

Town of Windsor

Memorandum

February 7, 2023

TO: The Honorable Mayor and Town Council

FROM: William G. Saunders, IV, Town Manager *WGS IV*

SUBJECT: Purchasing Policy Review

Background

The Town of Windsor’s purchasing policy is dated and in need of revision. The Town Manager presented a draft of the revised policy to the Town Council at their January 10, 2023 meeting.

Specifics

While the Town of Windsor is exempt from many elements of the Virginia Public Procurement Act (VPPA) due to its population being under 3,500, it is still a framework that should be an aspirational goal. In that light, the VPPA was used as a guide, also used as reference were procurement policies from two other Virginia towns with populations of 8,098 and 8,693.

The current policy has become more restrictive over time due to increases in the Consumer Price Index, with the \$5,000 limit on administrative purchases at the time of its 1999 adoption, being comparable to over \$9,000 in today’s dollars. Further, the current policy requires a formal Request for Proposals (RFP) or Invitation for Bid (IFB) at that same \$5,000 level.

The current draft increases the administrative purchase level, but phases in administrative purchases with increased scrutiny as the purchase amounts increase; the highest levels requiring a Purchase Order, which must be signed off on by the Treasurer to ensure available funds in that line item and the Town Manager. The implementation of Purchase Orders is new to the Town of Windsor.

The proposed draft also increases the level of purchase requiring a formal RFP or IFB. The posting of RFPs and IFBs require much administration, which can be burdensome and costly for a small municipality; however, this increase does not preclude the initiation of a RFP or IFB for a smaller purchase if it would be advantageous to the town.

Enclosures

- Draft Purchasing Policy
- Current Purchasing Policy

Recommended Motion

Adopt revised policy



TOWN OF WINDSOR

PROCUREMENT POLICY AND PROCEDURES

Draft 11/01/2022
Adopted ...

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I. Purpose

The policies contained herein have been developed pursuant to the Virginia Public Procurement Act of the Code of Virginia (VPPA). The VPPA has certain mandatory provisions and allows for the use of certain optional policies provided they are adopted in writing for the governing body and are based on competitive principles. Further, there are exemptions to provisions of the VPPA for localities with populations under 3,500, such as the Town of Windsor [Per Virginia State Code Section § 2.2-4343(A)(9)]. These policies are intended to provide the framework to respond to user needs, strengthen the public confidence in the integrity of public purchasing and bring the most favorable price for purchase of needed goods, services and construction by the Town.

II. Policy

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 unless otherwise authorized or exempted by law or regulation.

III. Applicability

These policies and procedures apply to all contracts for procurement of goods, services, insurance and construction entered into by the Town involving any expenditure of public funds except those specifically exempted herein.

IV. Responsibility

1. The Town Manager shall exercise overall responsibility for the conduct of the Town's procurement system.
2. The Town Manager serves as the Chief Purchasing Officer (CPO) for the Town. The CPO shall have the power and duty to:
 - a. Keep current, observe and enforce the policies and procedures adopted herein;
 - b. Ensure that procurement transactions be conducted in a fair and impartial manner, that competition be promoted and that the best interests of the Town be served;
 - c. Implement procedures that ensure that all goods, services or construction purchased are properly inspected and conform to the purchase order, contract and/or specifications;

- d. Ensure that appropriate personnel are trained and possess copies of this Procurement Policy Manual; and
 - e. Participate in state and regional cooperative purchasing programs and organizations when advantageous to the Town.
3. Department Heads of the Town shall be responsible for the following:
- a. Assuring compliance by the personnel of their departments with the procurement policies herein and procedures implemented to comply with such policies;
 - b. Assuring that procurements are made for authorized purposes and within the budgetary limits approved by the Town Council;
 - c. Ensure that all goods, services or construction purchased are properly inspected and conform to the purchase order, contract and/or specifications;
 - d. Exercising delegated procurement responsibility within the limits and procedures established by this regulation and procedures implemented by the CPO; and
 - e. Assuring that appropriate personnel are trained and possess copies of this Procurement Policy Manual.
4. Failure to follow the provisions of these policies and established procurement procedures shall be grounds for disciplinary action to include termination.

V. Contract Approvals

1. Only the Town Manager or his designee is authorized to sign contracts which bind the Town for the procurement of goods, services, insurance or construction.
2. Contracts shall be processed as follows:
 - a. The using department or the company awarded contract shall draft the contract documents and forward them to the CPO for review;
 - b. After review, the CPO or the Town Clerk shall forward them to the Town Attorney if needed for approval as to legal form; and,
 - c. The contract is then returned to the Town Clerk to secure the signature of the Contractor, and the Town Manager or his designee.

VI. Small Purchase Policy

The competitive pricing methods set forth below shall be followed for purchases not expected to exceed the limits set in the VPPA. ***Purchases over \$5,000 require a purchase order which must be approved by the Town Treasurer and the Town Manager. Purchases over \$20,000 must be approved by the Town Council.***

1. ***Purchases less than \$2,500*** must be authorized by a Department Head or his/her authorized representative. Competition shall be sought for these purchases wherever practicable. Purchases less than \$2,500 and up to the limit on the cardholder's account may be accomplished through the use of a Town Credit Card.
2. ***Purchases greater than \$2,500 and less than \$5,000*** This level of purchase shall be made on the open market on the basis of terms most financially advantageous to the Town and requires at least two (2) attempted telephone, catalog, electronic or written price quotes, unless such is not practicable, and must be authorized by a Department Head or his/her authorized representative and the Town Manager. Verbal quotes may be obtained provided all pertinent information is properly documented.
3. ***Purchases greater than \$5,000 and less than \$25,000*** This level of purchase shall be made on the open market on the basis of terms most financially advantageous to the Town and requires at least three (3) telephone, catalog, electronic or written attempted price quotes, unless such is not practicable, and must be authorized by a Department Head or his/her authorized representative and the Town Manager. Verbal quotes may be obtained provided all pertinent information is properly documented.
4. ***Purchases between \$25,000 - \$50,000*** This level of purchase shall be made on the open market on the basis of terms most financially advantageous to the Town and requires at least four (4) attempted telephone, catalog, electronic or written quotes unless such is not practicable, and must be authorized by a Department Head or his/her authorized representative and the Town Manager. Verbal quotes may be obtained provided all pertinent information is properly documented.
5. ***Professional services up to \$50,000*** This level of purchase shall be made on the open market and shall be accomplished through the use of at least three (3) attempted written or electronic quotations with emphasis on qualifications, experience, suitability and timeliness. *Cost shall not be the sole determining factor.* The CPO or his/her authorized representative will obtain these quotations.
6. The Town Manager may waive the requirement for formal solicitations up to \$80,000.

7. Nothing in this Policy shall prevent the use of competitive sealed bidding or competitive negotiation in procurements under the VPPA limit, or limits imposed by this policy, if deemed appropriate by the CPO.
8. Orders may not be arbitrarily split so as to constitute a small purchase.
9. Proper documentation of verbal quotes includes: item description; date and time of quotation; company name; quoted unit and extended price; and name of authorized representative providing the quotation.

VII. Large Purchases and Procedures For Competitive Sealed Bidding and Competitive Negotiation

Large purchases are defined by this policy as any purchase whereby goods, services other than professional services, non-transportation-related construction, and professional services are estimated to cost over \$50,000; and transportation-related construction is estimated to cost over \$25,000. This level of service requires that a formal Invitation For Bid (IFB) or Request For Proposal (RFP) be issued.

1. **Goods and non-professional services over \$50,000** require a formal Request for Proposal (RFP) or Invitation for Bid (IFB) if competition is not practicable or fiscally advantageous.
2. **Professional services over \$50,000** require a formal Request for Proposal (RFP). *Cost shall not be the sole determining factor.*

The Town of Windsor is exempt from some requirements of the Virginia Public Procurement Act; however, it follows its procedures for competitive sealed bidding and competitive negotiation. All IFB's or RFP's must be advertised for a minimum of 10 days as required by law.

Required Components of Formal Solicitation Documents

1. Public Notice (Newspaper ad required for RFP).
2. List of vendors contacted directly (if applicable)
3. Solicitation of Small Businesses and Minority-Owned Businesses in cooperation with the Virginia Department of Small Businesses and Supplier Diversity.
4. Detailed specifications and requirements for goods and services
5. Qualifications required of bidders/offers; description of prequalification process (if applicable).
6. Factors Considered in Evaluating Bids or Proposals including whether a numerical scoring system will be used in evaluation of proposal. If numerical

- scoring system is used, the point values assigned to each of evaluation criteria shall be included in Request for Proposal.
7. Bid Form (IFB)
 8. Instructions to Bidders/Offerors
 9. Special Terms and Conditions (unique contract requirements); specifications
 10. General Terms and Conditions (general requirements for all contracts)
 11. Public Notice of Intent to Award or Notice To Award

VIII. Exceptions To Above

1. **Emergency Purchases** – An emergency is a situation in which (1) an official emergency has been declared by the Mayor, the Governor, the General Assembly, or the US Government; (2) or, there is an immediate threat to the public health, safety or welfare exists; (3) or, immediate action is required to protect, or preserve public property; (4) or, there is an existing situation where Town work forces are stopped in progress for the lack of equipment, supplies, or tools and the resultant delay will run costs up significantly to the Town. Justification for emergency procurements shall be outlined on the Purchase Order Form.

Purchasing Policy requires that the 'open market' process be used in case of emergency purchases. That means, if it is reasonable, and if time permits, quick turnaround informal shopping should take place. If not then immediate action to protect the Town, its citizens and property must be priority and supersedes this requirement.

2. **Sole Source** – Upon a determination in writing that there is only one source practicably available for that which is procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. Justification for sole source procurements shall be outlined on the Purchase Order Form.
3. **Government to Government** - The Procurement Act and Town policy governs purchases between the public and private sectors. It does not govern transactions between two or more governmental entities, with the exception that those explained in the next paragraph. As a federalist government when contracting with another agency, we are technically doing business with ourselves. Therefore, there are no competitive requirements and we are free to obtain goods or services from another jurisdiction.

The General Assembly has raised concerns, after receiving complaints from merchants that the government should not compete with the private sector. Therefore, on the Commonwealth's Department of Planning and Budget's Commercial activities list, that requires public notice if the value of a purchase from another governmental entity is greater than \$25,000, except from public

institutions of higher education, which are exempt.

4. **Cooperative Procurements** - There are many national, state and local contracts that have the necessary language to allow the Town to ride existing contracts let by other governmental jurisdictions. To qualify under procurement policy, these contracts need to have been awarded with the clear intent that other jurisdictions may join the contract and that the Contractor agrees to extend all terms and pricing to the Town. The buyer should use caution and read those contracts to ensure that the contract is eligible to use and that it is advantageous to the Town. For example, in some cases the contract requires that a written modification to the entities agreement naming the Town as an additional member must be formally added. Some do not require any formal actions beyond the Town citing the contract, but others have language that allows us to use the contract only with their specific approval in every instance.
5. **State Contracts** – No competition is required. Contractor and contract number must be verified on the Department of General Service central electronic procurement website.
6. Other exceptions or exemptions as outlined in the Virginia Public Procurement Act; specifically, Section § 2.2-4343(A)(9).

IX. Ethics in Public Contracting

Article 6. Ethics in Public Contracting

§ 2.2-4367. Purpose. -- The provisions of this article supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 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.

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.

§ 2.2-4368. Definitions. -- As used in 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 State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

“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 governing bodies.

§ 2.2-4369. 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 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; or
4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

§ 2.2-4370. 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.

§ 2.2-4371. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors 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 **(1)**, 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

(1): No officer or employee of the Town of Windsor or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of \$100 or any combination of gifts with an aggregate value in excess of \$100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is a person, organization, or business who is or is seeking to become a party to a contract with the local agency of which he is an officer or an employee. Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition. Violations of this policy are subject to disciplinary action per the Personnel Manual.

§ 2.2-4372. 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 shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

§ 2.2-4373. 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.

§ 2.2-4374. 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.

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.

C. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

§ 2.2-4375. 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 who knowingly makes a false statement in the certification shall be punished as provided in § 2.2-4377.

§ 2.2-4376. 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.

§ 2.2-4377. 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.

X. SWAM Program

The Department of Small Business and Supplier Diversity

The Department of Small Business and Supplier Diversity (DSBSD) is a state agency dedicated to enhancing the participation of small, women- and minority-owned businesses in Virginia's procurement process. The agency administers the Small, Women- and Minority-owned Businesses program under Virginia's SWaM Procurement Initiative. DSBSD also administers the Service Disabled Veterans and Employment Services Organization Program

Small, Women-Owned, and Minority-Owned (SWaM) Firms

SWaM firms are small businesses and businesses owned and operated by women, minorities, or service disabled veterans organizations. In order to be classified as a SWaM business, vendors must be certified as such by DSBSD.

- **Small Business**
- For the purposes of classification and reporting, a small business enterprise is an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. For the purpose of the SWaM Program, the definition of small business enterprise shall be interpreted to include all certified woman-owned and minority-owned businesses.
- **Women-Owned Business**
- For the purposes of classification and reporting, a women-owned business is defined as a business concern which is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more women, and whose management and daily business operations are controlled by one or more of such individuals.
- **Minority-Owned Business**
- For the purposes of classification and reporting, a minority-owned business is defined as a business concern which is at least 51 percent owned by one or more minorities or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals.

Service Disabled Veterans (SDV)

SDV firms are small businesses those that are owned by Service Disabled Veterans who are certified as such by the Virginia Department of Veteran Services.

- For the purposes of classification and reporting, a service disabled veteran-owned business is defined as a business concern which is at least 51 percent owned by one or more service disabled veteran or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more service disabled veteran and whose management and daily business operations are controlled by one or more of such individuals.

Employment Services Organization (ESO)

ESO means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department of Aging and Rehabilitative Services.

Town of Windsor's Commitment to SWaM, SDV and ESO Firms

Diversity in expenditures is strongly supported by Procurement Services. SWaM, SDV and ESO businesses are solicited and encouraged to participate in the procurement activities of the Town of Windsor and records are maintained documenting such solicitation efforts and participation. The Town of Windsor also encourages its contractors to provide for the participation of SWaM, SDV and ESO firms through partnerships, joint ventures, subcontracts and other contractual opportunities. User departments at the Town of Windsor are encouraged to support procurement diversity using their delegated purchasing authority. Small, women and minority-owned businesses, service disabled veteran-owned and employment services organizations are encouraged to establish business relationships with user departments that may require products and or services from their firm.

Ways Town of Windsor Provides Business Opportunities to SWaM, SDV and ESO Firms

Solicitation Requirements

In and IFB or RFP process, if bids are solicited directly from any potential contractors, bids must also be solicited directly from at least some businesses selected from the list made available by the Department of Small Business and Supplier Diversity. (22.4302.1(2) & 2.2-4302.2(2).

Advertisement Requirements

All formal RFP's must be advertised/posted in the:

- The Smithfield Times or another local paper
- Town of Windsor website
- eVA

All IFBs must be advertised in the:

- Town of Windsor website
- eVA

Goal Setting, Monitoring, and Reporting

The Town of Windsor recognizes and acknowledges the importance of small, women-owned, minority-owned, service disabled veteran-owned businesses and employment services organizations and the challenges they face to compete in the open market. The Town is committed to cooperating with prevailing law as it contributes to the preservation and strengthening of such businesses.

For those contracts in which prime contractors have made SWaM, SDV and ESO commitments, the Town will record those SWaM, SDV and ESO businesses in a database as a means to track and identify such businesses. The prime contractor will be required to provide information regarding expenditures to second-tier SWaM, SDV and ESO businesses that were utilized on the specific contract. The prime contractor must provide the name of the second-tier firm, business classification of the firm (e.g. minority-owned), and the dollar amount paid. The reported information will be compared with the prime contractor's commitment to determine whether the prime contractor is fulfilling its contractual obligations.

Prime contractors will calculate expenditures with SWaM, SDV and ESO businesses on a monthly basis and report to the Virginia Department of Small Business and Supplier Diversity (DSBSD) on a quarterly basis.

Payments are withheld for prime contractors who fail to report information on a timely basis (until the information is reported). Prime contractors that do not meet their SWaM, SDV and ESO commitments may be held in contractual default.

XI. General Terms and Conditions

Probation Period:

There shall be a 90 day probation period starting from time of execution of the contract. During this time the Town may cancel the contract at any time for any reason. Verbal and written notification with cause for cancellation will be provided to the contract provider.

Cancellation:

After the probation period, the Town may cancel and terminate any resulting contract for poor contractor performance, in part or in whole, without penalty, upon 60 days written notice to the contractor. Any contract cancellation notice shall not

relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

Public Notice of Award:

Public notice of award will be posted on eVA VBO (eva.virginia.gov) and on the Town website (www.windsor-va.gov).

Payment and Invoices:

All invoices shall have a payment of net 30 days.

Contractual Disputes:

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.

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.

A contractor may not invoke administrative procedures meeting the standards of § 2.2-4365, if available, or institute legal action as provided in § 2.2-4364, 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 (§ 2.2-4363). 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.

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 § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

Applicable Laws and Courts:

This solicitation and any resulting contract shall be governed in all respects by the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the Circuit Court of Isle of Wight County. The parties are encouraged

to resolve any issues in controversy arising from the award of this contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures as provided for in Section 2.2-4366 of the Code of Virginia (1950, as amended). The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

Anti-Discrimination:

The Contractor is prohibited from engaging in employment discrimination and must comply fully with the provisions of the Code of Virginia, Section 2.2-4311 (1950, as amended). The Town of Windsor does not discriminate on the basis of race, sex, age, handicap, national origin or faith/religious affiliation.

By submitting their proposals/bids, offerors/bidders certify to the Town that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and Section 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the 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. See Code of Virginia, § 2.2-4343(1)(E).

In every contract over \$10,000, the provisions in (1) and (2) below apply:

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, national origin, age, disability, or any 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 contract, 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 these requirements.

(d) The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Town may terminate the affected part of this contract for breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.

(e) In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.

2. The Contractor will include the provisions of (1) above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Sub-Contractor or vendor.

Nondiscrimination of Contractors:

A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, or disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract 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.

Ethics in Public Contracting:

By submitting their bids/proposals, bidders/offerors certify that their bids/proposals are made without collusion or fraud and they have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer or subcontractor in connection with their proposal/bid, and they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services

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

The bidder/offerer shall identify any actual or potential conflicts of interest that exist, or which may arise if the offeror is recommended for award, and propose who such conflicts might be resolved.

By his/her signature on the documents submitted, each bidder/offeror attest that his/her agents and/or employees, to the best of his/her knowledge and belief, have not in any way colluded with anyone for and on behalf of the offeror, or themselves, to obtain information that would give the offeror an unfair advantage over others, nor has he/she colluded with anyone for and on behalf of the bidder/offeror, or itself, to gain any favoritism in the award of this contract.

Immigration Reform and Control Act of 1986:

By submitting their proposals/bids, offerors/bidders certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

Debarment Status:

By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

Antitrust:

By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Town of Windsor all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and Town of Windsor, relating to the particular goods or services purchased or acquired by Town of Windsor under said contract.

Default:

In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Town of Windsor, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town may have.

Drug-Free Workplace:

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 Sub-Contractor 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, 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

Payment Requirements:

All contracts awarded by any agency of local government require the following action to be taken by contractors:

- a. Within seven days after receipt of amounts paid for work performed by the subcontractor under that contract:
 - (1) 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
 - (2) notify the agency 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 subcontractor may contact the contracting agency concerning non-payment and non-notification by the prime contractor. The subcontractor has to show proof that it has not been paid by providing supportive document.
- b. If an individual contractor, provide social security number in order to receive payment.
- c. If a proprietorship, partnership or corporation, provide federal employer identification number.

- d. Pay interest to subcontractors on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the agency for work performed by the subcontractor under that contract, except for amounts withheld as allowed in (2) above.
- e. Interest shall accrue at the rate of one percent per month.
- f. 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.

NOTE: A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Town of Windsor. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

Background Checks:

The Town of Windsor reserves the right to request sufficient information from any and all contracted service providers to allow law enforcement background checks on employees working on Town property and public right-of-ways

Qualifications of Contractor:

The Town may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder/offeror to perform the services/furnish the goods and the bidder/offeror shall furnish to the Town all such information and data for this purpose as may be requested. The Town reserves the right to inspect bidder/offeror's physical facilities prior to award to satisfy questions regarding the bidder/offeror's capabilities. The Town further reserves the right to reject any bid/proposal , if as the evidence submitted by, or investigations of, such bidder/offeror fails to satisfy the Town that such bidder/offeror is properly qualified to carry out obligations of this contract and to provide the services and/or furnish the good contemplated therein.

Licensing:

Contractor shall maintain all license and certifications required by applicable federal, state, and local government entities for provision of the goods and services provided under this contract.

Testing and Inspection:

The Town reserves the right to conduct any test/inspection if may deem advisable to assure goods and services conform to the specifications.

Assignment of Contract:

A contract shall not be assignable by the contractor in whole or in part without written consent by the Town.

Subcontractors:

The Contractor's attention is called to the requirement that not more than fifty percent (50%) of the work shall be subcontracted and the amount of any subcontractors proposed by the contractor in excess of ten percent (10%) of the proposal price shall be identified.

Availability of Funds:

It is understood and agreed between the parties herein that the Town shall be bound hereunder only to the extent of the funds or which may hereafter become available for the purpose of this agreement.

Authorization to Conduct Business in the Commonwealth:

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 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the *Virginia Public Procurement Act* 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. 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.

W-9 Request for Taxpayer Identification Number and Certification:

The Town of Windsor is required by IRS regulations to issue Forms 1099 to qualifying companies and individuals. The attached W-9 forms must be submitted with your bid/proposal package to ensure compliance with all IRS reporting obligations.

PROCUREMENT PROCEDURES

TOWN OF WINDSOR

This operating procedure applies to contracts (verbal and written) for the procurement of services, goods, insurance, and construction entered into by the Town of Windsor for the purchase of same by town personnel.

The town manager is designated the primary purchasing agent of the town, and all purchases for the town will be done by him or his authorized representative. He is authorized to purchase supplies, as needed, at a cost not to exceed five thousand dollars (\$5,000) per project and to authorize payment for such purchases.

The town may award single and term contracts not to exceed five thousand dollars (\$5,000) without competitive sealed bidding or competitive negotiation as defined in Virginia Code, section 11-37. However, the following are levels of purchases and the actions recommended at each level.

1. For purchases where the cost is estimated at less than one thousand dollars (\$1,000), the town manager shall seek competition for purchases wherever practicable.
2. For purchases where the cost is estimated between one thousand dollars (\$1,000) and five thousand dollars (\$5,000), the town manager shall obtain either written or oral quotations, whichever is deemed most

feasible, from more than one (1) source, unless such is not practicable.

A memo or note shall be made of all oral transactions.

3. For purchases estimated to be in excess of five thousand dollars (\$5,000), the town manager shall prepare a more formal request for proposal (RFP) which, as a minimum, outlines:
 - a. Specifications of the goods or services to be performed.
 - b. A request for the breakdown in pricing if both materials and services are required.
 - c. Insurance requirements where applicable.
 - d. A deadline for the submission of bids.
 - e. The name, address, and phone number of the town manager.
 - f. A statement that the town has the option to accept or reject any or all bids.

Responses to an RFP shall remain unopened until a time designated in the RFP. Upon opening they will be evaluated by the manager, and when warranted, a committee appointed by the mayor will assist the manager in making recommendations to Council. Selection will be made by town council and based upon the manager's (and/or council members') evaluation to determine the lowest responsive and responsible bidder. All bids or invoices in excess of five thousand dollars (\$5,000) shall be submitted to the town council for approval prior to payment.

4. For acquisitions or selection of professional services in excess of five thousand dollars (\$5,000), where competitive negotiation is used, procedures as outlined in Virginia Code, section 11-37 will be followed.

5. General Provisions

a. Bid Negotiations: Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, unless the bid from the lowest responsible bidder exceeds available funds. In that event, the town may negotiate with the apparent low bidder to obtain a contract price within available funds. Negotiations of this type may be undertaken only under conditions and procedures described in writing and approved by the town prior to issuance of the invitation to bid.

b. Instances of a Single Vendor: Upon determining that there is only one source practicably available for the goods or services to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiations. A memo documenting the basis for determining that there is only one practicable source shall be included in the contract file.

c. Emergency Procurement: No capital equipment and/or improvements in excess of five thousand dollars (\$5,000) shall be purchased or contracted for by the town manager prior to approval by the town council except in situations where the immediate purchases of capital equipment are necessary to insure and

provide for the continued, uninterrupted operation of the town's water system or other essential services. In such instances, the town manager shall consult with the mayor and/or vice mayor and shall notify the council members of such capital purchases as soon as may be practicable. A memo outlining the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

- d. Bid Rejection or Cancellation: An invitation to bid, a request for proposal, any other solicitation, or any and all bids or proposals, may be cancelled or rejected. The reason for cancellation or rejection shall be made part of the contract file. However, a bid or proposal may not be cancelled or rejected solely to avoid awarding a contract to a particular responsive and responsible bidder.

Adopted January 13, 1999, Patricia M. Moran