

SCOTT

VIRGINIA

At a meeting of the Scott County Board of Supervisors begun and held in the Supervisors' meeting room located at the Community Services Building in Gate City, Virginia on Wednesday the 7th day of September, 2022 at 8:30 a.m.

PRESENT: Darrel W. Jeter
Marshall D. Tipton
Jeremy P. Herron
Danny P. Mann – Chairman
Michael K. Brickey
Selma G. Hood – arrived at 8:35 a.m.
Stefanie C. Addington – Vice-Chairman

ABSENT: None.

Chairman Danny P. Mann called the meeting to order.

Supervisor Jeremy P. Herron gave the invocation and led the Pledge of Allegiance.

On a motion by Marshall D. Tipton, duly seconded by Darrel W. Jeter, this Board hereby amends the agenda by adding items 10a Twin Springs High School Government Class and 10b Virginia Department of Transportation.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, and Stefanie C. Addington.

Voting nay: None.

Absent: Selma G. Hood.

On a motion by Darrel W. Jeter, duly seconded by Michael K. Brickey, this Board hereby approves the June 29, 2022 and August 3, 2022 minutes.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, and Stefanie C. Addington.

Voting nay: None.

Absent: Selma G. Hood.

Supervisor Selma G. Hood arrived at 8:35 a.m.

Chairman Danny Mann opened Citizen Expression Period to receive public comment.

Hearing no comments, Chairman Mann closed the Citizen Expression Period.

Chairman Danny Mann opened a public hearing on the possible adoption of an ordinance to Amend and Reenact in its Entirety the Scott County Public Procurement Ordinance to reflect the law as it now reads in Title 2.2 Chapter 43 of the Code of Virginia.

Hearing no comments, Chairman Mann closed the public hearing.

On a motion by Michael K. Brickey, duly seconded by Stefanie C. Addington, this Board hereby adopts the following:

SCOTT COUNTY
PUBLIC PROCUREMENT ORDINANCE

ORDINANCE NO. 2022-08

AMENDED: SEPTEMBER 7, 2022

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ORDINANCE NO. 2022-08

SCOTT COUNTY PUBLIC PROCUREMENT ORDINANCE

Be it ordained by the Board of Supervisors of Scott County that the Scott County Public Procurement Ordinance is hereby amended to reflect the law as it now reads in Title 2.2, Chapter 43 of the Code of Virginia (1950) and the entire ordinance as thus amended is reenacted and shall read as follows:

ARTICLE 1.

General Provisions.

Section 1. Title; purpose; applicability.

A. This ordinance may be cited as the Scott County Public Procurement Ordinance.

B. The purpose of this ordinance is to enunciate County policies pertaining to governmental procurement from nongovernmental sources pursuant to the *Virginia Public Procurement Act* to include governmental procurement which may or may not result in monetary consideration for either party. This ordinance and the *Public Procurement Act* apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.

C. Procurement of any and all construction, goods or services for any department, office, agency, board, commission, authority, constitutional or County officer or employee of Scott County, including but not limited to the Scott County School Board, the Scott County Department of Social Services and all public bodies solely appointed by the Scott County Board of Supervisors shall conform to the provisions of this ordinance and the Scott County Purchasing Manual.

Section 2. Implementation. The implementation of the provisions of this ordinance shall be coordinated by and shall be under the supervision of the Scott County Administrator and the County Purchasing Administrator.

Section 3. Definitions. The words defined in this section shall have the meanings set forth below throughout this ordinance.

“Competitive negotiation” is the method of contractor selection set forth in Article 1, Section 5 of this ordinance.

“Competitive sealed bidding” is the method of contractor selection set forth in Article 1, Section 4 of this ordinance.

“Construction” means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

“Goods” means all material, equipment, supplies, printing, and automated data processing hardware and software.

“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.

“Nonprofessional services” means any services not specifically identified as professional services in the definition of professional services.

“Potential bidder or offeror” for the purposes of Article 5, Section 4 and Article 5, Section 8 of this ordinance means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

“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, dentistry, medicine, optometry, pharmacy or professional engineering.

“Public body” means any department, office, agency, commission, authority, constitutional or county office of Scott County, including but not limited to the Scott County Board of Supervisors, the Scott County School Board, the Scott County Department of Social Services, and all public bodies solely appointed by the Scott County Board of Supervisors.

“Public contract” means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

“Responsible bidder” or *“offeror”* means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

“Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

“Reverse auctioning” means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders’ prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

“Services” means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

Section 4. Process for competitive sealed bidding.

The process for competitive sealed bidding shall include the following:

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 public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. Any locality may include in the Invitation to Bid criteria that may be used in determining whether a bidder who is not prequalified by the Virginia Department of Transportation is a responsible bidder pursuant to § 2.2-4301 of the Code of Virginia (1950), as amended. Such criteria may include a history or good faith assurances of (i) completion by the bidder and any potential subcontractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) participation by the bidder and any potential subcontractors in apprenticeship training programs approved by state agencies or the U.S. Department of Labor; or (iii) maintenance by the bidder and any potential subcontractors of records of compliance with applicable local, state, and federal laws. No Invitation to Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. 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;
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 Services' central electronic procurement website or the Scott County website. In addition, public bodies may publish in a newspaper of general circulation. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity;
3. Public opening and announcement of all bids received;
4. Evaluation of bids based upon the requirements set forth in the Invitation to Bid, 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; and

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

For the purposes of subdivision 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913 of the Code of Virginia (1950), as amended.

Section 5. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this section shall condition a successful offeror's eligibility on having a specified experience modification factor;

2. Public notice of the Request for Proposal 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 the Scott County website. Public bodies may also 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. Posting on the Department of General Services' central electronic procurement website shall be required of any local public body if such local public body elects not to publish notice of the Request for Proposal in a newspaper of general circulation in the area in which the contract is to be performed. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, 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. In the case of a proposal for information technology, as defined in § 2.2-2006 of the Code of Virginia (1950), as amended, a public body shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. 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; or

4. For professional services, the public body 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 public body 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 man-hours or cost for services. At the discussion stage, the public body 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 § 2.2-4342 of the Code of Virginia (1950), as amended, proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132 of the Code of Virginia (1950), as amended, until after the qualified offerors are ranked for negotiations. 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 public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the public body, 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.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts 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 and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

B. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract.

For the purposes of subdivision A 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913 of the Code of Virginia (1950), as amended.

ARTICLE 2.

Contract Formation and Administration.

Section 1. Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law. *Effective July 1, 2023:* Local public bodies are encouraged to use eVA to offer an electronic submission option.

B. Professional services shall be procured by competitive negotiation.

C. Goods, services other than professional services, and insurance may be procured by competitive sealed bidding or competitive negotiation.

Upon a written determination made in advance by the public body, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional set forth in Article 1, Section 5 of this ordinance. The basis for this determination shall be documented in writing and shall be forwarded to the Scott County Purchasing Agent.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances:

1. By any public body on a fixed price design-build basis or construction management basis as provided in Article 7; or

2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made in advance by the public body 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.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination and shall be forwarded to the Scott County Purchasing Agent. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or the Scott County website and in addition, the public body may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file and shall be forwarded to the Scott County Purchasing Agent. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or the Scott County website, and in addition, the public body may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

G. The Scott County Board of Supervisors may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for:

1. Goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$30,000; and

2. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000.

However, such small purchase procedures shall provide for competition wherever practicable.

Such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$20,000.

All public bodies proceeding with purchases under this subsection shall post a public notice on the Department of General Services' central electronic procurement website or other appropriate websites.

H. Upon a determination made in advance by the public body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination and shall be forwarded to the Scott County Purchasing Agent.

I. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

Section 2. Architectural and professional engineering term contracting; limitations.

A. A contract for architectural or professional engineering services relating to multiple projects may be awarded by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

Such contracts may be renewable for three additional terms at the option of the public body. Any unused amounts from one contract term shall not be carried forward to any additional term, except as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq. of the Code of Virginia (1950), as amended). The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

The sum of all projects performed in a contract term shall not exceed \$10 million, and the fee for any single project shall not exceed \$2.5 million.

B. Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for individual projects based on price.

Section 3. Job order contracting; limitations.

A. A job order contract may be awarded by a public body for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first. Contractors may be selected through either competitive sealed bidding or competitive negotiation.

B. Such contracts may be renewable for two additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed \$6 million. Individual job orders shall not exceed \$500,000.

C. For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

D. Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection B is prohibited.

E. No public body shall issue or use a job order, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in § 54.1-400. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term.

F. Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass. However, job order

contracting may be used for safety improvements or traffic calming measures for individual job orders up to \$250,000, subject to the maximum annual threshold amount established in this section.

Section 4. Cooperative procurement.

Any public body may participate in, sponsor, conduct, or administer a joint procurement agreement or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, or the U.S. General Services Administration, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction as provided in § 2.2-4304 of the Code of Virginia (1950), as amended .

Section 5. Competitive procurement by localities on state-aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building by any public body for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided in this ordinance. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this ordinance.

Section 6. Modification of the contract.

A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the public body. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications.

D. The provisions of this section shall not limit the amount a party to a public contract may claim or recover against a public body pursuant to Section 7 of Article 5 of this ordinance or any other applicable statute or regulation. Modifications made by a political subdivision that fail to comply with this section are voidable at the discretion of the governing body, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in Article 5, Section 7.

Section 7. Discrimination prohibited; participation of small, women-owned, minority-owned, and service disabled veteran-owned businesses and employment services organizations.

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, 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, each public body shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity, which list shall include all companies and organizations certified by the Department.

B. All public bodies shall establish programs consistent with all provisions of this ordinance and § 2.2-4310 of the Code of Virginia (1950), as amended, to facilitate the participation of small businesses, businesses owned by women, minorities and service disabled veterans, and employment services organizations in procurement transactions.

Section 8. Employment discrimination by contractor prohibited; required contract provisions.

All public bodies shall include in every contract of more than \$10,000 the following provisions:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, 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.
2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Section 9. Compliance with federal, state, and local laws and federal immigration law; required contract provisions.

All public bodies shall provide in every written contract that the contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

Section 10. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth.

A. All public bodies shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership 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.

B. Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

C. Any bidder or offeror described in subsection B that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the County Administrator.

D. Any business entity described in subsection A that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

Section 11. Drug-free workplace to be maintained by contractor; required contract provisions.

All public bodies shall include in every contract over \$10,000 the following provisions:

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

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

Section 12. 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 and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

Section 13. Comments concerning specifications.

Every public body awarding public contracts shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

Section 14. Prequalification generally; prequalification for construction.

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing by the public body and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body. Such process shall be consistent with the provisions of this subsection.

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 pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of Article 2, Section 32, of this ordinance.

In all instances in which the public body 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.

At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the public body 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.

A decision by a public body denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in Section 1, Article 5 of this ordinance.

C. A public body may deny prequalification to any contractor only if the public body 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 public body shall be sufficient to establish the financial ability of such contractor to perform the contract resulting from such procurement;

2. 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 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 a public body without good cause. If the public body has not contracted with a contractor in any prior construction contracts, the public body 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. A public body 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 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 the *Virginia Public Procurement Act*, (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 of the Code of Virginia (1950), as amended, or (iv) 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; and

7. The contractor failed to provide to the public body in a timely manner any information requested by the public body relevant to subdivisions 1 through 6 of this subsection.

D. If a public body has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body 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.

E. The provisions of subsections B, C, and D shall not apply to prequalification for contracts let under § 33.1-12 of the Code of Virginia (1950), as amended.

Section 15. Negotiation with lowest responsible bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds. However, such negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein.

Section 16. Cancellation, rejection of bids; waiver of informalities.

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file and a copy of the reasons shall be forwarded to the Scott County Purchasing Agent. A public body 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.

B. A public body may waive informalities in bids.

Section 17. Exclusion of insurance bids prohibited.

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to a public body in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude a public body from debaring a prospective insurer pursuant to Section 15, Article 2 of this ordinance.

Section 18. Debarment.

A. Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the public body. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for a public body.

B. In addition, a prospective contractor shall be debarred from contracting with all public bodies and covered institutions whenever the Tax Commissioner so determines pursuant to § 58.1-1902 of the Code of Virginia (1950), as amended.

Section 19. Purchase of flags of the United States and the Commonwealth by public bodies.

Notwithstanding any provision of law to the contrary, whenever a state or local public body or school division purchases a flag of the United States or a flag of the Commonwealth for public use, such flag shall be made in the United States from articles, materials, or supplies that are grown, produced, and manufactured in the United States, if available.

Section 20. Preference for Virginia products with recycled content and for Virginia firms.

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

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 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 price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractor and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

D. For the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

Section 21. Preference for local products and firms; applicability.

A. In case of a tie bid, preference may be given to goods, services and construction produced in Scott County or provided by persons, firms or corporations having principal places of business in Scott County, if such a choice is available; otherwise, the tie shall be decided by lot, unless the above Section 10 applies.

B. The provisions of this section shall apply only to bids submitted pursuant to a written Invitation to Bid.

Section 22. Preference for energy-efficient and water-efficient goods.

A. As used in this section, "FEMP" means the Federal Energy Management Program.

B. When in the course of procuring goods, if a local public body receives two or more bids for products that are Energy Star certified, meet FEMP-designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are Water Sense certified, such local public body may only select among those bids unless, before selecting a different bid, the local public body provides a written statement that demonstrates the cost of the products that are Energy Star certified, meet FEMP-designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are Water Sense certified was unreasonable.

Section 23. 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 in the bid, 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 that 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.

B. One of the following procedures for withdrawal of a bid shall be selected by the public body and stated in the advertisement for bids:

1. Bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

2. Where the public body opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the public body or designated official 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. The work papers shall be delivered by the bidder in person or by registered mail. The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed.

Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of § 2.2-4342 of the Code of Virginia (1950), as amended.

C. If a public body chooses to allow the withdrawal of bids for other than construction contracts, it shall follow the above-described procedure.

D. 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.

E. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

F. 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.

G. 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.

Section 24. Contract pricing arrangements.

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

B. 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.

C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

Section 25. Workers' compensation requirements for construction contractors and subcontractors.

A. No contractor shall perform any work on a construction project of a department, agency or institution of Scott County unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia (1950), as amended, and (ii) provides prior to the award of contract, on a form furnished by Scott County, evidence of such coverage.

B. The Virginia Department of General Services shall provide the form to such departments, agencies, institutions and political subdivisions. Failure of a department, agency, institution or political subdivision to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of a department, agency or institution of Scott County unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia (1950), as amended.

Section 26. Retainage on construction contracts.

A. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

Section 27. Deposit of certain retained funds on certain contracts with local governments; penalty for failure to timely complete.

A. When contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pike driving, miscellaneous drainage structures,

and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, there shall be included in the Bid Proposal an option for the contractor to use an escrow account procedure for utilization of the public body's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the Bid Proposal and Contract shall be executed and submitted to the public body within fifteen calendar days after notification. If the escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

B. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The escrow agreement and all regulations adopted by the public body entering into the contract shall be substantially the same as that used by the Virginia Department of Transportation.

C. This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

D. Any such public contract for construction with the county which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

E. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

Section 28. Public construction contract provisions barring damages for unreasonable delays declared void.

A. Any provision contained in any public construction contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract that:

1. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
2. Requires notice of any delay by the party claiming the delay;
3. Provides for liquidated damages for delay; or
4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against a public body for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the public body and shall pay it for a percentage of all costs incurred by the public body in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the public body shall be equal to the percentage of the contractor's total delay claim for which the public body's denial is determined through litigation or arbitration to have been made in bad faith.

Section 29. Bid bonds.

A. Except in cases of emergency, all bids or proposals for non-transportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia (1950), as amended, that are in excess of \$350,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

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

C. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for non-transportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia (1950), as amended, and partially or wholly funded by the Commonwealth.

Section 30. Performance and payment bonds.

A. Upon the award of any (i) non-transportation-related public construction contract exceeding \$500,000 awarded to any prime contractor or (ii) transportation-related project authorized pursuant to Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia (1950), as amended, exceeding \$350,000 that is partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. 2. A payment bond in the sum of the contract amount. The 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.

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

C. If the public body is the Commonwealth, or any agency or institution thereof, the bonds shall be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds required for the contracts of other public bodies shall be payable to such public body.

D. Each of the bonds shall be filed with the public body that awarded the contract, or a designated office or official thereof.

E. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below \$500,000 for non-transportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia (1950), as amended, and partially or wholly funded by the Commonwealth.

F. 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 that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

Section 31. 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 institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond.

C. The provisions of this section shall not apply to the Department of Transportation.

Section 32. Bonds on other than construction contracts.

A public body may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

Section 33. Action on performance bond.

No action against the surety on a performance bond shall be brought unless within five years after completion of the contract. For the purposes of this section, completion of the contract is the final payment to the contractor pursuant to the terms of the contract. However, if a final certificate of occupancy, or written final acceptance of the project, is issued prior to final payment, the five-year period to bring an action shall commence no later than 12 months from the date of the certificate of occupancy or written final acceptance of the project.

Section 34. Actions on payment bonds; waiver of right to sue.

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 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 such labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 90 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages 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 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.

Section 35. Public inspection of certain records.

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the *Virginia Freedom of Information Act* (§ 2.2-3700 et seq. of the Code of Virginia (1950), as amended).

B. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

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

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

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 2.2-4317 of the Code of Virginia (1950), as amended, shall not be subject to the *Virginia Freedom of Information Act* (§ 2.2-3700 et seq. of the Code of Virginia (1950), as amended); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. A bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal, or prequalification application prices.

ARTICLE 3.

Exemptions and Limitations.

Section 1. Compliance with conditions on federal grants or contracts.

Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this ordinance, a public body may comply with such federal requirements, notwithstanding the provisions of this ordinance, only upon the written determination of the public body, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this ordinance in conflict with the conditions of the grant or contract. The determination shall be forwarded to the Scott County Purchasing Agent.

Section 2. Permitted contracts with certain religious organizations; purpose; limitations.

A. It is the intent of the General Assembly, in accordance with the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, P.L. 104-193, to authorize public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, "*faith-based organization*" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, P.L. 104-193.

C. Public bodies, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. Public bodies shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the public body does not discriminate against faith-based organizations.

E. A faith-based organization contracting with a public body (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, or refusal to participate in a religious practice or on the basis of race, age, color, gender, sexual orientation, gender identity, or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

F. Consistent with the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, P.L. 104-193, funds provided for the expenditure pursuant to contracts with public bodies shall not be spent for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000 e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services or disbursements from an alternative provider.

The public body shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization a notice in bold face type that states: "Neither the public body's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated on this form."

Section 3. Exceptions from competition for certain transactions.

A. Any public body may enter into contracts without competition for:

1. The purchase of goods or services that are produced or performed by:
 - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or
 - b. Employment services organizations that offer transitional or supported employment services serving individuals with disabilities.

2. The purchase of legal services, provided that the pertinent provisions of Chapter 5 of the Code of Virginia (§ 2.2-500 et seq.) remain applicable, or expert witnesses or other services associated with litigation or regulatory proceedings.

B. The Scott County Economic Development Authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.2-4902 of the Code of Virginia (1950), as amended, or "facility" as defined in § 15.2-6400 of the Code of Virginia (1950), as amended.

C. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the

public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination and shall be forwarded to the Scott County Purchasing Agent.

D. The Scott County Department of Social Services in administering public assistance and social services programs as defined in § 63.2-100 of the Code of Virginia (1950), as amended, community services boards as defined in § 37.2-100 of the Code of Virginia (1950), as amended, or any public body purchasing services under the *Virginia Comprehensive Services Act for At-Risk Youth and Families* (§ 2.2-5200 et seq.) or the *Virginia Juvenile Community Crime Control Act* (§ 16.1-309.2 et seq.) for goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of Section 1, Article 2, of this ordinance.

E. The Scott County School Board may authorize any or all of its public schools to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this ordinance, competitive sealed bidding not necessarily being required for such contracts. The Virginia Superintendent of Public Instruction may provide assistance to the Scott County Public School System regarding this exception from competitive sealed bidding to permit competitive negotiation for such contracts.

ARTICLE 4.

Prompt Payment.

Section 1. Definitions.

As used in this article, unless the context requires a different meaning:

“*Contractor*” means the entity who has a direct contract with any public body as discussed in Section 5 of Article 4.

“*Payment date*” means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) forty-five days after receipt of a proper invoice by the public body or its agent responsible under the contract for approval of such invoices for the amount of payment due, or (b) forty-five days after receipt of the goods or services by the local government, whichever is later.

“*Subcontractor*” means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

Section 2. Exemptions.

The provisions of this article shall not apply to (i) the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission or (ii) payments for services provided under the state plan for medical assistance identified as potentially fraudulent, abusive, or erroneous in accordance with the program established pursuant to § 32.1-319.1 of the Code of Virginia (1950), as amended, and delayed until such time as the claim can be validated..

Section 3. Retainage to remain valid.

Notwithstanding the provisions of this article, the provisions of this ordinance relating to retainage shall remain valid.

Section 4. Prompt payment of bills by public bodies.

Every public body that acquires goods or services, or conducts any other type of contractual business with a nongovernmental, privately owned enterprise, shall promptly pay for the completed delivered goods or services by the required payment date. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of the goods or services; or (ii) if such date is not

established by contract, not more than forty-five days after goods or services are received or not more than forty-five days after the invoice is rendered, whichever is later.

Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery.

Within twenty days after the receipt of the invoice for goods or services, the public body or its agent shall notify the supplier of any defect or impropriety that would prevent payment by the payment date.

Unless otherwise provided under the terms of the contract for the provision of goods or services, every public body that fails to pay by the payment date shall pay any finance charges assessed by the supplier that shall not exceed one percent per month.

The provisions of this section shall not apply to the late payment provisions in any public utility tariffs or public utility negotiated contracts.

Section 5. Date of postmark deemed to be date payment is made.

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of this ordinance.

Section 6. (Effective until January 1, 2023) Payment clauses to be included in contracts.

Any contract awarded by any agency of local government in accordance with Article 4, Section 4 of this ordinance, shall include:

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the public body and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to 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 public body for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1 of this section.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to 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.

A 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 public body. A contract modification shall not 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.

Section 6. (Effective January 1, 2023) Payment clauses to be included in contracts.

Any contract awarded by any agency of local government in accordance with Article 4, Section 4 of this ordinance, shall include:

1. A payment clause that obligates a contractor on a construction contract to be liable for the entire amount owed to any subcontractor with which it contracts. Such contractor shall not be liable for amounts otherwise reducible due to the subcontractor's noncompliance with the terms of the contract. However, in the event that the contractor withholds all or a part of the amount promised to the subcontractor under the contract, the contractor shall notify the subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment. Payment by the

party contracting with the contractor shall not be a condition precedent to payment to any lower-tier subcontractor, regardless of that contractor receiving payment for amounts owed to that contractor. Any provision in a contract contrary to this section shall be unenforceable.

2. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the agency of local government and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

3. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

4. An interest clause that obligates the contractor to 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 agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 2 of this section.

5. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to 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.

A 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 agency of local government. A contract modification shall not 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.

ARTICLE 5.

Remedies.

Section 1. Ineligibility.

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365 of the Code of Virginia (1950), as amended, if available, or in the alternative by instituting legal action as provided in § 2.2-4364 of the Code of Virginia (1950), as amended.

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

Section 2. Appeal of denial of withdrawal of bid.

A. A decision denying withdrawal of bid under the provisions of Section 20, Article 2 of this ordinance shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, if available, or in the alternative by instituting legal action as provided in Section 8, Article 5 of this ordinance.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of this ordinance, prior to appealing, shall deliver to the public body a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

Section 3. Determination of nonresponsibility.

A. Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in Section 3, Article 1 of this ordinance. At the same time, the public body shall determine whether the apparent low bidder is responsible. If the public body so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in Section 3, Article 1 of this ordinance. If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the public body shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received the rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, if available, or in the alternative by instituting legal action as provided in Section 8, Article 5 of this ordinance.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to Section 8 or Section 9, Article 5, it is determined that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of Section 8, Article 5 of this ordinance or both.

If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of Section 4, Article 5 of this ordinance.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under Section 4, Article 5 of this ordinance.

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

E. Any determination that a low bidder is not responsible that uses such factors listed in the Invitation to Bid as a basis for its decision shall be presumptively considered an honest exercise of discretion.

Section 4. Protest of award or decision to award.

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit such protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Section 1, Article 2 of this ordinance. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under Section 32, Article 2 of this ordinance, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under said Section 32, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, if available, or in the alternative by instituting legal action as provided in Section 8, Article 5 of this ordinance. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

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

C. Where a public body or an official designated by that public body determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 6 of this ordinance, the public body or the designated official may enjoin the award of the contract to a particular bidder.

Section 5. Effect of appeal upon contract.

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

Section 6. Stay of award during protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in Section 4, Article 5 of this

ordinance, or the filing of a timely legal action as provided in Section 8, Article 5 of this ordinance, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

Section 7. Contractual disputes.

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

B. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the public body. If the public body has established administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor.

C. If, however, the public body fails to include in its contracts a procedure for consideration of contractual claims, the following procedure shall apply:

1. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.

2. No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the public body's chief administrative officer or his designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the public body fails to render a decision within 90 days of submission of the claim. Failure of the public body to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the public body's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.

D. A contractor may not invoke administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, if available, or institute legal action as provided in Section 8, Article 5 of this ordinance, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract or, if no time is specified, then within the time provided by subsection C. A failure of the public body to render a final decision within the time provided in subsection C shall be deemed a final decision denying the claim by the public body.

E. The decision of the public body shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the public body by invoking administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, if available, or in the alternative by instituting legal action as provided in Section 8, Article 5 of this ordinance.

Section 8. Legal actions.

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the Scott County Circuit Court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial or prequalification, based upon the criteria for denial of prequalification set forth in subsection B of Section 13, Article 2 of this ordinance. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with Section 3, Article 1 of this ordinance, is found by the court to be a responsible bidder, the court

may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under Section 20, Article 2, of this ordinance may bring an action in the Scott County Circuit Court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in Section 1, Article 2 of this ordinance, whose protest of an award or decision to award under Section 4, Article 5 is denied, may bring an action in the Scott County Circuit Court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the Scott County Circuit Court.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.

G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor.

Section 9. Administrative appeals procedure.

A. By resolution, the public body may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, (iv) and appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in Section 13, Article 2 of this Ordinance. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.

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

Section 10. Alternative dispute resolution.

Public bodies may enter into agreements to submit disputes arising from contracts entered into pursuant to this chapter to arbitration and to utilize mediation and other alternative dispute resolution procedures. Alternative dispute resolution procedures entered into by school boards shall be nonbinding.

ARTICLE 6.

Ethics in Public Contracting.

Section 1. Purpose.

The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the *Virginia State and Local Government Conflict of Interests Act* (§ 2.2-3100 et seq. of the Code of Virginia), the *Virginia Governmental*

Frauds Act (§ 18.2-498.1 et seq. of the Code of Virginia), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2 of the Code of Virginia.

The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the *Virginia State and Local Government Conflict of Interests Act*.

Section 2. Definitions.

As used in this this article.

“Immediate family” means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

“Official responsibility” means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

“Pecuniary interest arising from the procurement” means a personal interest in a contract as defined in the *Virginia State and Local Government Conflict of Interests Act* (§ 2.2-3100 et seq. of the Code of Virginia).

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

“Public employee” means any person employed by a public body, including elected officials or appointed members of public bodies.

Section 3. Proscribed participation by public employees in procurement transactions.

Except as may be specifically allowed by subdivisions B 1, 2, and 3 of § 2.2-3112 of the Code of Virginia (1950), as amended, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

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

Section 4. Disclosure of subsequent employment.

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

Section 5. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractor prohibited.

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

B. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan,

subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

Section 6. Kickbacks.

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

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

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

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

Section 7. Participation in bid preparation; limitation on submitting bid for same procurement.

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

Section 8. Purchase of building materials, etc., from architect or engineer prohibited.

A. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in § 2.2-3101 of the Code of Virginia (1950), as amended.

B. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in § 2.2-3101 of the Code of Virginia (1950), as amended.

C. The provisions of subsections A and B herein shall not apply in cases of emergency.

Section 9. Certification of compliance required; penalty for false statements.

A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.

B. Any public employee required to submit a certification as provided in subsection A of this section who knowingly makes a false statement in the certification shall be punished as provided in Section 12, Article 6 of this ordinance.

Section 10. Misrepresentations prohibited.

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any

false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

Section 11. Penalty for violation.

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

ARTICLE 7.

Construction Management and Design-Build Contracting

Section 1. Definitions.

As used in this article, unless the context requires a different meaning:

"Complex project" means a construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes competitive sealed bidding not practical.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Department" means the Department of General Services.

"Design-build contract" means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, or other item specified in the contract.

"Public body" means the same as that term is defined in § 2.2-4301.

"State public body" means any authority, board, department, instrumentality, agency, or other unit of state government. "State public body" does not include any covered institution; any county, city, or town; or any local or regional governmental authority.

Section 2. Design-build or construction management contracts for local public bodies authorized.

A. Any local public body may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis, provided that the local public body (i) complies with the requirements of this article and (ii) has by ordinance or resolution implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing construction management or design-build contracts.

B. Prior to making a determination as to the use of construction management or design-build for a specific construction project, a local public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise such public body regarding the use of construction management or design-build for that project and (ii) assist such public body with the preparation of the Request for Proposal and the evaluation of such proposals.

C. A written determination shall be made in advance by the local public body that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize construction management or design-build. The determination shall be included in the Request for Qualifications and be maintained in the procurement file.

D. Procedures adopted by a local public body for construction management pursuant to this article shall include the following requirements:

1. Construction management may be utilized on projects where the project cost is expected to be less than the project cost threshold established in the procedures adopted by the Secretary of Administration for utilizing construction management contracts, provided that (i) the project is a complex project and (ii) the project procurement method is approved by the local governing body. The written approval of the governing body shall be maintained in the procurement file;

2. Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

3. The construction management contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

4. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the local public body may consider the experience of each contractor on comparable projects;

5. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable;

6. The procedures allow for a two-step competitive negotiation process; and

7. Price is a critical basis for award of the contract.

E. Procedures adopted by a local public body for design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department for state public bodies.

ARTICLE 8.

Reporting Requirements for All Public Bodies

Section 1. Reporting requirements.

All public bodies subject to the provisions of this chapter shall report no later than November 1 of each year to the Director of the Department on all completed capital projects in excess of \$2 million, which report shall include at a minimum (i) the procurement method utilized, (ii) the project budget, (iii) the actual project cost, (iv) the expected timeline, (v) the actual completion time, and (vi) any post-project issues.

ARTICLE 9.

Severability and Effective Date

Section 1. Severability.

If any section, article, paragraph, sentence, phrase or word of this ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such judgment or decree shall not affect the validity of any other portions of said ordinance.

Section 2. Effective date.

This ordinance shall be effective upon its date of adoption and shall supersede prior Scott County Public Procurement Ordinances and Resolutions which were previously adopted pursuant to the *Virginia Public Procurement Act*.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

Chairman Danny Mann opened a public hearing on a Special Use Permit Application submitted by Jason Barger for 572 Ann Goode Cooper Road, Hiltons, tax map # 131 A 20 to use the parcel as a Campground.

Building Code Official/Zoning Administrator David Gilmer presented an application for a special use permit for Jason Barger. He went on to say that a list of adjoining property owners were notified, and the Planning Commission recommends approval of the Special Use Permit. Mr. Gilmer added that the area is in a flood zone; therefore, Mr. Barger has been advised to remind everyone to get out before it floods and obtain a base flood evaluation. Mr. Gilmer added that any RV not moved in 180 days will be required to get a mobile home permit.

Hearing no further comments, Chairman Mann closed the public hearing.

On a motion by Marshall D. Tipton, duly seconded by Stefanie C. Addington, this Board hereby approves issuing a Special Use Permit to Jason Barger for 572 Ann Goode Cooper Road, Hiltons, Tax Map # 131 A 20 to use the parcel as a Campground.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

Chairman Danny Mann opened a public hearing on the tax levy for real estate and manufactured homes which is currently \$0.80.

Mr. Tommy Thompson spoke about his reassessment increase. He went on to say that it did take two weeks of his social security to pay his taxes and now it will take six and a half weeks of his social security to pay his taxes. Mr. Thompson stated that puts a burden on him, and he does not think it is right. Something should be done about it.

Chairman Mann asked if Mr. Thompson went before the Board of Equalization.

Mr. Thompson replied yes.

Ms. Carol Blevins inquired about the purpose of taxes collected in Scott County.

The Board replied that some of the funding is for the school system, garbage pickup, Board of Elections, public safety, court system, and pointed out that the budget is online and shows a breakdown of all the agencies funded.

Ms. Blevins asked if the tax levy will be lowered.

Chairman Mann replied that will be determined later in the meeting.

Ms. Vickie Bowen pointed out that it is very hard since everything increased so much. She went on to say that her property tripled, and there is nothing new on her property. The group assessing the property were not from this area, and there needs to be someone local doing the assessment.

Chairman Mann replied regardless where they come from, the county gives them the numbers. They throw out the highest and the lowest and use the middle figures.

Mr. Tommy Thompson asked how his property can be valued at one amount and his neighbors at another.

Chairman Mann replied that he cannot answer that.

Mr. Perry Carroll addressed the levy and stated that he ran an ad in the newspaper. He requested that the Board of Supervisors reduce the levy. He stated that a 31 percent increase is ridiculous. Inflation is nine percent. He went on to say that if the tax levy remains \$0.80 the revenue will go from 10 million to 13 million. If it is lowered to \$0.70, the revenue will be 12 million. If it is lowered to \$0.68, the revenue will be 11 million. Mr. Carroll stated that he ran the ad in the newspaper because he wanted the tax payers to know that it is a 31 percent increase. The amount the county ran in the paper the first time was incorrect.

Chairman Mann replied that 31 percent spread over six years would be five percent per year.

Mr. Carroll suggested increasing it a little each year.

Chairman Mann replied that the Board has looked at establishing an Assessors Office; however, the cost of that is three times more.

Mr. Michael Collins stated the reassessment was done and some questions could be asked. If you are Terry Kilgore or his mother, it goes down. If you own a thousand acres, it does not move a cent. Mr. Collins stated his five acres went up 161 percent, and that is a little strange. He went on to say that the Economic Development Authority owns 208 acres in this county. He noted 92 acres at the Bray farm, 91 acres in Duffield, and questioned how much money is made from that. He added that it would be fine if some tax dollars were generated from the 208 acres, but it is sitting there being wasteful, and his tax dollars are paying for that. Mr. Collins stated that he just heard the Building Inspector say there are currently 18 new homes being constructed in Scott County. There were a total of 32 permits issued last year, but he was paid \$66,000. If there were 32 permits issued last year, it would be \$16,000 for someone to show up and do inspections. However, the Building Inspector is paid \$66,000 to stay in the office two hours because he needs to do inspections the rest of the day. The most he ever had was 36 permits his second year. The County needs to outsource what can be and combine what can be. Mr. Collins went on to say that he does not understand why there is a golf course, non-park recreation, and tourism department doing the same job. Mr. Collins stated that his wages do not go up that much, but this last county budget had a half million dollars in wage increases. Scott County has been losing population since 1991, but everyone is doing an awesome job. That is why everyone needs to get paid more except the Board of Supervisors. That pay stays the same. Mr. Collins stated that he does not know where the kickback is. He stated that he saw the taxes for the Board of Supervisors, and they went up just like his did. They are not Terry Kilgore or his mother. Mr. Collins pointed out that there is usually a scandal or something going on, but it looks like the Board is getting screwed just like the rest of us. He mentioned clerical compensation for the Board that is going up \$8,000 to \$38,000. He questioned if that fell under the County Administrator.

The County Administrator replied that is a separate position.

Mr. Collins asked why? Last year the County Administrator was paid \$101,000, but you can't do clerical too.

The County Administrator replied that is not clerical for the Board. This is our front office person.

Mr. Collins noted that the position is broken off into County Administrator and County Clerk. Scott County is not like Alexandria. He questioned if there is really that much to keep up with in Scott County. The average wage in Scott County is \$40,000.

Chairman Mann noted, for the record, there are 95 counties in the state. The County Administrator for Scott County is 88th from the bottom as far as compensation. The County Administrator in a neighboring county is making \$60,000 more than she is. More is paid for people with a master's degree or a law degree.

Mr. Collins questioned if those counties are dying like Scott County.

Chairman Mann replied that he does not keep up with other counties and asked where Mr. Collins is going with his statements. To get a truck driver with a CDL, the salary had to be increased, and he asked where Mr. Collins wanted to go with this. Chairman Mann stated that he appreciated Mr. Collins speaking.

Mr. Collins stated that he does not believe that. No matter what everyone says here today, the Board of Supervisors can do what they want to, but we can vote them out.

Chairman Mann replied that his wife hopes that he will be voted out and thanked Mr. Collins for attending.

Chairman Mann welcomed the Twin Springs Government Class.

Mr. Randy Gilmer stated that he knows the state of the nation, how taxes are going up, and what we are confronted with. He went on to say that he volunteers for a mental health center and continues to help the county. The Board of Supervisors have a tough job. The reassessment amount went up so extreme and sudden. Things are happening in our nation and are not exactly fair. Many things seem extreme. All we can do is our little part. That ends up being a big part

in this county. We can all do the right thing from our own perspective. The fact that our assessment went up so high may be because it should have been higher to start with. Mr. Collins stated that the correction is extreme, and he hopes that the Board will moderate that. He went on to say that he understands more has to be paid to hire people, but I hope you will do the right thing in our county. Mr. Collins added that he brags on this county by saying it is like living in Mayberry, and it is paradise. The way to keep it is doing the right thing and not worry about what happens in the rest of the country. He asked that the Board tighten their belts and squeeze the budget. Mr. Collins added that the Board is very conscious of those living hand to mouth. All should be able to keep their land. Mr. Collins suggested reducing the tax levy and not go up in such an extreme fashion.

Mr. Dennis Cress questioned anything that could be done to reduce the budget and not raise taxes. He went on to say that he went to the assessor's meeting and was told that a lot of the mountainous property was valued the same as the property closer to town and level land. Mr. Cress added that most of his land is mountainous, and his taxes went up 40 percent. He added that he went to the Equalization Board, and his assessment was lowered some. He pointed out that it is difficult for those on a fixed income. Mr. Cress stated that, if his assessment had not been lowered, he would have paid his entire social security toward taxes. In addition, Mr. Cress pointed out that Biden is going to be sending IRS agents after people. Pretty soon, we will be a communist country.

Ms. Christina Hurd stated that she served on the Board of Equalization that only got to see ten percent of the county parcels. Of that ten percent, parcels increased 70 percent, 100 percent, and more. She added that her assessment went up along with everything else that is going up. If the tax levy is lowered, it would help all the others who were not seen by the Equalization Board.

Hearing no further comments, Chairman Mann closed the public hearing.

Chairman Mann noted that it is required by law that a reassessment occur every six years. It went up 31 percent which is about five percent each year. We had a 1.2 million dollar increase with the school system this year, and there will be a \$410,000 increase next year. The regional jail cost the county \$600,000 when it first started. It is over two million dollars now. The amount given to the school system is based on a composite index, and that tells us the amount we are required to pay. Government employees are expensive. The Scott County Administrator is the seventh lowest paid County Administrator in the State of Virginia. She has a good salary and so does the County Attorney. To get educated people, it costs.

Supervisor Selma Hood added that the Board of Supervisors are pretty much volunteers, and we do a lot of work.

Chairman Mann talked about the other agencies that members of the Board serve on. The Board is here to make this county better and hopefully, we can do that without being painful on the pocketbook. Chairman Mann stated that there are sixteen less county positions than there were when he was elected. The Board has cut everything that can be cut. The budget committee looks at everything they can to cut the budget.

Supervisor Michael Brickey stated that he was on the budget committee. There are 52 agencies that ask for funding. The Board of Supervisors have to raise money to keep our agencies going. Last week, we met with our financial advisors. They suggested that we keep seven million dollars in our rainy day fund. We had to draw 1.4 million dollars out to balance the budget. He went on to say that he heard the same complaints about unfunded mandates at a Virginia Association of Counties meeting recently. The Board was required to fund the school a five percent increase this year and another five percent next year. That does not come from the state. It comes from the county. He asked Perry Carrol to research the 560 out-of-county students attending Scott County schools and no reciprocal agreement with other counties. Scott County kids would have to pay \$10,000 if they attended school in Tennessee. There is no tuition for out-of-county students attending school in Scott County. It costs \$10,500 to educate a child in Scott County and multiply that by 13 years of school per child. Supervisor Brickey stated that he would like to see a breakdown and how that affects Scott County.

Perry Carroll addressed the amount not collect by the Treasurer in delinquent taxes also.

Supervisor Jeter stated the reassessment went overboard. People are paying extreme amounts for property to move here. That causes our property values to increase. Supervisor Darrel Jeter suggested lowering the tax levy.

Supervisor Jeremy Herron stated that the personal property taxes will be going up, and there will be some money from the casino. Supervisor Herron stated that his taxes went up nine percent, and he did not go to the Equalization Board. Supervisor Herron suggested that the tax levy be lowered to \$0.61 and increase it to cover the deficit each year if need be. He also presented the idea of increasing the tax levy \$0.01 each year and lower it in six years if possible. Supervisor Herron suggested \$0.69 or \$0.70.

County Administrator Freda Starnes pointed out that the budget will be in the negative if the tax levy is less than \$0.76.

Supervisor Marshall Tipton pointed out that there is no waste or fat in the budget. He proposed \$0.77.

The County Administrator noted that the Board will have to raise the levy next year to cover increases such as the school.

Supervisor Stefanie Addington stated that we have to think about the future and set the county up for success.

Chairman Danny Mann reported that the financial advisors recommended leaving the levy at \$0.80, but it needs to be lowered for the people in Scott County.

Supervisor Jeremy Herron suggested looking at it on a yearly basis.

On a motion by Marshall D. Tipton, duly seconded by Darrel W. Jeter, this Board hereby sets the FY 2023 tax levy for Real Estate & Manufactured Homes at \$0.77.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

County Attorney Sally Kegley advised that the Virginia General Assembly made some changes to the Rules of Procedure effective September 1, 2022.

On a motion by Stefanie C. Addington, duly seconded by Selma G. Hood, this Board hereby amends the Rules of Procedure per the Code of Virginia effective September 1, 2022 (Said Rules of Procedure attached to the minutes of this meeting; Minute Book 33 Attachment No: 40).

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

Chairman Mann welcomed the Twin Springs Government Class and instructor Mr. Bays for attending the meeting and expressed appreciation for the letters written by the class regarding the need for mowing along the road leading to Twin Springs High School.

Government students Riley Gillenwater and James Craig read some of those letters.

Virginia Department of Transportation representatives Wade Belcher and Eric Hartless reported that they would take a look at Twin Springs Road. Virginia Department of Transportation has a Best Practice Manual that outlines how many times per year primary and secondary roads are mowed. It states that primary roads are to be mowed three times per year and secondary roads are to be mowed two times per year. Mowing just begun on secondary roads. If issues arise between those times, we can send someone out.

Mr. Hartless indicated that he would have that area mowed.

Mr. Belcher pointed out a number to call for road issues that is 1-800-for-road.

Supervisor Herron suggested sending the letters written by the Government class to the Governor, Delegate and Senator.

Mr. Bays stated that this turned out to be a great experience for the Government class.

Supervisor Herron responded that the power is in the people.

The Board thanked the Government class for attending the meeting.

The Board addressed issues with overgrown vegetation along roadways throughout the county.

Mr. Belcher explained that one contractor was the low bidder for three counties. Mowing is currently being done in Scott County. If there are areas with sight distance issues, Mr. Belcher encouraged the Board to call 1-800-for-road.

Supervisor Tipton addressed Virginia Department of Transportation offices that closed in Scott County.

County Administrator Freda Starnes reported that the Governor sent the letter regarding the Blueprint Plan to the Bristol District Office.

There was discussion about rural rustic roads. Mr. Belcher reported that the Virginia Department of Transportation has purchased a paving machine.

Supervisor Hood requested that any left-over asphalt be placed in front of her neighbor's home on Route 624. He worked for the Virginia Department of Transportation for years. The pavement ends within feet of his driveway, and he is left with all the dust.

The Board addressed various other road concerns.

Mr. Belcher offered to assist any way that he can with road issues.

Break: 10:10 a.m.

Reconvene: 10:30 a.m.

On a motion by Marshall D. Tipton, duly seconded by Jeremy P. Herron, this Board hereby adopts the following and authorizes up to \$300 from Board Contingency for the sign.

RESOLUTION 2022 - 20

BRIDGE NAMING ON ROUTE 65, SINKING CREEK HIGHWAY, IN SCOTT COUNTY AS THE "JACK D. COLLINS MEMORIAL BRIDGE"

WHEREAS, Jack D. Collins (1925 - 2009) lived most of his life in Scott County, a twin son of Robert and Olga Porter Collins, and

WHEREAS, Mr. Collins, just after his 18th birthday, during his senior year of high school was drafted into the U.S. Army and transported to Camp Lee, Virginia where he received his basic training, and

WHEREAS, because of Mr. Collins' mathematical skills, he was attached to the newly formed 87th Chemical Mortar Battalion. This battalion fought their way through the major battles of Europe from D-Day to Cherbourg, to the Hurtgen Forest, to the Battle of the Bulge, and

WHEREAS, Mr. Collins was awarded the following decorations and citations: American Theatre Ribbon, European-African-Middle Eastern Ribbon with one Silver Star, Good Conduct Medal, Distinguished Unit Badge, Bronze Arrowhead, and WWII Victory Medal, and

WHEREAS, after WWII, he married Barbara Gillenwater and they lived in Dungannon for the majority of their lives. Mr. Collins worked at Moss 1 Preparation Plant for Clinchfield Coal Company for over 35 years, and

WHEREAS, Mr. Collins served as a Dungannon Town Council member and also Mayor for over 25 years. During that time he was greatly influential in helping the town and residents complete various projects that enhanced the lives of everyone living in Dungannon and the surrounding area, and

WHEREAS, Section 33.2-213 of the *Code of Virginia* authorizes the Commonwealth Transportation Board (CTB) to give suitable names to state highways, bridges, interchanges, and

other transportation facilities and change the names of any highways, bridges, interchanges, or other transportation facilities forming a part of the systems of state highways, and

WHEREAS, Section 33.2-213 provides that the Virginia Department of Transportation shall place and maintain appropriate signs indicating the names of highways, bridges, interchanges, and other transportation facilities named by the CTB and requires that the costs of producing, placing, and maintaining such signs shall be paid by the localities in which they are located.

NOW, THEREFORE, BE IT RESOLVED, that Scott County, in accordance with the requirements of Section 33.2-213 of the *Code of Virginia*, does hereby request that the CTB name structure number 1038, located on Route 65, Sinking Creek Highway, in Scott County as the Jack D. (Don) Collins Memorial Bridge.

BE IT FURTHER RESOLVED, that Scott County agrees to pay the cost of producing, placing, and maintaining the signs calling attention to this naming.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

On a motion by Selma G. Hood, duly seconded by Michael K. Brickey, this Board hereby authorizes the County Administrator to proceed with an A&E procurement for demolition of two buildings on county property that are past their useful life and set a deadline for articles to be removed from those buildings by the Sheriff's Office and Circuit Court Clerk.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

On a motion by Darrel W. Jeter, duly seconded by Stefanie C. Addington, this Board hereby allows the County Administrator to proceed with a plan for abandonment or discontinuance of Fugate Hollow Lane.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

On a motion by Marshall D. Tipton, duly seconded by Michael K. Brickey, this Board hereby appropriates the following:

Animal Control

\$6,650.82 to 35100-3170 Animal Control – Special Services

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

On a motion by Marshall D. Tipton, duly seconded by Michael K. Brickey, this Board hereby appropriates the following:

Park/Golf Course

\$1,748.61 to 71110-6015 Park/Golf Course – Merchandise for Resale

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

On a motion by Marshall D. Tipton, duly seconded by Michael K. Brickey, this Board hereby appropriates the following:

County Administrator

\$159.45 to 12110-6008 County Administrator – Vehicle Equipment & Supplies/Fuel

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

On a motion by Marshall D. Tipton, duly seconded by Michael K. Brickey, this Board hereby appropriates the following:

Sheriff

\$1,530.83 to 31200-6009 Sheriff's Office – Repairs/Maintenance of Vehicles

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

On a motion by Marshall D. Tipton, duly seconded by Michael K. Brickey, this Board hereby appropriates the following:

Sheriff

\$1,065.00 to 31200-1100 Sheriff's Office – Salaries

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

On a motion by Marshall D. Tipton, duly seconded by Michael K. Brickey, this Board hereby appropriates the following:

Sheriff

\$81.47 to 31200- 2100 Sheriff's Office - FICA

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

On a motion by Michael K. Brickey, duly seconded by Jeremy P. Herron, this Board hereby accepts Sheriff's Office DCJS Byrne Justice Assistance Grant (JAG) Local Law Enforcement Block (LOLE) grant # FFY21 and establishes code for police supplies 4-1-31359-6010

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

On a motion by Michael K. Brickey duly seconded by Jeremy P. Herron, this Board hereby accepts Sheriff's Office DCJS School Resource Officers (SRO) FY23 Grant 23-927-C for continuation of 5 positions at \$312,347.00

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

On a motion by Michael K. Brickey, duly seconded by Jeremy P. Herron, this Board hereby accepts Sheriff's office DCJS School Resource Officers (SRO) FY23 grant 23-211-A for 2 positions at \$124,939.00

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

On a motion by Michael K. Brickey, duly seconded by Jeremy P. Herron, this Board hereby accepts Sheriff's Office DCJS School Resource Officers (SRO) FY23 grant 23-248-A for 2 positions at \$143,952.00.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

Tina Seay presented a letter requesting that Keith Wilson be reappointed to the Heart of Appalachia Board.

Heart of Appalachia Board (two-year term)

Darrel W. Jeter nominated Keith Wilson

On a motion by Marshall D. Tipton, duly seconded by Stefanie C. Addington, this Board hereby ceases nominations and, by acclamation, appoints Keith Wilson to a two-year term on the Heart of Appalachia Board beginning January 1, 2023 -December 31, 2024.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

County Administrator Freda Starnes presented the claims and related reports (Said reports being attached to the minutes of this meeting; Minute Book 33 Attachment No: 42)

On a motion by Stefanie C. Addington, duly seconded by Marshall D. Tipton, this Board orders that:

- (a) Social Services be allowed the sum of \$432,046.11 for voucher numbers 4080164 - 4080278 and payroll electronic tax payment.
- (b) General Fund be allowed the sum of \$1,316,742.86 for voucher numbers 2097474-2097476, 2097478 – 2097496, 2097498 – 2097511, 2097513, 2097515 – 2097522, 2097524, 2097526 – 2097571, 2097573 – 2097581, 2097583 – 2097591, 2097593 – 2097594, 2097595 – 2097601, 2097603 – 2097609, 2097611 – 2097614, 2097616 – 2097621, 2097622 – 2097628, 2097630 – 2097636, 2097638 – 2097655, 2097658 – 2097671, 2097672 - 2097695 and payroll electronic tax payment.
- (c) Fund 2 Concealed Weapon be allowed the sum of \$149.00 for voucher number 2097572 and payroll electronic tax payment.
- (d) Fund 11 be allowed the sum of \$2,768.82 for payroll electronic tax payment.
- (e) Fund 42 be allowed the sum of \$127.93 for voucher numbers 2097477 and 2097496 and payroll electronic tax.

- (f) Fund 35 be allowed the sum of \$332,641.62 for voucher numbers 2097497, 2097514, 20977582, 2097592, 2097602, 2097629, 2097630, 2097656, 2097657 and payroll electronic tax.
- (g) Fund 55 be allowed the sum of \$42,650.33 for voucher numbers 5511280 - 5511294
- (h) Fund 45 be allowed the sum of \$1,984.83 for voucher number 2097615 and payroll electronic tax.
- (i) Fund 16 be allowed the sum of \$390.57 for voucher numbers 2097561 and 2097610.
- (j) Fund 17 be allowed the sum of \$5,713.54 for voucher numbers 2097512, 2097523, and 2097525 and payroll electronic tax payment.
- (k) Fund 9 be allowed the sum of \$239.81 for voucher number 2097637.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

County Administrator Freda Starnes announced a bridge dedication ceremony for Kenny Fannon on Saturday, September 17, 2022. Ms. Starnes pointed out that the Daniel Boone Waste Site will be closed due to paving; however, the dumpsters will be moved to Virginia Department of Transportation property off U.S. Highway 23. In addition, she requested that two members of the Board of Supervisors volunteer to serve on the Courthouse Facilities Committee.

Supervisors Selma Hood and Michael Brickey volunteered to serve on the Courthouse Facilities Committee.

Public Works Director Bill Dingus announced that a Household Hazardous Waste collection day will be held at the flea market parking lot in Gate City, Virginia on September 17, 2022.

Economic Development Director John Kilgore gave an update (Said update being attached to the minutes of this meeting; Minute Book 33 Attachment No: 43).

Supervisor Darrel Jeter thanked the staff and mentioned trash along roadways in the Yuma area and inquired if inmates are picking up trash.

County Administrator Starnes replied there is no one to take the inmates out to pick up trash. The Litter Control Officer does not take them out. It has to be a deputy.

Public Works Director Bill Dingus replied that the Litter Control Officer administers the Assign-A-Highway Program and a lot of them pick up trash near their home since they don't have a driver's license. S.C.O.T.T. Service takes crews out for trash pick-up.

Supervisor Jeter advised that the Frisco Yard area is bad.

Supervisor Stefanie Addington added that Highway 72 is bad as well.

Mr. Dingus offered to contact the Litter Control Officer to see if he has someone in those areas, and S.C.O.T.T. Service will be contacted as well.

Supervisor Marshall Tipton thanked the staff. He suggested that a larger flag be flown at the courthouse and a flag pole that would accommodate the National flag along with the State flag be installed at that site.

Supervisor Jeremy Herron expressed appreciation to everyone. He went on to say that the Board needs to stay on track with the Virginia Department of Transportation changes in Richmond. He suggested that the letters written by the Twin Springs High School Government Class be forwarded to Governor Youngkin, Delegate Kilgore, and Senator Pillion and invite them to visit this area. He added that we are not going to have roads in five to six years if something is not done. There have been thousands of gravel and dirt ruin property and pasture land.

On a motion by Jeremy P. Herron, duly seconded by Stefanie C. Addington, this Board hereby directs the County Administrator to forward letters to Governor Youngkin, Delegate Kilgore, and Senator Pillion that were written by the Twin Springs High School Government students requesting that the Virginia Department of Transportation mow the road leading to

Twin Springs High School that is over-grown with weeds and creating unsafe driving conditions (Said letters being attached to the minutes of this meeting; Minute Book 33 Attachment No: 41).

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

Supervisor Michael Brickey expressed appreciation to the staff for all they do and Deputy Thacker for attending the meetings each month.

Supervisor Selma Hood expressed appreciation to the county staff.

Supervisor Stefanie Addington expressed appreciation to the staff and all the citizens that attended the meeting today. She went on to say that the Board does feel like punching bags at times, and it sometimes gets frustrating. It is hard knowing the historical records on the taxes. The Board is not shooting in the dark. Every decision the Board makes is with eyes wide open. Supervisor Addington stated that she wants to help and make a difference. She expressed appreciation to the staff for all they do.

Supervisor Danny Mann expressed appreciation to the staff and citizens who spoke at the meeting today. He went on to say that it has been tough going through two Boards of Equalization. The people who came today had legitimate concerns. They are on fixed incomes trying to pay their taxes. He went on to say that he does not know where this ends.

On a motion by Darrel W. Jeter, duly seconded by Marshall D. Tipton, this Board hereby enters into closed session pursuant to Virginia Code Section 2.2-3711 A.5 Prospective Industry being in the Weber City area.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood and Stefanie C. Addington.

Voting nay: None.

On a motion by Marshall D. Tipton, duly seconded by Michael K. Brickey, this Board hereby returns to open session.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood and Stefanie C. Addington.

Voting nay: None.

On a motion by Marshall D. Tipton, duly seconded by Stefanie C. Addington, this Board hereby gives the following:

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Scott County Board of Supervisors has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provision of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the Scott County Board of Supervisors that such closed meeting was conducted in conformity with Virginia Law;

NOW, THEREFORE, BE IT RESOLVED that the Scott County Board of Supervisors hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the Scott County Board of Supervisors.

Voting aye: Darrel W. Jeter
Marshall D. Tipton
Jeremy P. Herron
Danny P. Mann
Michael K. Brickey
Selma G. Hood
Stefanie C. Addington.

Voting nay: None.

On a motion by Michael K. Brickey, duly seconded by Selma G. Hood, this Board hereby approves a county moral obligation in the amount of six million dollars for a prospective company, Project Delta, working in conjunction with the Economic Development Authority and Tobacco Commission.

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.

Chairman Danny P. Mann adjourned the meeting until October 5, 2022 at 8:30 a.m.

Chairman

Clerk