e. major shareholder, member, partner) and major subcontractor in the structure fit into the overall team.
- b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project, including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience, and other engagements of the firm or consortium of firms. Include the

identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.

- c. Provide the names, addresses, and telephone numbers of persons who may be contacted for further information.
- d. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent (20%) or greater.
- e. Identify any persons known to the applicant who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to Virginia State and Local Government Conflict of Interest Act (Va. Code §§ 2.2-3100 *et seq.*).

(ii) Project Characteristics

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the County or any other private entity.
- c. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic, and environmental impacts of the

project. Specify the strategies or actions to mitigate such impacts of the project.

- e. Identify the anticipated positive social, economic and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- g. Describe the proposed allocation of risk and liability for work completed beyond the project completion date, and assurances for timely completion of the project.
- h. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the County's use of the project.
- i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- j. Describe any architectural (including, where appropriate, historic district considerations), building, engineering, or other applicable standards that the proposed project will meet.
- k. Describe the method by which all necessary property interests, including rights-of-way or easements, are to be secured. Include the names and addresses of current property owners, if known, the nature of property to be acquired, and a description of any property that the County is expected to condemn.

(iii) Project Financing

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

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

(iv) Project Benefit and Compatibility

- a. Describe the anticipated benefits to the community, region, or state, including anticipated benefits to the economic condition of the County, and identify who will benefit from the project and how they will benefit.
- b. Identify any anticipated public support or opposition as well as any anticipated

government support or opposition, for the project.

- c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Explain whether the project is likely to attract or maintain industries and businesses to the County or the surrounding region and, if so, explain how.
- e. Explain whether the project is compatible with the County's comprehensive plan, infrastructure development plans, capital improvements budget, or other government spending plan and, if so, explain how.

10.5.4 Step Four: The Detailed Review Phase

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

- 1. A topographic map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
- 2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity;
- 3. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
- 4. A statement and strategy setting out the plans for securing all necessary property. The statement shall include the names and addresses, if known, of the current owners of the subject

property as well as a list of any property the proposer intends to request the County to condemn;

5. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties;
6. A total lifecycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The lifecycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses;
7. A detailed discussion of assumptions about user fees or rates, and usage of the projects;
8. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications;
9. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;
10. Explanation of how the proposed project would impact local development plans of each affected local jurisdiction;
11. Identification of any known conflicts of interest or other disabilities that may impact the County's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 *et seq.*);
12. Information relating to the current plans for development of facilities or technology infrastructure to be used by a public

entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction;

13. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
14. A statement setting forth the private entity's general plans for financing the qualifying project including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity;
15. The names and addresses of the persons who may be contacted for further information concerning the request;
16. Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the County. Include a detailed description of any financial plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the County, and all underlying data supporting any conclusions reached in the analysis or the selection by the applicant of the financing plan proposed for the project; and,
17. Additional material and information as the County may request.

10.6 PROPOSAL EVALUATION AND SELECTION CRITERIA

In addition to evaluation of materials and information described in Section 10.5, the County may consider some or all of the following matters in the evaluation and selection of unsolicited and solicited proposals.

10.6.1 Qualifications and Experience

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

1. Experience with similar projects;
2. Demonstration of ability to perform work;

3. Leadership structure;
4. Project manager's experience;
5. Management approach;
6. Financial condition; and
7. Project ownership;

10.6.2 **Project Characteristics**

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

1. Project definition;
2. Proposed project development schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to laws, regulations, and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

10.6.3 **Project Financing**

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include:

1. Cost and cost benefit to the County as determined through a cost-benefit analysis;
2. Financing and the impact on the debt burden of the County or other appropriating body;

3. Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
4. Opportunity costs assessment;
5. Estimated cost;
6. Lifecycle cost analysis;
7. The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable, and
8. Such other items as the County deems appropriate.

10.6.4 **Project Benefit and Compatibility**

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans include:

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

10.6.5 **Other Factors**

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

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;

4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public, including financial and nonfinancial;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents;
9. The recommendation of a committee of representatives of members of the County and the appropriating body which may be established to provide advisory oversight for the project; and
10. Other criteria that the County deems appropriate.

10.6.6 Public Private Partnership Oversight Advisory Committee

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

10.6.7 Appropriating Body

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

10.7 Interim and Comprehensive Agreements

1. Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with the County. Prior

to entering into a comprehensive agreement, the County and private entity may enter into an interim agreement that permits the private entity to perform compensable activities related to the project.

2. The Purchasing Agent may designate a working group to be responsible for negotiating any interim or comprehensive agreement.
3. The County may enter into an interim or comprehensive agreement only with the approval of the Board of Supervisors subsequent to its review of the proposed agreement. Such review shall include examination of the results of any cost-benefit analysis, assessment of opportunity costs, and any other studies and analyses related to the proposed qualifying project.
4. The Board may approve agreements providing for the development or operation of the education facility, technology infrastructure or other public infrastructure or government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if it determines that the project serves the public purpose because:
 - a. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;
 - b. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and
 - c. The private entity's plans will result in the timely development or operation of the qualifying project.
5. In evaluating any request, the Board may rely upon internal staff report prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.
6. The County shall electronically file a copy of all interim and comprehensive agreements and any supporting documents with the Auditor of Public Accounts within 30 days from the execution of the interim or comprehensive agreement.
7. Any changes in the terms of the interim or comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the interim or comprehensive agreement by written amendment.

8. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

10.7.1 **Interim Agreement Terms**

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

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

10.7.2 **Comprehensive Agreement Terms**

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

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.
2. The review of plans and specifications for the qualifying project by the County.

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

- iii. Classifications according to reasonable categories for assessment of user fees may be made.
10. The terms and conditions under which the County may contribute financial resources, if any, for the qualifying project.
11. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action.
12. The terms and conditions under which the County will be required to make any payments to the private entity, and the amount of any such payments.
13. The date for the commencement of activities related to the qualifying project, which date the County may extend from time to time.
14. Other requirements of the PPEA or other applicable law.
15. Such other terms and conditions as the County may deem appropriate.

10.7.3 Comprehensive Agreement Provisions Relating to Construction Projects

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

1. In design-build construction projects the private entity will be expected to assume single-point responsibility and liability for all design and construction activities.
2. To the fullest extent possible, the County expects the private entity to perform its own geotechnical investigation of subsurface conditions at the project site. The risk of inadequate geotechnical investigation or improper interpretation of the results of the geotechnical investigation will be allocated to the private entity in the comprehensive agreement. The County will consider assuming part or all of the risk of subsurface conditions that could not

reasonably be foreseen notwithstanding the performance of a geotechnical investigation meeting the ordinary standard of care of geotechnical engineers working under similar conditions.

3. The County encourages private entities to propose a formula for the mutual sharing of cost savings realized during construction. Mutually agreed upon terms for the sharing of such savings will be incorporated in the comprehensive agreement.

10.7.4 Comprehensive Agreement Provisions Relating to Private Entity Legal Structure

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

10.7.5 Public Notice

1. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, the County shall post the proposed agreement for 30 days at the County Administration Building and on the County website. The Purchasing Agent also may publish such notice in *Virginia Business Opportunities* and on the Commonwealth's electronic procurement website. Notices shall (i) state that the County has negotiated an interim or comprehensive agreement with the proposer; (ii) state that the County intends to execute the agreement by a date certain; (iii) summarize the proposed agreement; and (iv) indicate where copies of the proposal are available for public inspection. The Purchasing Agent may take such additional steps to publicize the proposal that he deems necessary.

2. At least one copy of the proposal shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of Virginia Code §2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the County and the private entity. Also, any documents that fall under Virginia Code §2.2-3705.2 may be excluded by the County.
3. Any studies and analyses considered by the County in its review of a proposal shall be disclosed to the Board of Supervisors prior to the execution of an interim or comprehensive agreement.
4. At least 30 days prior to entering into an interim or comprehensive agreement, the County shall hold a public hearing on the proposals that have been received.
5. Once the County has executed an interim agreement or a comprehensive agreement, the County shall make procurement records available for public inspection, upon request. For the purposes of this subdivision, except as the proposer and the County may mutually agree, procurement records shall not include:
 - A. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code §59.1-336 et seq.).
 - B. Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements.
 - C. Cost estimates prepared by or for the County.
 - D. Those documents the County may choose not to disclose in accordance with the VFOIA.
6. If the agreement proposed for execution is a comprehensive agreement, procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents prior to execution of an interim or comprehensive agreement would have an adverse affect on the financial interest or bargaining position of the County or private entity as provided by in section 10.3.2.2.B of these guidelines.

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

10.8 MATERIAL DEFAULT: REMEDIES

- 10.8.1 In the event of a material default by the private entity, the County may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title and interest in such qualifying project, subject to any liens on revenues previously granted by the private entity to any person providing financing thereof.
- 10.8.2 The County may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has provided financing for the qualifying project, and the private entity, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.
- 10.8.3 The County may terminate, with cause, the interim or comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity.
- 10.8.4 The County may make or cause to be made any appropriate claims under the maintenance, performance, or payment bonds; or lines of credit required by subsection A 1 of § 56-575.9.
- 10.8.5 In the event the County elects to take over a qualifying project pursuant to Section 10.8.1, the County may develop or operate the qualifying project, impose user fees, impose and collect lease payments for the use thereof and comply with any service contracts as if it were the private entity. Any revenues that are subject to a lien shall be collected for the benefit of and paid to secured parties, as their interests may appear, to the extent necessary to satisfy the private entity's obligations to secured parties, including the maintenance of reserves. Such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the County may use revenues to pay current operation and maintenance costs of the qualifying project, including compensation to the responsible public entity for its services in operating and maintaining the qualifying project. The right to receive such payment, if any, shall be considered just compensation for the qualifying project. The full faith and credit of the County shall not be pledged to secure any financing of the private entity

by the election to take over the qualifying project. Assumption of operation of the qualifying project shall not obligate the County to pay any obligation of the private entity from sources other than revenues.

11.0 DESIGN-BUILD CONTRACTS

11.1 INTRODUCTION

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

11.1.1 Adoption and Use of Procedures

Amherst County is a political subdivision of the Commonwealth of Virginia with the authority to develop a wide range of projects for public use. The County wishes to adopt design-build contract procedures in order to maximize its flexibility in procuring construction of public facilities in a manner consistent with State law. The County therefore has incorporated these procedures into its procurement process by adoption of Resolution 2015-0001 on January 20, 2015.

11.1.2 Benefits

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

11.1.2.1 Faster Project Completion Time

- A. Bid time will be shortened significantly because construction bids can be accepted during the design process.
- B. Construction can begin before the design process is completed.

- C. Overall design/construction time can be shortened by as much as 30 to 40 percent.
- D. Building occupancy can occur at an earlier date.

11.1.2.2 Single Point Responsibility

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

11.1.2.3 Cost Control

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

11.1.3 Governing State Law

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

11.1.4 **Point of Contact**

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

Dean C. Rodgers, Amherst County Administrator
153 Washington Street
P.O. Box 390
Amherst, Virginia 24521

11.2 **DEFINITIONS**

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

11.2.1 “Building Committee” or “Committee” means the committee established and reaffirmed by Resolutions 2013-0016-R, adopted on June 24, 2013, and 2013-0020-R, adopted on August 6, 2013, containing two members of the Board of Supervisors, a citizen member, and up to two representatives of public or private entities that will be directly affected by the proposed construction project.

11.2.2 “County” means Amherst County.

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

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

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

11.2.6 “RFP” means request for initial proposals.

11.2.7 “RFTCP” means request for technical and cost proposals.

11.2.8 “State” means the Commonwealth of Virginia.

11.3 **PRELIMINARY STEPS**

11.3.1 **Advice Regarding Use of Design-Build or Contract Management**

Prior to deciding whether to use a design-build approach for a
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construction project, the County shall solicit the opinion of a licensed engineer or architect with professional competence appropriate to the project. The engineer or architect shall advise the County whether a design-build approach would be appropriate and beneficial to the project. If the engineer or architect advises the County that a design-build approach would be appropriate and beneficial, he shall assist the County with both preparation of the RFP and RFTCP, and with evaluation of any proposals submitted in response.

11.3.2 Written Determination

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

- A. A design-build contract is more advantageous than a competitive sealed bid construction contract;
- B. There is a benefit to the County by using a design-build contract; and
- C. Competitive sealed bidding is not practical or fiscally advantageous.
- D. The written findings shall be made a part of the RFP and shall be posted on the County's webpage along with other project documentation.

11.3.3 Appointment of Members to the Building Committee

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

11.4 AWARD OF DESIGN-BUILD CONTRACTS

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

11.4.1 **Step One – Selection of Qualified Proposers (Prequalification)**

- 11.4.1.1 The County shall prepare an RFP that (i) describes the scope of the proposed construction project and facility requirements, (ii) specifies the building and site criteria and criteria that the County will use to evaluate proposals, and (iii) details other relevant information, including any unique capabilities or qualifications that the proposer must have in order to successfully complete the project.
- 11.4.1.2 The County shall publish a notice of its RFP at least ten (10) days prior to the deadline for receipt of proposals (i) on the County website, (ii) in a public area normally used for posting public notices, and (iii) in one or more newspapers of general circulation in the County so as to provide sufficient notice to the maximum number of contractors that can be reasonably anticipated to submit proposals. The County may also directly solicit proposals from potential contractors.
- 11.4.1.3 The Building Committee with the assistance of the architect or engineer shall evaluate each proposal and shall identify a short list of proposers who are fully qualified and suitable to undertake and complete the project.
- 11.4.1.4 The Building Committee may find that a proposer is not qualified for the following reasons:
1. The proposer does not have sufficient financial ability to perform the contract. If a bond is required to ensure performance of a contract, evidence that the proposer can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type the County requires shall be sufficient to establish the requisite financial ability.
 2. The proposer does not have appropriate experience to undertake or complete the construction project.
 3. The proposer or any officer, director or owner thereof has had judgments entered against him

within the past ten years for the breach of contracts for governmental or nongovernmental construction.

4. The proposer has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the County has not contracted with a proposer in any prior construction contracts, the County may deny prequalification if the proposer has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. A public body may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance are documented in writing in the prior construction project file and such information relating thereto given to the proposer at that time, with the opportunity to respond.
5. The proposer or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state.
6. The proposer or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government.
7. The proposer failed to provide the County in a timely manner any information the County requested relevant to subdivisions one through six above.

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

11.4.2 Step Two - Selection of Design-Build Contractor

11.4.2.1 The County shall send an RFTCP to the proposers that are prequalified, requesting that they submit Technical and Cost Proposals. The RFTCP shall identify specific project requirements, and the criteria by which those requirements will be evaluated, in areas such as site plans, floor plans, exterior elevations, basic building envelope materials, fire protection information plans, structural, mechanical (HVAC), and electrical systems, special telecommunications, and shall identify other requirements as the Building Committee deems necessary.

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

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

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

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

11.4.2.6 The Board of Supervisors may thereafter vote to award the contract to one or more proposers recommended by the Building Committee.

11.5 POST AWARD ACTIONS

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

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

12.0 BUILDING COMMITTEE

For building projects anticipated to exceed \$500,000 in total cost at the time of their approval, the Board of Supervisors will determine whether its Building Committee will participate in project execution. Absent an assignment to the building committee, staff will expedite the project and keep the Board informed as to its progress.

13.0 CONTRACT PROVISIONS

13.1 County General Condition Contract Provisions

*Required by Procurement Act in contracts of more than \$10,000

** Required by Procurement Act in all contracts

*1. The Contractor shall provide a drug-free workplace for Contractor's employees. Contractor shall post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in

Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition. Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace. Contractor shall include these provisions in every subcontract or purchase order of over \$10,000 so that these requirements are binding upon each subcontractor or vendor.

(Virginia Code §2.2-4312)

*2. During the performance of this Agreement, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such contractor is an equal opportunity employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The contractor will include the provisions of the foregoing paragraphs A, B, and C in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(Virginia Code §2.2-4311)

**3. The Contractor does not, and shall not during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

(Virginia Code §2.2-4311.1)

- **4. If the Contractor is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, he shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the term of this Agreement.

(Virginia Code §2.2-4311.2)

**5. PAYMENT CLAUSES

- A. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to him by the County for work performed by a subcontractor under the Agreement:
- i. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under the Agreement; or
 - ii. Notify the County and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment and the reason for nonpayment.
- B. The Contractor shall pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under the Agreement, except for amounts withheld as allowed in subsection A.
- C. Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of one percent per month.
- D. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- E. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the state agency or agency of local government. No modification to this Agreement shall be

made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

- F. The Contractor shall provide to the County (i) his social security number if an individual, or (ii) the federal employer identification number if a proprietorship, partnership, or corporation.

(Virginia Code §2.2-4354)

- **6. The Contractor shall indemnify and hold harmless County and its officers, agents, volunteers, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Contractor's or its agent's or subcontractor's negligent activities or omissions on or near any of the County's property or easements, or arising out of or resulting from Contractor's negligence in providing any of the services under this Agreement, including, without limitation, fines and penalties, violations of federal, state, or local laws, or regulations promulgated thereunder, or any personal injury, wrongful death, or property damage claims of any type.
- **7. No payment, final or otherwise, nor partial or entire use or acceptance of Contractor's work by the County shall constitute acceptance of any professional services not in accordance with the Agreement, nor shall the same relieve the Contractor of any responsibility for any errors or omissions in connection with the Project or operate to release the Contractor from any obligation under the Agreement.
- **8. The Contractor shall comply with all applicable federal, state, and local laws, codes and regulations currently in force or subsequently adopted, including terms and provisions of Amherst County Code.
- **9. The claims procedure established pursuant to Virginia Code §22-4363 shall apply to any contractual disputes arising under this Agreement.
- **10. In the event that any provision of this Agreement is adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding, and in full force and effect.

13.2 **Additional General Condition Contract Provisions For Schools**

The terms herein are required to be a part of any contract with the Amherst

County Schools, any school, division, or contract relating to Amherst County Schools. Any contractor who receives this document and chooses to offer goods or services agrees to be bound by these terms. Any term of any contract that attempts to in any way modify any term hereof is void and of no effect unless approved by the school board attorney.

13.2.1 It is a policy of the Amherst County School Board that tobacco products will not be used on School Board Property. By submission of a proposal the proposer certifies their agreement to comply with this policy.

13.2.2 It is a policy of the Amherst County School Board that guns are not allowed on School Property. By submission of a bid the bidder certifies that no employee will bring a gun or guns onto Amherst County School Property.

13.2.3 By submission and signing the bid document the bidder certifies:

13.2.3.1 That neither he or any employee to be assigned to this project has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child.

13.2.3.2 That neither he or any employee to be assigned to this project has been convicted of a crime of moral turpitude.

14.0 PARTICIPATION OF SMALL, WOMEN-OWNED, MINORITY-OWNED, AND SERVICE DISABLED VETERAN-OWNED BUSINESS

14.1 Overview of Policy

Amherst County seeks to facilitate the participation of small businesses and businesses owned by women, minority individuals, and service disabled veterans in procurement transactions. Amherst County will comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to Virginia Code § 2.2-4310.C., or by the Board of Supervisors pursuant to Virginia Code, § 15.2-965.1.

In the solicitation or awarding of contracts, Amherst County will not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, Amherst County will seek to include businesses selected from any lists made available by the Department of Small Business and Supplier Diversity.

This policy reflects the commitment of Amherst County to increase opportunity for utilization of small businesses and businesses owned by women, minority individuals, and service disabled veterans in all aspects of procurement. This policy is not intended to give preference in making an award, but is intended to facilitate the participants of such businesses in procurement opportunities. All solicitations posted to eVA will be considered compliant with this policy.

14.2 Definitions

As used in this section:

“Minority individual” means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

14.2.1 “African American” means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

14.2.2 “Asian American” means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

14.2.3 “Hispanic American” means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

14.2.4 “Native American” means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

14.2.5 “Minority-owned business” means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability

company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

14.2.6 “Service disabled veteran” means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

14.2.7 “Service disabled veteran business” means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

14.2.8 “Small business” means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

14.2.9 “SWMV business” means a small business, or any business owned by a woman, minority individual, or a service disabled veteran.

14.2.10 “Women-owned business” means a business that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

14.3 Policy

It is the policy of Amherst County to:

- 14.3.1 Actively promote the procurement of goods and services from SWMV businesses.
- 14.3.2 Actively work towards the attainment of this objective, through education and outreach to increase competition, maximizing the value received for the money expended on goods and services purchased by the County. The primary focus of these education and outreach efforts will be those SWMV businesses which are, or could potentially be, taxpayers of Amherst County.
- 14.3.3 Include qualified SWMV businesses on solicitation lists.
- 14.3.4 Ensure that SWMV businesses are solicited whenever they are potential sources.
- 14.3.5 When economically feasible and legally permissible, divide total requirements into smaller tasks or quantities so as to permit maximum SWMV business participation.
- 14.3.6 Where economically feasible and legally permissible, establish delivery schedules which will encourage participation by SWMV businesses.
- 14.3.7 Use the services and assistance of the United States Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce of the Commonwealth of Virginia and all other resources identified as promoting the interest of SWMV businesses.

14.4 Purchasing Agent Responsibilities

The Purchasing Agent will have primary responsibility for the development, management and implementation of the SWMV business policy. The Purchasing Agent will be responsible for:

- 14.4.1 Developing and implementing techniques in order to ensure that SWMV businesses shall have the maximum practicable opportunity to participate in every procurement and contractual activity.
- 14.4.2 Contacting and making potential SWMV businesses aware of the County's procurement regulations.

14.4.3 Developing a method for registration of SWMV businesses on any County bidders list(s).

14.4.4 Incorporating into the standard terms and conditions of County procurement and construction contracts provisions for bidders to identify themselves as SWMV businesses.

14.4.5 Maintaining records of major contracts awarded to SWMV businesses, including the dollar amounts.

14.4.6 Administering the SWMV business policy.

14.5 Subcontractors

In awarding a contract for services to a small, women-owned, or minority-owned business that is certified in accordance with §2.2-1606, or to a business identified by Amherst County as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program as provided in subsection C, Amherst County shall include in every such contract of more than \$10,000 the following:

“If the contractor intends to subcontract work as part of its performance under this contract, the contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses.”

15.0 DEBARMENT {Pursuant to VA Code Section 2.2 - 4321}

15.1 The county may debar a prospective contractor from contracting for particular types of supplies, services, insurance or construction if it is in the public interest.

15.2 Further, a contractor may be debarred based on unsatisfactory performance for the county.

15.3 Causes for debarment:

15.3.1 Conviction of or civil judgment for: the commission of fraud or a criminal offense in connection with obtaining or attempting to obtain, or performing a public contract or subcontract; a violation of federal or state antitrust statutes relating to the submission of offerors; the commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property or the commission of any other offense indicating a lack of business integrity or

business honesty that seriously and directly attacks the present responsibility of a government contractor or subcontractor.

15.3.2 Violation of the terms of a government contract or subcontract so serious as to justify debarment, such as the willful failure to perform in accordance with terms of one (1) or more contracts; or a history of failure to perform or unsatisfactory performance of one (1) or more contracts.

15.3.3 Any other cause of so serious or compelling a nature that it affects the present responsibility of a government contractor or subcontractor.

15.4 Procedure for debarment:

15.4.1 Advise in writing the parties involved by certified mail, return receipt requested, that debarment is being considered, including the following:

15.4.1.1 The reason or reasons such action is being initiated;

15.4.1.2 The effect of debarment.

15.4.2 Debarment shall be for a period commensurate with the seriousness of the cause.

15.4.3 The candidate for debarment may submit within thirty (30) days after receipt of notice, in person, in writing or by authorized representative, information and argument relative to the proposed debarment that may cause debarment proceedings to be discontinued.

15.4.4 The county purchasing agent and/or administrator shall render a final decision within fifteen (15) days on a contested debarment.

15.4.5 No contract shall be awarded to a contractor pending a debarment decision.

16.0 ADMINISTRATIVE APPEALS PROCEDURE {Pursuant to VA Code Section 2.2 - 4365}

16.1 Any bidder, offeror, or contractor may protest a decision to award or an award, appeal a decision to refuse to allow withdrawal of bids, appeal a decision of disqualification, or a determination of nonresponsibility, or appeal a decision on disputes arising during the performance of a contract.

16.2 Any protest or appeal shall be in accordance with the following {Pursuant to VA

Code Sections 2.2-4357; 4358; 4359; 4360; 4363}:

- 16.2.1 Any bidder, offeror, or contractor shall submit a written protest or letter of appeal to the county purchasing agent and/or county administrator within the time set. The appeal shall include the basis for the protest or appeal, the relief sought and whether the bidder or offeror, or contractor wishes to have a hearing with respect to the protest or appeal.
- 16.2.2 The purchasing agent and/or county administrator shall render a written decision to the bidder within ten (10) days of receipt of the written protest or appeal. This decision shall be final unless the bidder or offeror appeals and requests a hearing within ten (10) days of the written decision.
- 16.2.3 If a hearing is requested, it shall be held within twenty-one (21) days of receipt of the written letter of appeal and a final decision shall be rendered within ten (10) days of the hearing. During the hearing, both the protesting party and the county shall have the opportunity to present pertinent information and to cross-examine adverse witnesses. The hearing shall be informal rather than a judicial-type trial and shall be conducted by a disinterested person or panel appointed by the purchasing agent and/or county administrator.
- 16.2.4 The decision of the disinterested person shall be final and conclusive and shall not be set aside unless the same is fraudulent, arbitrary, capricious, or so grossly erroneous as to imply bad faith. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.
- 16.2.5 Any party to the administrative review, including the county, shall be entitled to institute judicial review if such action is brought within thirty (30) days of receipt of the written decision.

17.0 WITHDRAWAL OF BID DUE TO ERROR FOR OTHER THAN CONSTRUCTION CONTRACTS {Pursuant to VA Code Section 2.2 - 4330 (c)}

- 17.1 Any bidder or proposer for goods or services other than construction that includes no bid bond requirement, after submission of a bid or proposal and closing date for the same, may request that their bid or proposal be withdrawn from consideration. A request to withdraw a bid or proposal must be provided in written form to the county purchasing agent, prior to a decision for contract award or within five (5) business days of the bid/proposal closing date, whichever occurs first.

- 17.2 The written request to withdraw a bid or proposal must include reasons that justify the request, which may include:
 - 17.2.1 Unintentional arithmetic error.
 - 17.2.2 Unintentional omission of a quantity of work, labor or material made directly in the compilation of pricing.
 - 17.2.3 Misunderstanding of county requirements, terms, conditions or specifications.
- 17.3 No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
- 17.4 If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.
- 17.5 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.
- 17.6 The public body shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the public body denies the withdrawal of a bid under the provisions of this section, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the public body shall return all work papers and copies thereof that have been submitted by the bidder.

18.0 NEGOTIATION WITH LOWEST RESPONSIBLE BIDDER {Pursuant to VA Code Section 2.2 -4318}

- 18.1 Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that, if the bid from the lowest responsible bidder exceeds available funds, the County may negotiate with the apparent low bidder to obtain a contract price within available funds. If the County wishes to negotiate with the apparent low bidder to obtain a contract price within available funds, negotiations shall be conducted in accordance with the following procedures:

- 18.1.1 The using agency shall provide the Purchasing Director with a written determination that the apparent low bid exceeds available funds. Such determination shall be confirmed in writing by the director of finance or his designee. The using agency shall also provide the Purchasing Director with a suggested reduction in scope for the proposed purchase.
- 18.1.2 The Purchasing Director shall advise the lowest responsible bidder, in writing, that the proposed purchase exceeds available funds. The director shall further suggest a reduction in scope for the proposed purchase and invite the lowest responsible bidder to amend its bid proposal based upon the proposed reduction in scope.
- 18.1.3 Repetitive informal discussions with the lowest responsible bidder for purposes of obtaining a contract within available funds shall be permissible.
- 18.1.4 The lowest responsible bidder shall submit an addendum to its bid, which addendum shall include the change in scope for the proposed purchase, the reduction in price and the new contract value.
- 18.1.5 If the proposed addendum is acceptable to the County, the County may award a contract within funds available to the lowest responsible bidder based upon the amended bid proposal.
- 18.1.6 If the County and the lowest responsible bidder cannot negotiate a contract within available funds, all bids shall be rejected.

19.0 COMMENTS CONCERNING SPECIFICATIONS {Pursuant to VA Code Section 2.2 - 4316}

- 19.1 Any prospective bidder or offeror may provide comments or questions concerning specifications or other provisions in Invitation to Bids or Request for Proposals, only in writing, to the Amherst County Purchasing Office, within five (5) working days of the respective closing date set.
- 19.2 Any interpretation made to prospective bidders or proposers will be expressed in the form of an addendum to the initial invitation for bids or request for proposals and issued no later than three (3) working days before the closing date set. Oral answers will not be authoritative.