

1.1 General

An internal part of the County's accounting system is the policies and procedures applicable to purchasing supplies, equipment, materials and commodities for all departments, offices, and employees of the County. The County Administrator is responsible for managing County purchases. The School Board and Department of Social Services are performing all purchasing for their activities independently of the Board of Supervisors.

Chapter one of this manual identifies the purpose of this manual and identifies the types of procurements subject to this manual and the Virginia Public Procurement Act. This chapter also defines terms used throughout the manual.

Greene County follows the Virginia Public Procurement Act (the "Act") which is cited as Virginia Code Section 2.2-4300 et seq. The purpose of the Act is to detail policies and procedures pertaining to the procurement of goods and services by a county from nongovernmental vendors. The Act requires that goods and services be procured through a competitive process that is fair, impartial, and accessible to all qualified vendors.

1.2 Procurements Subject to this Manual

- General: This manual applies to all public contracts with nongovernmental vendors for the purchase or lease of goods, services, insurance, or construction.
- Procurements using nongovernmental funds: This manual applies to the procurement of goods and services by the County even if private funds are used for the procurement.
- Procurements by lease: This manual applies to goods and services acquired by lease agreement

1.3 Definitions

The following terms and words are used in this manual and are defined below:

- Best Value – the overall combination of quality, price, and various elements of required.
- Bidder – person or company who submits a bid in response to an invitation to bid.
- Business – any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.
- Competitive Sealed Bidding – method of vendor selection which includes an invitation to bid, public notice of the invitation to bid, evaluation of bids received, and award.

- Construction – building, altering, repairing, improving, or demolishing any structure or roadway. Also includes any excavating, grading or similar work on real property.
- Construction Management Contract – A contract in which a party is retained to coordinate and administer contracts for construction services for the benefit of the owner.
- Contract modification – A written alteration to a contract signed by all parties bound by the modification.
- County attorney – county attorney or assistant county attorney for the Board of Supervisors.
- Day – calendar day, unless otherwise stated.
- Goods – All material, equipment, supplies, printing and automated data processing hardware and software.
- Invitation for bids – document issued by the purchasing agent as part of the competitive sealed bidding procedure which solicits bids for goods or services.
- Non-professional service – services not specifically identified as professional services.
- Offeror – person who submits a proposal in response to a request for proposals.
- Professional services – worked performed in the area of accounting, actuarial services, architecture, land surveying, landscape architecture, law, or professional engineering.
- Public employee – any person employed by the County, including elected officials.
- Purchasing agent – the person designated by the Board of Supervisors to serve as the purchasing agent.
- Request for proposals – a document issued by the County to solicit proposals for goods or services. It will include the general needs of the County and the factors that will be used to evaluate the proposal.
- Responsible bidder or offeror – a bidder or offeror that has the capability to perform fully the contract requirements and the business integrity and reliability to assure a good faith performance, and when required has been pre-qualified.
- Responsive bidder - a bidder that has submitted a bid that conforms in all respects to the invitation to bid.

1.4 Authority and Duties of a Purchasing Agent

Code of Virginia Section 15.2-414 defines a County Purchasing Agent as follows:

- a. The County shall have a County Purchasing Agent. The County Administrator shall, unless and until the Board selects a County Purchasing Agent or designates some other officer to act as County Purchasing Agent, exercise the powers conferred and perform the duties imposed upon the County Purchasing Agent.
- b. The County Purchasing Agent shall, subject to such exceptions as the Board may allow, make all purchases for the County and its departments, officers, and agencies.
- c. The County Purchasing Agent may also transfer supplies, materials, and equipment between, and sell surplus equipment, materials and supplies not needed by, the departments, officers, and agencies of the County.
- d. With the approval of the Board, the County Purchasing Agent may establish specifications or standards for equipment, materials, and supplies to be purchased and inspect deliveries to determine their compliance with such specifications and standards.
- e. All purchases and sales by the County Purchasing Agent shall be made in accordance with Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 and under such rules and regulations consistent with Chapter 43 of Title 2.2 as the Board provides.
- f. The County Purchasing Agent shall have charge of such storage rooms and warehouses of the County as the Board provides.

1.5 Severability

If any provisions of this Resolution or any application thereof to any person is held to be invalid, such invalidity shall not affect other provisions of this document and to this end the provisions of this document are declared to be severable.

2.1 General Determination

Department heads must first determine what type of procedure applies to the procurement. This will depend on the expected cost and the type of goods and/or services that are being procured.

The purchasing agent should then classify what goods or services are being procured.

Goods: Goods are generally procured through the competitive sealed bidding process.

Nonprofessional Services: These are generally procured by the competitive sealed bidding procedure, however the competitive negotiation procured may be used for some services.

Professional Services: Services to be performed by an independent contractor within the field of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering, must be procured by the competitive negotiation procedure for professional services, unless otherwise exempted by law.

The County Administrator is authorized to execute contracts with vendors for goods and services less than \$50,000, as long as the funds were previously budgeted and appropriated by the Board of Supervisors. The execution of contracts with vendors for goods and services greater than \$50,000 requires Board of Supervisors approval.

a. Goods or nonprofessional services: Costs not to exceed \$2,500:

The County of Greene, Virginia permits, through its Purchasing Agent or the specified designees, purchases for goods and services up to \$2,500.00 per item without any purchase requisition or purchase order.

b. \$2,500 to \$20,000.00:

For purchases between \$2,500.00 and \$20,000.00, there shall be three (3) verbal quotations obtained and submitted with the requisition. These verbal quotations shall be documented by the department head and reference the date, company name, and quotation given. Additional information may include the company's availability and qualifications. Further, if a department head reaches out and leaves a voicemail and/or sends an email and receives no response from a vendor, that may be sufficient for one of the quotations needed.

c. Over \$20,000.00-\$50,000:

For purchases between \$20,000.00 and \$50,000.00, there shall be three (3) written quotations obtained and submitted with the requisition. These quotations shall be

documented by the department head and reference the date, company name, and quotation given. Additional information may include the company's availability and qualifications. Further, if a department head reaches out and leaves a voicemail and/or sends an email and receives no response from a vendor, that may be sufficient for one of the quotations needed.

d. Over \$50,000

For purchases over \$50,000.00 the county shall use the competitive sealed bidding process described in Section 2.7 of this policy and in compliance with Virginia Code Section 2.2-4302.1. The County may also issue a Request for Proposals, as described in Section 2.8 of this policy, that details the goods or services to be procured and the factors that will be used in evaluating the proposals as is detailed in Virginia Code Section 2.2-4302.2.

2.2 Advance Preparation of Requisition: Purpose: Authorized Department Personnel:

All County departments and offices shall submit a requisition for purchase (Exhibit 1) for any item totaling \$2,500.00 or more. Every requisition for purchase shall be prepared well in advance of the need for the goods or services so the Purchasing Agent shall be able to obtain competitive prices and still allow ample time for delivery. The department head or the duly authorized representative shall complete the requisition for purchase. Department heads or their representatives are authorized to obtain written quotes.

2.3 Preparation in Duplicate: Numbering:

The requisition for purchase shall be prepared in duplicate and numbered by each department. The *original* shall be sent to the Purchasing Agent. The *copy* shall be retained by each department in their files.

2.4 Responsibility of Originating Department: Specification of Vendors: Final Choice of Vendor:

The originating department shall be responsible for resolving any questions regarding the anticipated purchase before the purchase requisition is forwarded to the Purchasing Agent. All requests shall specify suggested vendors, however it shall be noted that the Purchasing Agent reserves the right to make the final choice of a vendor.

2.5 Required Contents and Indications:

- a. The requisition for purchase shall be dated in the right corner. The department making the requisition shall be filled in. When the department has more than one division within it, the

division for which the requisition is prepared shall also be noted. The account to which the purchase is to be charged shall be indicated on the requisition. The County's chart of accounts contains the accounts used by each department. The account number shall be proper and have a balance sufficient to cover the purchase before the requisition is processed. The shipping address on the requisition shall be as specific as possible. This address shall include a street address and the room number, if applicable. The date the goods or services are required shall be included on each requisition. This shall always be a specific date and not simply marked "soon" or "rush."

b. The details of the goods or services requisitioned shall be clearly stated on the purchase requisition. The quantity shall be indicated as well as the units in which the goods are ordered (i.e., pounds, dozen, each). From past experience, the using department shall include the estimated price for each unit and the three written quotes if purchases are estimated to cost between \$20,000.00 and \$50,000.00. If this happens and all prices exceed the maximum allowable, the requisition may be processed no further. Finally, the total price is extended by multiplying the number of units by the price per unit.

c. The department head or his authorized representative shall certify on each requisition that the items requested are necessary and that funds are available for the purchase by comparing requisitions with periodic budget comparison reports furnished to department heads by central accounting. If funds are not sufficient, a transfer between budgeted accounts shall be submitted prior to the requisition.

2.6 Split Purchasing:

Occasionally, an office makes several purchases at one time under \$2,500.00 in order to avoid going through the purchase order procedure. This practice, known as split purchasing, is detrimental to the goal of exercising proper fiscal control over County expenditures. If this practice becomes the rule rather than the exception, the remedy that shall be employed shall be to require purchase orders for all expenditures, regardless of an amount, or suspending authority to purchase.

2.7 Competitive Sealed Bidding:

a. Invitation to Bid

The County shall issue a written Invitation to Bid containing specifications and contractual terms related to the procurement. The Invitation to Bid shall be posted on the County website, the Department of General Service' website (eva.virginia.gov), and another outlet that may be appropriate.

Public notice of the Invitation to Bid shall be at least 10 days prior to the date of receipt for said bids.

The County shall publicly open and announce all bids received.

Evaluation of bids will be based on the requirements set forth in the Invitation to Bid and may also include value analysis, workmanship, delivery and other factors that may be helpful in determining acceptability.

The County will award to the lowest responsive and responsible bidder.

b. Bid Quotations: Required Contents:

The Purchasing Agent shall request bid quotations in writing to include the following information:

1. The department or office requesting bids.
2. The specific deadline for the submission of sealed bids which includes the date, time and place. All sealed bids are to be clearly marked on the envelope.
3. The amount and type of bond required, if any.
4. The description of the items or work to be done.
5. Completion date.
6. Trade-in information, if applicable.
7. Conditions of delivery.
8. Notification of requirement that all bidders shall submit signed statements of non-collusion with other bidders on the bid in question.
9. Place where complete plans and specifications can be obtained or reviewed.

c. Procedure for Awarding or Rejecting Bids:

Bids shall be opened and read at the specified time and place at a meeting open to public. Bids not received on time shall be returned unopened. Any or all bids may be rejected. All bids are formally awarded by the Greene County Board of Supervisors or by the Purchasing Agent in accordance with Board directives.

d. Evaluation of Bids

1. Bids will be evaluated based on the requirements set forth in the Invitation to Bid. This may include cost, qualifications of the bidder, timing of delivery, and any other relevant criteria set out in the Invitation to Bid.

e. Lowest Responsive and Responsible Bidder

1. The contract will be awarded to the lowest responsive and responsible bidder.
2. When terms and conditions dictate, awards may be made to more than one bidder.

f. 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 Purchasing Agent may negotiate with the apparent low bidder to obtain a contract price within available funds provided notice of such possibility was contained in the invitation to bid

g. Award for Tie Bids:

1. In the case of a tie for the low bid, other things being equal, if only one (1) such bidders is located in Greene County, then preference shall be given to such bidder.
2. In the case of a tie for the low bid, and assuming that subsection 1 above is inapplicable, other things being equal, if only one (1) of such bidders is a resident in the state, or has bid goods, service, or construction to be produced in the state, then preference shall be given to such bidder.
3. In the case of a tie for the low bid, and assuming that subsections (1) and (2) above are inapplicable, the Purchasing Agent shall invite such tie bidders to resubmit written bids below the original bid, and award shall be made to the lowest responsive bidder who rebids. Any verbal price quote shall be confirmed in writing.
4. In the event that none of the foregoing provisions of this section resolve the tie, the Purchasing Agent may award the contract by lot to one (1) of the tied bidders, or may cancel the solicitation and rebid.

2.8 Process for Competitive Negotiation

The County shall issue a written request for proposals indicating what is to be procured along with a general description. The request will include the method that will be used in evaluating the proposal.

Public notice will be posted at least 10 days prior to the date set for receipt of proposals. The County will post notice on its website, the Department of General Services website (eva.gov), and any other outlet that may be appropriate.

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. Negotiations shall then be conducted with each of the offerors selected. Price may be considered, but is not the sole determining factor.

For professional services, the County shall engage in discussions with two or more offerors deemed qualified. There may be several interviews of the offerors and offerors will be encouraged to explain qualifications that related to the proposed project. The County will negotiate terms and conditions with the offeror selected.

If a contract that is satisfactory to the County cannot be negotiated with the initial preferred offeror, the County may discontinue negotiations with the initial preferred offeror and pursue negotiations with another offeror.

2.9 Exemptions:

Bidding is not required for the following (when the process is in compliance with the *Virginia Public Procurement Act*):

a. Cooperative Procurement

Conditions for use

The County may enter into a cooperative agreement under Sections 2.2-4304 and 2.2-4343 of the Virginia Code for the purposes of combining requirements to increase efficiency or reduce administrative expenses.

All cooperative contracts entered into or used by the County shall be based on procurement principles contained in this Resolution.

The County may participate in or purchase goods and services through contracts awarded by other governmental bodies when it is determined by the Purchasing Agent that such use in the best interest of the County and the contract is based on competitive principles.

b. Sole source items.

The competitive bidding and negotiation procedures are excused when it is determined that the goods or services are practicably available from a sole source.

Determining a sole source – If a department needs good or services that the department believes are available only from a sole source, the department shall state in writing a description of the goods or services, the reason it believes the goods or services are only available from a single vendor, and an explanation of efforts made to reach this conclusion.

Based on this information the purchasing agent will make a written determination that this is the only vendor for this purpose.

c. Procedures for Emergency Purchases:

Instances may arise in which the defined purchasing system does not secure the needed goods or services within the necessary time frame.

The definition of an emergency would include a breakdown or imminent potential breakdown in essential services, or circumstances under which goods or services are needed for immediate use in work which may vitally affect the health, safety and welfare of the public, or which may interrupt the normal operations of County services as well as other appropriate circumstances. Emergency procedures may only be used to purchase what is necessary to cover the requirements of the emergency. Subsequent procurement needs shall be obtained using normal purchasing procedures described herein.

1. Emergency Procedures During Normal Business Hours:

The user department shall immediately notify the Purchasing Agent, who shall either supply or purchase the needed items directly, or shall authorize the using department to do the same (if the purchase exceeds the minimum stated in Purchase Limit Requirements, Section A). For purchases under the minimum, the user department may purchase the needed items directly.

2. Emergency Purchase Procedures Outside Normal Business Hours:

The user department shall directly purchase the needed items, and the department head shall forward to the Purchasing Agent a completed purchase requisition, delivery ticket, receipt or other documentation with a brief written description of the circumstances regarding the purchase.

3. Determination of an Emergency:

If the County's director of emergency services declares a local emergency or the governor's office declares a state of emergency, pursuant to Virginia Code § 44-146.21 the formalities of the Virginia Public Procurement Act to not apply.

If a formal state of emergency is not declared, a department shall state in writing a description of goods and services needed, a reason the department believes an emergency exists, and the immediate need for the goods or services. The County Administrator shall approve the exigent circumstances that dictate that an emergency exists where no official state of emergency is declared.

d. Other Goods and Services Exempt from Formal Competitive Procedures

The Virginia Procurement Act (Section 2.2-4300 et. seq.) exempts the following from the competitive sealing bidding and sealed negotiation procedures, even though the expected cost may exceed \$100,000:

- Legal Services
- Litigation related services (for example expert witnesses)

- Insurance purchased through an association – if insurance is purchased through an association of which the County is a member, and that association is maintained for the purpose of developing relationships with other public bodies. The purchasing agent must make a determination that competitive bidding is not fiscally advantageous to the County.
- Goods produced or services performed by the disabled – if goods/services are produced or performed under the supervision of the Virginia Department for the Visually Handicapped or by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.
- Extension of an existing contract – the purchasing agent 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.

e. Special Situations

During the normal course of County government operations a number of special situations arise when purchasing goods or services. They are considered to be special for a variety of reasons such as infrequency of occurrence, technical considerations or need for uninterrupted supply. The County has anticipated and identified most of these circumstances for which applicable procedures have been developed. The following section of this chapter addresses the purchasing rules for special situations.

f. Equipment Repairs:

For equipment not covered by a service agreement, the responsible department shall order the repair after evaluating the situation to make sure the cost of the repair shall not exceed the replacement cost of the equipment. If the estimated cost of the repair exceeds \$500.00, the purchase limit requirements previously established apply. It is the responsibility of the using department to ascertain that funds are available before authorizing the work.

g. Professional Services:

The County may elect to follow the Virginia Public Procurement Act for professional services. In that case, the County does not require purchase requisitions for professional services not expected to exceed the limits as established. The Purchasing Agent or the designee requires specific approval and a purchase order or contract. Services in excess of the limits shall be obtained through “competitive negotiation” as set forth by the Act.

A purchase order is a formal offer by the County to purchase goods or services from a supplier or vendor for future delivery. The purchase order is an offer and may be withdrawn by the County at any time up until it is accepted in writing or by the beginning of performance in the case of services.

3.1 Issuance Procedure:

Once the certified requisition for purchase has been received by the Central Purchasing Department, Central Purchasing shall verify that the unencumbered balance exists sufficient to meet the obligation. Upon confirmation of the availability of funds, the actual purchasing process begins. The requisition is verified for accuracy and compliance with the dollar limits set forth in the purchasing policy. Additionally, Central Purchasing shall commence or supervise the formal bidding process, if applicable. Finally, after the optimal vendor is determined, a Purchase Order (Exhibit II) is prepared from the County's accounting software system. The Purchasing Agent or the appointed designee shall sign all purchase orders.

The County currently operates an accounting software system. This accounting system contains a purchase order module that automatically processes the County purchase orders. The purchase orders can be added, changed, posted, liquidated and printed. The purchase order number is automatically assigned by the system. To the fullest extent producible, the County shall produce all the purchase orders through the accounting software system.

Distribution of Copies:

1. After processing the purchase order through the Accounting System, the original copy shall be mailed directly to the vendor by Central Purchasing.
2. The second copy (yellow) shall be sent back to the department for their records.
3. The third copy (pink) shall be retained by Central Purchasing.
4. The fourth copy (goldenrod) shall be sent back to the department making the requisition. This copy is to be matched with the invoice and returned to Accounting with the payment voucher to allow for processing of payment.

When the goods are actually received by the department, the items and quantities shall be checked against the purchase order. After items have been checked in, the department head or the department representative shall sign the receiving copy of the purchase order to indicate the receipt of the goods. This copy shall then be forwarded to Accounting with the proper payment voucher.

SPECIAL NOTE:

In the event any major stockholder or officer of the vendors company is an employee or elected official of the County of Greene, the purchase order is null and void, unless accompanied by an official letter of approval signed by the County Administrator.

3.2 Functional Responsibility for Purchase Order System Flow:

The following is a description of functional responsibility for purchase order flow within the system:

Department:

The department matches the receiving copy of the purchase order with the copy of the requisition for purchase. After preaudit, the copies are forwarded to the Accounting Clerk where they are matched with the invoice and Accounting's copy of the purchase order.

Accounting Clerk:

At this point, the receiving copy of the purchase order is compared in detail, line by line; with the vendor invoice to verify the County was billed only for those items actually received. A check is made that the prices on the purchase order and invoice are correct. Any discrepancies noted in these checks are resolved before further processing. The Clerk then reviews the information provided on the payment voucher. Subsequent to verification by the Finance Director, checks shall be prepared for the required signatures.

Accounting Office:

The Accounting Office has responsibility for maintaining the permanent copy of vendor invoice and receiving report. Accounting may, at any time, print a schedule of outstanding purchase orders for review and audit by the Purchasing Agent. This schedule shall show the vendor name and number, purchase order number, date and amount, and the account number charged. This shall show the total number and amount of the outstanding purchase orders.

In cases when all items on a purchase order are not received simultaneously, the department shall make a duplicate of the purchase order. The copy shall be marked "Partial Receiving" with vendor tickets attached, signed by the department head, and forwarded to Accounting with the payment voucher.

Generally, in order to minimize the possibility of simple transcription errors, judgment errors, or intentional defalcations, assigned duties and responsibilities for the various steps within a system shall be assigned to different individuals. This basic premise of good internal control gives integrity to the system and information obtained there from. When this separation of duties does not exist, the integrity of the system is compromised. The information from a compromised system shall be more closely scrutinized for accuracy before it can be relied upon.

4.1 Responsibility:

The Board of Supervisors has the responsibility of the disposition of surplus equipment. County department heads shall notify the County Administrator of all property under their management deemed to be surplus. Usually, this notification takes place on an annual basis. Equipment and other County tangible personal property may be deemed surplus if it is no longer required, if it is not economically feasible to operate or repair, or if it is obsolete. It is the responsibility of each department to periodically review its equipment and determine that which is surplus. Then, the department head should notify the County Administrator in writing of property which shall be disposed of.

4.2 Review of Items by the County Administrator:

The County Administrator should review items that are submitted by the various departments. If the equipment may be of some use to other departments within the County, arrangement shall be made to have the items transferred. The remaining equipment shall be disposed of by public auction or sealed bids.

All property deemed to be surplus by the County Administrator shall first be made available to other departments or agencies of Greene County.

If surplus property is not needed by any other county department or agency, such property may be offered to a County volunteer fire company or rescue squad on a first- come first served basis.

If, after notification of the availability of such surplus property, none of the above listed departments or agencies indicates a need for the property, such property shall become available for purchase by the general public as indicated below, provided however that in the event that the cost of disposing of such property is anticipated to equal or exceed the expected sale value of the property, then the property may be disposed of in such manner as the County Administrator may direct.

4.3 Notice of Sale: Solicitation of Sealed Bids: Disposition of Proceeds:

The County shall sell, transfer, trade, or otherwise dispose of personal property belonging to the County which has become obsolete, unusable, or surplus or which is being transferred in order to be leased by the County under a lease purchase agreement.

The County Administrator shall give public notice of the disposal sale, listing conditions for purchase and type of articles available. All sales will be final. Terms will be cash, money order, certified checks, or cashier's check.

Notice of sale shall be published in a newspaper of general circulation at least five days prior to sale if the equipment is over \$500.00 in value. Any property exceeding \$5000.00 (or such other

amounts that shall be authorized by Section 15.2-1236(B) of the *Code of Virginia*) shall require solicitation of sealed bids.

The County Administrator will supervise all sale of property, turn the proceeds over to the County Treasurer, and report the sale to the Board of Supervisors. The County Administrator is responsible for the disposition of all property; none shall be disposed of without contacting the Administrator.

County employees are not eligible to buy surplus County personal property that is disposed of in accordance with this section, unless such property is disposed of by public auction or other form of competitive sale for an amount not to exceed \$500.

5.1 Authority to Debar or Suspend

After ten days written notice to the person involved and reasonable opportunity for that person to be heard by the Purchasing Agent, the Purchasing Agent, after consulting with the County Attorney, may debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. After consultation with the County Attorney, the Purchasing Agent may suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding six months. When debarment or suspension occurs, such debarment or suspension shall be considered to be just cause for cancellation of any existing contracts held by the person or business debarred or suspended. The causes for debarment or suspension include:

- a. Conviction for commission of a criminal offense relating to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- b. Conviction under state or Federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;
- c. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- d. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
- e. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- f. Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a County contractor including debarment or suspension by another governmental entity for any cause in this Resolution; and for violation of the ethical standards set forth in this Resolution.

5.2 Decision to Debar or Suspend

The Purchasing Agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial or administrative review.

5.3 Notice of Decision

A copy of the decision required by § 5.2 (Decision to Debar or Suspend) shall be mailed or otherwise furnished immediately to the debarred or suspended person, with a copy to the County Administrator.

5.4 Finality of Decision

A decision under § 5.2 (Decision to Debar or Suspend) shall be final and conclusive, unless the debarred or suspended person within 10 days after receipt of the decision protests the decision in writing to the County Administrator. The County Administrator shall issue a decision in writing within ten days after receipt of the protest stating the reasons for the action taken. This decision shall be final unless legal action as provided for in § xxxx of this Resolution is taken within ten days of the County Administrator's decision.

CHAPTER SIX

Ethics in Public Contracting

6.1 Purpose

The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to the State and Local Government Conflict of Interests Act (Sections 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Section 18.2-498.1 et seq.), 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 as amended. The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

6.2 Definitions

The words defined in this section shall have the meanings set forth below throughout this article. "Immediate family" shall mean spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

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

"Pecuniary interest arising from the procurement" shall mean a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

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

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

6.3 Proscribed Participation by Public Employees in Procurement Transactions

Except as may be specifically allowed by subdivisions A 2, 3 and 4 of §2.2-3112, no public

employee having official responsibility for a procurement transaction shall participate in that transaction of behalf of the public body when the employee knows that:

- (a) The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement transaction; or
- (b) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or
- (c) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- (d) 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 the bidder, offeror or contractor.

6.4 Solicitation or Acceptance of Gifts

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

6.5 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 Greene County, unless the employee or former employee provides written notification to the Board of Supervisors prior to commencement of employment by that bidder, offeror or contractor.

6.6 Gifts by Bidders, Offerors, Contractors or Subcontractors

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

6.7 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.

6.8 Kickbacks

No contractor or subcontractor shall demand or receive from any of his suppliers or 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. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order, and ultimately borne by Greene County and shall be recoverable from both the maker and the recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

6.9 Purchase of Building Materials, etc., from Architect or Engineer Prohibited

No building materials, supplies or equipment for any building or structure constructed by or for Greene County shall be sold by or purchased from any person employed as an independent contractor by Greene County to furnish architectural or engineering services, but not construction for such building or structure; or from any partnership, association, or corporation in which such architect or engineer has a personal interest as defined in § 2.2-3101 of the Code of Virginia. No building materials, supplies or equipment for any building or structure constructed by or for Greene County shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by Greene County 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. The provisions of this section shall not apply in the case of an emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

6.10 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 the same to contain any false, fictitious or fraudulent statement or entry.

6.11 Certification of Compliance Required; Penalty for False Statements

a. Greene County requires 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 the Code of Virginia.

b. Any public employee required to submit a certification as provided in subsection (A) of this section who knowingly makes a false statement in such certification shall be punished as

provided in § 2.2-4377.

6.12 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 employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.