

An ordinance to amend Chapter 2 (“Administration”), Article III (“Purchasing; Surplus Property”), Division 4 (“Contract Formation and Methods of Source Selection”) of the Goochland County Code by amending Sections 2-245 (“Competitive sealed bidding”), 2-246 (“Competitive Negotiation”), 2-247 (“Design-build or construction management contracts”), and 2-250 (“Small purchases”) to comply with changes to the Virginia Public Procurement Act

WHEREAS, §§ 15.2-1427 and 15.2-1433 of the Code of Virginia, 1950, as may be amended from time to time, enable a local governing body to adopt, amend and codify ordinances or portions thereof; and

WHEREAS, Chapter 23 (House Bill 1595) amends §§ 2.2-4343 Code of Virginia to increase the threshold from \$30,000 to \$50,000 for local public bodies procuring professional services in the aggregate or for the sum of all phases of such a contract or project; and

WHEREAS, this bill provides that where such contracts are not expected to exceed \$50,000, the public body may establish written small purchase procedures that provide for competition wherever practicable; and

WHEREAS, Chapter 343 (House Bill 1929) amends §§ 2.2-4324 to provide that whenever the lowest responsive and responsible bidder is a resident of any other state and such state allows a resident contractor of that state a price-matching preference, then a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia;

WHEREAS, Chapter 544 (Senate Bill 1424) amends § 2.2-4341 of the Code of Virginia to provide that any claimant with a direct contractual relationship with any subcontractor but who has no contractual relationship with the contractor, may bring an action on the contractor’s payment bond only if he has given written notice to the contractor within 90 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment; and

WHEREAS, Chapter 594 (House Bill 2520) amends §§ 2.2-4303, 2.2-4308, 2.2-4323, 3.2-2800, 3.2-2805, 3.2-2806, 9.1-108, 9.1-112, 10.1-419, 33.1-221.1:1.1, 44-146.35, 44-146.38, 44-146.40, 60.2-113 and 62.1-44.34:26 of the Code of Virginia to eliminate certain advisory boards, councils and other advisory collegial bodies and restricts the use of competitive negotiation for the purchase of construction; and

WHEREAS, Chapter 612 (Senate Bill 1107) amends §§ 2.2-4303 of the Code of Virginia to increase from \$50,000 to \$100,000 the small purchases exemption under the Virginia Public Procurement Act for single or term contracts for goods and services other than professional services; and

WHEREAS, Chapter 717 (Senate Bill 1425) amends § 2.2-4330 of the Code of Virginia to clarify the procedure for withdrawal of a bid when the public body opens bids one day after the time fixed for the submission of bids; and

WHEREAS, under the procedure, the bidder must submit to the public body his original work papers, documents, and materials used in the preparation of the bid at or prior to the time fixed for the opening of bids; and

WHEREAS, the bill provides for the public body to notify the bidder of its decision within five days of the withdrawal request; and

WHEREAS, Chapter 789 (House Bill 1951) amends §§ 2.2-1839, 2.2-4336 and 2.2-4337 of the Code of Virginia to raise from \$100,000 to \$500,000 the minimum contract amount required for bid, performance, or payment bonds for nontransportation related construction projects; and

WHEREAS, this bill provides that for nontransportation related construction projects between \$100,000 and \$500,000 where the bond requirements are waived, the prospective contractors must be prequalified; and

WHEREAS, the Board of Supervisors wishes to amend the County Code to comply with the state law;

WHEREAS, the proper advertisement and public hearing was conducted as required by law; and

WHEREAS, the full text of this amendment was available for public inspection in the Goochland County Administrator's Office, County Administration Building, 1800 Sandy Hook Road, Goochland, Virginia 23063.

NOW THEREFORE, BE IT ORDAINED, that the Goochland County Code is hereby amended and this ordinance is hereby enacted as follows:

Chapter 2

ADMINISTRATION*

ARTICLE III.

PURCHASING; SURPLUS PROPERTY*

* **State Law References:** Virginia Public Procurement Act, Code of Virginia, § 11-35 et seq.

o o o

DIVISION 4.

CONTRACT FORMATION AND METHODS OF SOURCE SELECTION

Sec. 2-245. Competitive sealed bidding.

(1) *Conditions for use.* All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services (other than professional services), insurance, or construction in excess of the maximum amount permitted in section 2-250 of this article shall be awarded after competitive sealed bidding, or by such other procedures required or otherwise authorized by this article.

(2) *Prequalification of bidders.*

- A. The purchasing agent is authorized to prequalify bidders prior to any solicitation of bids, whether for goods, services, insurance or construction.
- B. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. Such form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor shall be considered a trade secret or proprietary information pursuant to section 2-255 of the Goochland County Purchasing Article.

- C. In all instances in which the purchasing agent requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.
- D. At least thirty (30) days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the purchasing agent shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to such contractor shall state the reasons for such denial of prequalification and the factual basis of such reasons.
- E. A decision by the purchasing agent denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in section 2-285 of this article.
- F. The county may deny prequalification to any contractor for construction only if the county finds one of the following:
 - 1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the county shall be sufficient to establish the financial ability of such contractor to perform the contract resulting from such procurement;

The contractor does not have appropriate experience to perform the construction project in question;
 - 3. The contractor or any officer, director, or owner thereof has had judgments entered against him within the past ten (10) years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design build or construction management;
 - 4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the

county without good cause. If the county has not contracted with a contractor in any prior construction contracts, the purchasing agent may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The county may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any owner, officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten (10) years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to a violation of Division 9 of the Goochland County Purchasing Article, the Virginia Governmental Frauds Act (Section 18.2-498.1 et seq.), Chapter 4.2 (Section 59.1-68.6 et seq.) of Title 59.1, or any substantially similar law of the United States or another state;
 6. The contractor 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 contractor failed to provide to the county in a timely manner any information requested by the county relevant to subdivisions 1. through 6. of this subsection.
- G. If the county adopts a prequalification policy which provides for minority participation in construction contracts, the county may also deny prequalification based on minority participation criteria. However, nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof are in accordance with the constitution and laws of the United States and the commonwealth.
- H. Prequalification of a bidder shall not constitute a conclusive determination that the bidder is responsible, and such bidder may be rejected as nonresponsible on the basis of subsequently discovered information.

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

(3) *Notice of invitation to bid.* The purchasing agent shall solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "bidder list" which the agent may maintain, and other responsible prospective suppliers in the purchasing agent's discretion, by sending such notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidder list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent. At least ten (10) days prior to the date set for receipt of bids, the purchasing agent also shall post, all pending purchases or sales by notice in a public place designated by the purchasing agent, or publish notice in a newspaper of general circulation, or both. Public notice may also be published on the county web site, on other appropriate web sites, or in other locations deemed appropriate by the purchasing agents.

(3.1) *Invitation to bid.* The purchasing agent shall issue a written invitation to bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. The invitation to bid should provide contact information whereby comments concerning specification or other provisions in the invitation can be received and considered prior to the time set for receipt of bids or award of the contract. Unless provision has been made for prequalification of bidders, the invitation to bid shall include a statement of any requisite qualifications of potential contractors. When it is impracticable 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.

(4) *Use of brand names.* Unless otherwise provided in the invitation to bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the county in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. Unless the invitation to bid contains the words, "or equal" or their equivalent, it shall be deemed to restrict bidders to the specific brand, make or manufacturer named, but the purchasing agent may waive noncompliance with this specification in his sole discretion if the purchasing agent determines the bidder has offered an equal to that specified.

(5) *Bid bonds on construction contracts.* Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of one five hundred thousand dollars (\$100,000.00) (\$500,000.00) or transportation-related projects authorized under Section 33.1-12 of the Code of Virginia that are in excess of two hundred fifty thousand dollars

(\$250,000.00) and partially or wholly funded by the commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five (5) percent of the amount bid. Nothing in this section shall preclude the purchasing agent from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than one five hundred thousand dollars ~~(\$100,000.00)~~ (\$500,000.00) for nontransportation-related projects or two hundred fifty thousand dollars (\$250,000.00) for transportation-related projects authorized under Section 33.1-12 of the Code of Virginia and partially or wholly funded by the Commonwealth.

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

(6) *Bonds for other than construction contracts.* At the discretion of the purchasing agent bidders may be required to submit with their bid a bid bond in an amount to be determined by the purchasing agent and specified in the invitation to bid, as a guarantee that if the contract is awarded to such bidder, that the bidder will enter into the contract for the work described in the bid.

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

(7) *Rejection of bids.* An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part or informalities waived when the purchasing agent determines that it is in the best interest of the county to do so. The reasons therefore shall be made a part of the record in the matter. The county shall not cancel or reject an invitation to bid, a request for proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

(8) *Bid opening.* All bids received under this section must be opened in public.

(9) *Withdrawal of bid due to error.*

- A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a

judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The procedure for bid withdrawal must be stated in the advertisement for bids.

The purchasing agent shall select one (1) of these procedures:

1. The bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and at the request of the purchasing agent shall submit original work papers with such notice; or

Where the public body opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the purchasing agent his original work papers, documents and materials used in the preparation of the bid within one (1) day after the date fixed for submission of bids at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail ~~at or prior to the time fixed for the opening of bids.~~

In either instance, such work papers, documents and materials may, at the bidder's request, be deemed a trade secret pursuant to subsection F of Section 2.2-4342 of the Virginia Code, subject to the conditions of subsection 2-255(6) of this article. The bids shall be opened one (1) day following the time fixed by the county for the submission of bids. Thereafter, the bidder shall have two (2) hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the county until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

- B. Procedures for the withdrawal of bids for other than construction contracts may be established by the purchasing agent.
- C. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five (5) percent.
- D. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
- E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
- F. The purchasing agent shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the purchasing agent denies the withdrawal of a bid under the provisions of this section, he shall ~~notify the bidder in writing stating~~ state in such notice the reasons for his decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the purchasing agent shall return all work papers and copies thereof that have been submitted by the bidder.

(10) *Bid evaluation.*

- A. Evaluation of bids shall be 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.
- B. In determining "lowest responsive and responsible bidder", in addition to price, the agent shall consider:
 - 1. The ability, capacity, skill and financial resources of the bidder to perform the contract or provide the service required;

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

3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
4. The quality of performance of previous contracts or services;
5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
6. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
7. Whether the bidder is in arrears to the county on a debt or contract or is a defaulter on surety or whether the bidder's taxes or assessments are delinquent.

(11) *Bid award.* Bids shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of the invitation to bid provide that multiple awards may be made, awards may be made to more than one (1) bidder.

Unless canceled or rejected for good cause, 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 or is deemed excessive, the county may negotiate with the lowest responsible bidder to obtain an acceptable contract price. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the county prior to issuance of the invitation to bid and summarized therein.

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

(12) *Tie bids.*

- A. In the case of a tie bid submitted pursuant to a written invitation to bid, preference shall be given to goods, services and construction produced in Goochland County or provided by persons, firms or corporations having principal places of business in Goochland County, if such a choice is available. Like preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms

or corporations.

- B. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The State Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, the County shall rely upon the accuracy of the information posted on this website.

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

- C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, when the tie bid still exists after existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.
- D. In the event that none of the foregoing provisions of this section resolve the tie, the purchasing agent may:
1. Decide the tie by lot; or

Invite the tie bidders to resubmit written bids below the original bid, and award shall be made to the bidder with the lowest bid price; or
 3. Cancel the solicitation and re-bid.

(13) *Multi-step sealed bidding.* When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of offer not priced. Bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation shall be invited to submit priced offers.

(14) *Contract pricing arrangement.* Public contracts may be awarded on any basis that is not prohibited. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carriers administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section. Architect, engineer and similar contracts which are based on a percentage of construction cost shall not be prohibited by this section, providing the construction contract is not awarded by or to that architect, engineer or similar contractor.

(15) *Multi-term contracts.*

- A. *Specified period.* Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interest of the county provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.
- B. *Cancellation due to unavailability of funds in succeeding fiscal periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

(16) *Retainage on construction contracts.*

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

(17) *Performance and payment bonds for construction contracts.*

A. Upon the award of any (i) public construction contract exceeding one five hundred thousand dollars (\$100,000.00) (\$500,000) awarded to any prime contractor; (ii) construction contract exceeding one five hundred thousand dollars (\$100,000.00) (\$500,000) awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the county; (iii) construction contract exceeding one five hundred thousand dollars (\$100,000.00) (\$500,000) in which the performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding two hundred fifty thousand dollars (\$250,000.00) that are partially or wholly funded by the commonwealth, the contractor shall furnish to the county the following bonds:

1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the county.

A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site. For transportation-related projects authorized under Section 33.1-12 of the Code of Virginia and partially or wholly funded by the commonwealth, such bond shall be in a form and amount satisfactory to the public body.

- B. Each of such bonds shall be executed by one (1) or more surety companies selected by the contractor which are legally authorized to do business in Virginia.
- C. Bonds shall be made payable to the county.

- D. Each of the bonds shall be filed with the county purchasing agent or designee.
- E. Nothing in this section shall preclude the purchasing agent from requiring payment or performance bonds for construction contracts below one-five hundred thousand dollars (\$100,000-00) (\$500,000) or for transportation-related projects authorized under Section 33.1-12 of the Code of Virginia and partially or wholly funded by the commonwealth, such bond shall be in a form and amount satisfactory to the public body.
- F. For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2-245.
- ~~F~~G. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the furtherance of the work provided for in the subcontract.

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

(19) *Actions on payment bonds; waiver of right to sue.*

- A. ~~Subject to the provisions of subsection B, a~~Any claimant who has a direct contractual relationship with the contractor and who has performed labor or furnished material in accordance with the contract documents in the furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of ninety (90) days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to such action.
- B. Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor

payment bond under subsection 2-245(17) F, but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within ninety (90) ~~one hundred eighty (180)~~ days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under subsection 2-245(17)F. of this article, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainage with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

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

(20) *Alternative forms of security.*

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

(Ord. of 12-2-03(1), § 1; Ord. of 5-5-09(3))

Sec. 2-246. Competitive negotiation.

(1) *Competitive negotiation for goods or services other than professional services.*

- A. *Conditions for use.* Upon a determination made in advance by the purchasing agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public; goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the purchasing agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

- ~~1.~~ ~~For (i) the construction, alteration, repair, renovation or demolition of buildings or structures when the contract is not expected to cost more than one million five hundred thousand dollars (\$1,500,000.00); and (ii) on a fixed price design-build basis or construction management basis under section 2-247 of this article when the contract is not expected to cost more than one million five hundred thousand dollars (\$1,500,000.00); or~~
- 2.1. For the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or
- 3.2. As otherwise provided in section 2-247 of this article.

- B. *Request for proposal.* The purchasing agent shall issue a written request for proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. The request for proposal should provide contact information whereby comments concerning specification or other provisions in the request can be received and considered prior to the time set for receipt of proposals or award of the contract.

o o o

Sec. 2-247. Design-build or construction management contracts.

(1) While the competitive sealed bid process remains the preferred method of construction procurement, the county may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the county complies with the requirements of this section and procedures consistent with those adopted by the state Secretary of Administration for utilizing design-build or construction management contracts ~~and has obtained the approval of the design-build/construction management review board (the review board) as provided in Code of Virginia, § 2.2-2406, or complies with the requirements of the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA), Code of Virginia § 56-575.1, et seq., and any implementation guidelines adopted by the board of supervisors.~~

(2) Prior to making a determination as to the use of design-build or construction management for a specific construction project, the county shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the county regarding the use of design-build or construction management for that project and who shall assist the county with the preparation of the request for proposal and the evaluation of such projects.

(3) The request for proposal for any design-build or construction management contract for a specific construction contract shall include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. ~~Except as may otherwise be approved by the review board, such~~ Such procedures for:

- A. Design-build construction projects shall include a two-step competitive negotiation process consistent with ~~the review board's regulations; standards established by the Division of Engineering and Buildings of the Department of General Services for state agencies.~~
- B. Construction management projects shall include selection procedures and required construction management contract terms consistent with ~~the review board's regulations; procedures as adopted by the Secretary of Administration.~~

(4) Prior to issuing a request for proposal for any design-build or construction management contract for a specific construction project, the purchasing agent shall have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract;

(ii) there is a benefit to the public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

(5) ~~Once approved by the review board in accordance with Code of Virginia § 2.2-2406, the county may award a design-build or construction management contract for the specific construction project presented to the review board. Unless otherwise specified in the request for proposal, The such~~ contract shall be awarded to the fully qualified offeror who submits an acceptable proposal at the lowest cost in response to the request for proposal. The provisions of this subsection shall supersede any related provision in the capital outlay manual.

(6) ~~The purchasing agent shall provide information as requested by the review board to allow post-project evaluation by the review board.~~
(Ord. of 12-2-03(1), § 1; Ord. of 5-5-09(3))

o o o

Sec. 2-250. Small purchases.

(1) Any contract for goods and services other than professional services not expected to exceed ~~fifty-one~~ hundred thousand dollars ~~(\$50,000.00)~~ (\$100,000.00) may be awarded, at the discretion of the purchasing agent, in accordance with small purchase procedures approved by the county administrator.

(2) Any contract for professional services not expected to exceed ~~thirty~~ fifty thousand dollars ~~(\$30,000.00)~~ (\$50,000.00) may be awarded, at the discretion of the purchasing agent in accordance with small purchase procedures approved by the county administrator.

(3) Small purchase procedures include but are not limited to the following provisions:

- A. Contract requirements shall not be artificially divided so as to constitute a small purchase.
- B. Insofar as it is practical, for purchases other than professional services, no less than three (3) businesses shall be solicited to submit quotations for purchases under thirty thousand dollars (\$30,000.00), and no less than four (4) businesses shall be solicited to submit written quotations for purchases between thirty thousand dollars (\$30,000.00) and ~~fifty-one~~ hundred thousand dollars ~~(\$50,000.00)~~ (\$100,000.00) and shall include posting of a public notice on, at least, the County website. For professional services, insofar as it is practical, no less than four (4) businesses shall be solicited to submit written quotations.

- C. Award shall be made to the business offering the lowest acceptable quotation.
- D. The name of the businesses submitting quotations and the date and the amount of each quotation shall be recorded and maintained as a public record.
- E. If required by the purchasing agent, quotations shall be selected from a list prepared by the purchasing agent. Purchases under twenty-five hundred dollars (\$2,500.00) may be made without soliciting competitive quotations.
- F. Nothing in this section shall preclude the purchasing agent from requiring more stringent procedures for purchases made under the small purchase method or from waiving these small purchase procedures in whole or in part when, in the opinion of the purchasing agent, the best interests of the county would be served by such waiver.

(Ord. of 12-2-03(1), § 1; Ord. of 11-5-08(1), § 1)

o o o

- 2. **Except as amended herein, all chapters, articles, sections, paragraphs and provisions of the Goochland County Code are readopted in their entirety as if set forth herein.**
- 3. **BE IT FURTHER ORDAINED that this amendment shall take effect immediately.**

Approved this 5th day of July, 2011.

<u>Roll Call Vote:</u>	AYE	NAY
Andrew W. Pryor,	<u> X </u>	_____
William E. Quarles, Jr.,	<u> X </u>	_____
Ned S. Creasey,	<u> X </u>	_____
Malvern R. Butler,	<u> X </u>	_____
James W. Eads,	<u> X </u>	_____

Abstentions: None

Absent: None

BOARD OF SUPERVISORS OF
GOOCHLAND COUNTY, VIRGINIA

A copy teste:

A handwritten signature in black ink, appearing to read "Rebecca T. Dickson".

By: _____
Rebecca T. Dickson, Clerk