

TOWN OF VIENNA, VIRGINIA PURCHASING ADMINISTRATIVE PROCEDURES

SECTION 1. PURPOSE AND APPLICABILITY

The Purpose of the Purchasing Administrative Procedures is to implement the Town's Procurement Ordinance, adopted by Town Council on November 2, 1998. The provisions hereof supplement, but do not supersede, other provisions of law including but not limited to, the Virginia Public Procurement Act (VPPA-Chapter 43 of the Code of Virginia), the Virginia Conflict of Interests Act and the Town's Purchasing Ordinance. The terms of these procedures shall apply to all contracts for goods, services, insurance and construction that are funded in whole or in part by public funds except as otherwise specified by the Purchasing Ordinance or by state and federal law.

When the procurement involves the expenditure of Federal assistance or contract funds, the procurement may be conducted in accordance with any applicable mandatory federal law and regulation which is not reflected in these procedures.

SECTION 2. POSITION OF THE PROCUREMENT OFFICER

The Procurement Officer is authorized to be the public purchasing official of the Town of Vienna. The Procurement Officer shall work under the direction and supervision of the Director of Finance and shall enforce applicable state law and the provisions of the Town's purchasing ordinance and procedures.

Authority and Duties of the Procurement Officer

The Procurement Officer shall be responsible for the procurement of goods, services, insurance and construction for the Town, as well as the management and disposal of goods determined to be surplus to the Town in accordance with the Town's Purchasing Ordinance.

In accordance with these procedures and in compliance with the Ordinance, and subject to the supervision of the Director of Finance, the Procurement Officer shall:

- a. Purchase or supervise the purchasing of all goods and services.
- b. Shall be responsible for sale, trade or disposal of surplus property.
- c. Establish and maintain programs for specification development, contract administration, inspection and acceptance, in cooperation with the User Department.
- d. Negotiate and Issue contract renewals.

Under the supervision of the Director of Finance, the Procurement Officer may establish and maintain purchasing procedures and requirements that enforce compliance with applicable state law and the provisions of the Ordinance.

The Procurement Officer shall be authorized to award any contract not in excess of \$75,000.00. The award of any contract in excess of this amount, shall require approval of the Town Council.

SECTION 3. PURCHASER/USING DEPARTMENT RESPONSIBILITIES

Purchasers, defined as those with authority to purchase goods and services and also traditionally defined in the Policy as “Using Departments”, shall work closely with Purchasing in developing their purchase requirements.

Using Departments shall comply with all Policy requirements, specifically Appendix A, Ethics in Public Contracting, during all purchasing transactions.

Planning is critical in the procurement process. Using Departments shall prepare acceptable technical specifications that characteristically define the quality of goods or services needed to perform a specific function, and shall provide evidence of funding i.e., appropriated budget code, at the time of solicitation development. Using Departments shall allow the necessary time for Purchasing to obtain bids and for the vendor to deliver.

Using Departments shall keep any and all information not subject to the Freedom of Information Act, confidential from vendors in order to protect the integrity of fair and open public competition. Employees may not release prices obtained during informal delegated bid processes to competing vendors which might then create an unfair bid advantage; however, informal bid results are open to public review after award of a contract or purchase order.

SECTION 4. BASIC PURCHASING WORKFLOW

All departments must submit a *Purchase Requisition* for purchases of \$2,000 or more. The requisition should be prepared well in advance of the need for the goods and services to allow ample time for delivery.

The Requisition must be entered into Munis for a Purchase Order to be generated. The originating department is responsible for resolving any questions regarding the anticipated purchase before the Requisition entered. If the vendor providing the lowest estimate is not selected for purchases under \$75,000, sufficient written justification must be provided supporting vendor selection.

The details of the goods or services requisitioned should be clearly stated in Munis. The description, also referred to as specifications, is the most important part of the requisition. It is imperative that goods/services are accurately described where at all possible.

The quantity should be indicated as well as the units in which the goods are ordered, e.g., pounds, dozen, each. The using department shall include the price for each unit and attach the required quotes.

Attachments required to be submitted with the requisition:

- Quote(s) from the vendor
- Approved Council Agenda Item (over \$75,000)
- Waiver Form (if applicable)
- If using the cooperative procurement method: a copy of the contract and cooperative procurement clause or rider clause from the jurisdiction

Once the Requisition has been approved by all appropriate parties, a Purchase Order is prepared and issued. All Purchase Orders must be signed by the procurement officer or his/her designee.

Things to Keep in Mind:

- Obtaining a quote from an internet website or catalog received in the mail, while appearing compliant with the three-quote method, is not the ideal way to ensure competitive pricing. Contacting the vendor directly and indicating that you are seeking their most competitive price as part of an open market bid process is the recommended approach. ***A no-bid is not considered valid as one of the three required quotes.***
- Quotes are normally only valid for a short period of time; be sure to submit your requisition within the required timeframe or obtain an updated quote if the one in hand has expired. At times vendors will submit a Quote with Invoice written at the top. Please ensure they do not submit quotes that appear to be invoices, or the requisition may be construed to be for a confirming purchase order.
- If the Using Department anticipates placing multiple orders during a fiscal year or specific time period against a three-quote method, they must clearly communicate this in their original specification and request so all bidders are aware of how long their quoted prices must remain valid, for example, *"Bidders shall provide pricing that can remain valid from 7/1/19- 6/30/20"*. State the length of time your three-quote method is valid for on your requisition.
- Bidding in the public sector prohibits the Purchaser from manipulating one bidder against another; Using Departments are prohibited from revealing one source's pricing to another during the open-market-bid process. Once a purchase order is processed, however, all pricing becomes public information and Purchasers may share the three-bid form with bidders to encourage more competitive bidding in the future.

SECTION 5. BID THRESHOLDS AND PROCEDURES



BID THRESHOLDS

<u>COST</u>	<u>REQUIRED QUOTES</u>
\$2,000 to \$4,999	1 Quote
\$5,000 to \$29,999	3 Quotes; Awarded or Rideable Contract
\$30,000 or More	Competitive Sealed Bids/Proposals; Awarded or Rideable Contract

A Purchase Order is required for purchases of \$2,000 or more. (Certain exceptions apply and are listed on page 18)

For Purchases between \$5,000 and \$29,999, a No Response from a vendor is not considered a quote. Three or more quotes must be obtained.

All purchases of \$75,000 or more must have Town Council approval. This includes one-time purchases over \$75,000 and purchases totaling \$75,000 or more, per vendor, per department, during the Fiscal Year.

Purchases shall not be sub-divided to circumvent the purchasing procedures. Splitting of orders is prohibited.

A. PURCHASES OF LESS THAN \$1,999

STANDARD PROCEDURES

A requisition is not needed for purchases less than \$1,999 unless required by the vendor or desired by the Department.

It is understood that the Department will seek the maximum value for each expenditure and that no excessive or unnecessary purchases will be made.

B. PURCHASES OF \$2,000 to \$4,999

STANDARD PROCEDURES

The Department obtains at least one quote from a Vendor. Departments should use discretion and seek additional competition whenever there is reason to believe that a quote is not a fair and reasonable price.

The Department enters a requisition into Munis with any required quotes, contract or agreement.

C. PURCHASES OF \$5,000 TO \$29,999

The Department prepares written specifications/requirements and verifies that funding has been appropriated in the current year budget. Competitive procurement from the following sources is required:

- Written quotes from at least three (3) vendors – a No Response or No Bid from a vendor is not considered a quote
- Using a contract that has been competitively bid and awarded by the Town (\$5,000-\$29,999)
- Cooperative Procurement: Riding another jurisdiction's contract that the Town has been authorized to use. (\$5,000-\$29,999)

The Department enters a requisition into Munis with the required quotes, contract information, request for waiver, or cooperative contract. Workflow will go through the Town Manager for purchases over \$10,000.

D. PURCHASES OVER \$30,000 – NO EXISTING CONTRACT OR COOPERATIVE PROCUREMENT

Department completes the Procurement Checklist (PC) form and submits it, with specifications of the item to be procured along with any required attachments, to the Procurement Officer. The Director of Finance certifies availability of funds based on the information provided in the PC form. The form identifies: 1) the estimated amount of the procurement; 2) the source of funds; 3) method of procurement (IFB/RFP); and 4) the items being procured. Upon certification of fund availability, the Director of Finance returns the form, with specifications, to the Procurement Officer to issue a formal IFB or RFP.

Solicitation Preparation

The Procurement Officer reviews the PC form submission to ensure completeness of specifications and adds other appropriate information necessary for a complete bid document. With the assistance of the user department, the Procurement Officer prepares a complete bid document and tabulation/evaluation forms to record bid/proposal results. In the case of proposals, the department must assign a list of criteria in which the award will be made and submit weights for each of the assigned criteria, as well as identify the Evaluation Committee members to the Procurement Officer.

A draft copy of the IFB/RFP is sent to the department and to the Town Attorney for approval. Once signatures are obtained, the final solicitation is completed and issued.

General Solicitation Process

Purchasing solicits sealed bids from a minimum of six (6) firms that can provide the commodity/ service being procured. The bid notification is advertised on the eVA website, is posted in a designated public area of the Town and is posted on the Town's website. Bid documents are issued for no less than ten (10) days prior to the date set for receipt of bids/proposals. Pre-bid and pre-proposal meetings are held if determined necessary. The Procurement Officer issues any addenda to amend the bid document.

Methods of Competitive Procurement

Invitation for Bids

The Procurement Officer conducts a formal bid opening for *sealed* bids received. Faxes or emails will not be accepted. To be considered, bids must be received at the location and by the time and date specified in the bid document. "Time" is incumbent on the time verified by the Procurement Officer. A representative from the user department witnesses the bid opening. The Procurement Officer determines if the response submitted by the apparent low bidder is "responsive". The department determines the "responsibility" of the bidder.

Request For Proposals

Proposals containing original signatures must be received by the date and time specified on the RFP. Faxes and emails will not be accepted. Evaluation Committee members must sign a Conflict-of-Interest Disclosure form prior to being given the proposals for evaluation. The proposals are then distributed to the Evaluation Committee members who have been pre-selected by the department head to independently evaluate each Offeror's proposal against the evaluation criteria stated in the RFP.

Scores are tabulated by the Procurement Officer to determine ranking of Offerors. After this process has been completed, interviews are conducted as determined necessary. After the interviews, contract negotiations may begin with the highest ranked Offeror in accordance with the Town's Procurement Ordinance regarding small purchase procedures for professional and nonprofessional services. Any required contract or agreement may be drafted by the Department, or the Offeror selected and shall incorporate or reference the terms of the solicitation.

Council Recommendation

The Procurement Officer submits a summary of the solicitation process to the department head to include in the award recommendation to the Town Council for award over \$75,000. The award recommendation shall include any required contract or agreement. The award recommendation shall be based on the VPPA for the method of procurement of the commodity/service being procured. *(See definitions for Competitive Sealed Bidding and Competitive Negotiations.)* The department may forward a copy of the bid document to the Town Clerk's office for public inspection, if the document is too cumbersome to include in the report to Town Council.

Council Consideration

The Town Council considers the award recommendation, appropriates the required funding, if not already specifically appropriated for that purpose in the current year budget, and awards the contract on the basis of the VPPA. The Town Council authorizes their designee to execute any contract or agreement required beyond the Town's standard purchase order contract.

Execution and Award of Contract

Any required contract or agreement is given a final review by the Town Attorney and executed by the designee of the Town Council.

Insurance and Bonding Requirements / Issuing the Purchase Order

The User Department ensures that the successful bidder/offeror has met all insurance and bonding requirements and submits an approved requisition with a copy of the executed contract or agreement to the Purchasing Office to issue a purchase order.

All requisitions for purchases over \$75,000 must have an approved Council Agenda item attached.

SECTION 6. UNAUTHORIZED PURCHASES

Utilizing public funds for purchasing involves stringent oversight. Three common areas of potential misuse are:

- Confirming purchase orders issued after-the-fact, not in advance as required
- Employees signing contracts or agreements
- Accidentally or deliberately splitting purchases to circumvent Purchasing

Detailed explanations of these issues are provided below.

Funds Encumbered in Advance of Purchase: in accordance with Virginia Statute 15.2-1238, *Except in emergency, no order for delivery on a contract or open market order for supplies, materials, equipment or contractual services...shall be awarded until the chief financial officer shall have certified that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order.* Certification is accomplished during the encumbrance process (or during the payment process for low-dollar purchases), requiring purchase orders in advance of receipt of goods or services as applicable by the dollar level of the purchase. Confirming or after-the-fact purchase orders are non-compliant with the Procurement Policy.

Employees Prohibited from Signing Contracts Employees are not authorized to sign or execute any contract or agreement between the Town of Vienna and a vendor when the vendor presents a contract for signature with their own terms and conditions. All such contracts shall be reviewed by the Town Attorney and signed by the Town Manager or his designated Director. Contracts of this kind signed by an employee are invalid. Contract template documents that have previously been approved by the Town Attorney do not need review prior to signing. Any and all changes to the template documents shall be reviewed and approved by the Town Attorney. If a Purchase Order is to accompany the contract to the vendor, the contract(s) must be approved by the Town Attorney and signed by the Town Manager prior to being submitted to Purchasing.

Split Purchases: Splitting a purchase requirement to lower the individual portions of the purchase below the threshold limits where a more restrictive level of bidding is required is prohibited.

SECTION 7. EMERGENCY PURCHASES

Instances may arise in which the defined purchasing system will 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 Town services, as well as other appropriate circumstances. Emergency purchase procedures do not apply to situations arising from poor planning, overlooked requirements or inadequate forecasting. Emergency Purchases will require a waiver form. The waiver form must be approved by the Procurement Officer, the Town Attorney, the Finance Director,

and the Town Manager.

- *During Normal Business Hours* - The user department shall immediately notify the Procurement Officer, who will either supply or purchase the needed items directly or will authorize the using department to do the same (if the purchase exceeds \$2,000). Competitive procurement should be utilized as is practicable under the circumstances.
- *Outside Normal Business Hours* - The user department will directly purchase the needed items, and the department head will forward to the Procurement Officer a completed Requisition for Purchase (if the cost exceeds \$2,000) using competitive procurement as is practicable under the circumstances. For all emergency purchases, the delivery ticket, receipt or other documentation with a brief written description of the circumstances regarding the purchase must be forwarded to the Procurement Officer by the next business workday. The Town Manager may authorize an extension to this due date in extreme emergencies.



TIPS TO PURCHASERS:

Because publicly posted emergency purchases are subject to protest, the Purchasing Department stringently reviews all documentation and justification provided from the Using Department

SECTION 8. SOLE SOURCE

Sole source procurement is made when there is only one source practicably available for the goods or services required. In a sole source situation, competition is not available or there are no practicable alternatives. This differs from a proprietary purchase where the product required is manufactured by only one company but is sold through distributors and competition between them can be obtained. Upon a determination in writing, on the Request for Waiver Form, by the Department Head or his/her designee that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without a competitive procurement process. The writing shall document the basis for this determination and validate that the purchase is in the best interest of the public. A letter from the vendor/manufacturer indicating the product is sole source, must be attached to the waiver. Each fiscal year must have a new sole source justification to verify that it is still truly a sole source purchase.

If the Sole Source request is for purchases over \$75,000, the approved Town Council Agenda item must be attached to the requisition.



TIPS TO PURCHASERS

Sole source purchases can still be negotiated but negotiation power is reduced by restricting the purchase to only one source; consult the Purchasing Department if assistance is needed in making that determination.

Because publicly posted sole sources are subject to protest, the Purchasing Department stringently reviews all documentation and justification provided from the Using Department.

Verifying sole sources each fiscal year may alert the Using Department to changes in company names through acquisition and the potential release of proprietary rights resulting in a more competitive bidding, not sole source environment.

SECTION 9. SPECIAL SITUATIONS

During the normal course of Town 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 Town 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.

A. Equipment Repairs:

For equipment not covered by a service agreement, the responsible department will order the repair after evaluating the situation to be certain the cost of repair will not exceed the replacement cost of the equipment. The responsible department will submit a Purchase Requisition if the estimated cost of repair exceeds \$2,000. A minimum of one (1) vendor estimates must be obtained between \$2,000 to \$4,999. A minimum of three (3) vendor estimates must be obtained between \$5,000 to \$29,999.

B. Vehicle Repairs:

Vehicle repair covered by insurance reimbursement is subject to estimate requirements as established by the insurance carrier. All other vehicle repair, not covered by insurance, should be performed at the Town of Vienna Vehicle Maintenance Division. If repairs are extensive and must be outsourced, then departments must submit a Purchase Requisition to the Purchasing Department and provide two (2) repair estimates.

C. Information Technology Hardware/Software Purchases:

All purchases of information and communications technology related goods or services shall be reviewed and approved by the Director of IT prior to any procurement action, regardless of the funding source or department, and including any potential procurements as sub-contracts to any equipment or service contracts issued by the Town. This includes, but is not limited to, information and communications technology hardware, software, telecommunications equipment and services, radio or wireless communications goods and services, data or telecommunications cabling, systems analysis, programming, application development, system and network design, acquisition services, installation services, maintenance services, and information security goods or services.

All software purchases, networking equipment, printers and other hardware initiated from the departments must be reviewed by the Director of IT and shall be processed through the Purchasing Department. (i.e., cables, keyboards, mouse, wired or wireless hubs, switches, routers, gateways, NIC cards, etc.)

The IT department will initiate the purchase of all computer hardware, such as servers, through Munis.

D. Maintenance Agreement Purchasing:

It is best to consider purchasing equipment maintenance agreements at the time of the

equipment purchase in order to obtain competitive pricing during purchase negotiations. If maintenance agreements are obtained separately after equipment is purchased, price quotes and purchase requisitions are required subject to cost as outlined under the *Purchase Limit Requirements* section herein unless the exceptions noted below are applicable.

SECTION 10. BLANKET PURCHASE ORDERS

The Blanket Purchase Order agreement offers a one-time encumbrance process to secure the purchase order for repetitive small purchases and payments throughout the fiscal year. The principle advantage of a BPO is the ability to delegate order authority to the user level, resulting in quicker access to the goods or services.

If the BPO is issued for purchases that are not from awarded Town contracts or from riding another jurisdiction's contract, each individual purchase on the BPO shall not exceed the \$2,000 threshold for competitive procurement. BPO's shall not be issued as a way to circumvent the purchasing procedures, nor should they be issued for one or two larger purchases during the FY. Individual purchase orders must be issued for non-contract purchases over \$2,000, following the purchasing procedures. If a requisition is submitted requesting a BPO and does not meet these said requirements, it will be rejected, and regular purchasing procedures shall be followed.

In all cases, attention should be given to how much was actually spent on the prior year BPO's when determining the issuance amount of a new BPO. This additional preparation time will help reduce the number of BPO's that are over encumbered and, therefore, need to be fully or partially liquidated during the FY in order to free up funds for other purchases.

Annual Maintenance Contract BPO's must be issued at the beginning of each Fiscal Year, as that serves as our contract agreement with the vendor.

Blanket Purchase Orders should be approved and issued no later than June 20 of each Fiscal Year.

The approved Council Agenda item must be submitted with the requisition for Blanket Purchase Orders over \$75,000.

SECTION 11. CHANGE ORDERS

Change orders are issued when there is a change to the contract (purchase order) that will affect price, performance, the contract term, delivery, or the scope of work of the contract. They can also be issued to add or deduct funds from the encumbered purchase order. A change order should be submitted on a Requisition form indicating that it is a Change Order, listing the original purchase order number and all of the information regarding the reason for the change. It shall list the amount of the original PO that was issued, the amount of the increase or decrease of funds, and the new total amount of the PO. The account number affected must be listed as well. The Expenditure Audit Trail report must be attached. All other Purchasing Regulations still apply.

No fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Town Council.

SECTION 12. CONTRACT RENEWALS

The Purchasing Department will seek feedback and permission to renew, or direction to either not renew or rebid, from the Using Department prior to the expiration of the current contract term. Feedback and permission are in the form of a Renewal Questionnaire the Using Department or contract administrator must complete, scoring performance, and return to Purchasing before any renewal notice is sent. Contractors often have options to adjust pricing at the time of renewal; if price adjustments are requested in accordance with the contract terms, Procurement will relay this request to the Using Department and await permission to adjust the pricing with the renewal. No renewal is completed without the permission and feedback of the contract administrator or Using Department, so the completion and return of the Renewal Questionnaire is important. The Using Department prepares the Agenda Item for Town Council Approval, if applicable. Once approved, Purchasing sends the notification(s) of renewal to the vendors.



Consider contacting the Procurement Division
for additional assistance if the Purchaser:

- Is unsure how to proceed in determining specifications for a good/service.
- Needs assistance in researching cooperative contracts for any good/service through other public entities in Virginia or for Procurement to issue a VAGP member inquiry.
- Requires assistance resolving contract questions or invoice discrepancies after attempting initial resolution.
- Is a contract administrator and is not quite sure if they or the contractor may currently be in breach of the contract.
- Would like to add something to an existing contract and is not sure how to proceed.
- Would like assistance in an informal bidding process or due to trouble finding enough vendors to satisfy the informal purchasing requirement.
- Is being asked to agree to or sign something that doesn't feel quite right.
- Is aware of a vendor that is interested in doing business with the Town of Vienna

SECTION 13. EXCEPTIONS TO STANDARD PROCEDURES

A. General Exceptions

Non-profits

Purchases from persons, schools, or workshops under the supervision of the Virginia Department for the Visually Handicapped or other non-profit organizations serving the handicapped.

Legal and Related Services

Purchases of legal, expert witness, and other services associated with litigation or regulatory proceedings.

Contract Extensions and Renewals

Extension of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract and renewals of multi-year contracts in which the renewed contract complies with all of the requirements as specified in the original award.

Insurance

Insurance purchased through an association of which the Town of Vienna is a member provided the insurance contract was procured by use of competitive principles and provided that Town Council has made a determination in advance after reasonable notice to the public and set forth in writing and fully documented that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public.

B. Cooperative Procurement

The Town may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies, or agencies of the United States, for the purpose of combining requirements to increase efficiency, to reduce costs, or to reduce administrative expenses. The ability to “ride” a contract shall be evidenced by the Vendor having given the Town authorization to do so at the time the bid was submitted.

A public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies, except for:

1. Contracts for architectural or engineering services; or
2. Construction in excess of \$200,000 by a local public body from the contract of another local public body that is more than a straight-line distance of 75 miles from the territorial limits of the local public body procuring the construction. The installation of artificial turf or other athletic surfaces shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be

construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § [2.2-4303](#).

The cooperative procurement of goods, services, insurance, and contracts in an amount exceeding \$75,000 shall be approved by Town Council. The approval recommendation shall include a copy of the cooperative contract, bid, or agreement. If such documents are too cumbersome to include in the recommendation to Town Council, they shall be placed in the Town Clerk's office for public inspection prior to Council's consideration of approval. If the Town enters into a cooperative procurement agreement with a county, city or Town whose governing body has adopted alternative procurement policies and procedures pursuant to the Act, the Town may comply with either the provisions of the Town's Purchasing Ordinance or with the alternative policies and procedures of the governing body of such county, city or town. (See VPPA § 2.2-4304)

C. Competitive Negotiation for Purchases not Practicable or Fiscally Advantageous Under Competitive Sealed Bidding

Upon a determination made in advance by the Town Council that competitive sealed bidding is either not practicable or fiscally advantageous to the Town, goods, services, or insurance may be procured by competitive negotiation.

D. Maintenance Agreements for *Specialized* Town Office Equipment

For the benefit of the Town both fiscally and for the purpose of providing the best service for labor and parts, specialized office equipment may require the use of the maintenance agreement provided by the Vendor in which the equipment was purchased. Departments should use discretion and seek additional competition whenever there is reason to believe that a quotation is not a fair and reasonable price and that an equivalent quality of service can be obtained from another Vendor.

The approved Council Agenda item must be submitted with the requisition for Purchases over \$75,000, whether a cooperative procurement clause is being used to ride another jurisdiction's contract, or whether it is a Town solicited and awarded contract.



**Processing Sole Source, Emergency Purchase,
or other Exceptions to the Purchasing Regulations**

The Department shall send the Purchasing Department a requisition with a Request for Waiver form, showing proof that the procurement is exempt from the requirement of competitive quotes or is not practicable or fiscally advantageous under competitive sealed bidding . Purchasing reviews the waiver to ensure all required justification, documentation, quotes, and proper forms have been submitted before forwarding to the Director of Finance, the Town Attorney, and the Town Manager.

If work has been authorized or goods purchased without the prior issuance of a Purchase Order, a waiver must be done in advance of the Confirming Purchase Order to explain why purchasing procedures were not followed.

SECTION 14. PURCHASES EXEMPT FROM COMPETITIVE PROCUREMENT

Items and services exempt from *competitive procurement procedures* and **do not require a purchase order** are as follows:

- Books and Subscriptions
- Conference and Seminar Registrations
- Memberships and Dues
- Goods and Services from Other Governments
- Utility Services
- Council Approved Donations
- Mail and Express Delivery Services
- Meals for Public Works Crew During Emergency Periods
- Travel Advances and Reimbursements (Including car rental, air, and train fares)
- Admission Fees and meals for Community Center Programs
- Public Defenders
- Community Center Instructors
- Community Center Special Event Program Performers
- Community Center Camps

Items and services exempt from *competitive procurement procedures* but **do require a purchase order** are as follows:

- Advertising
- Legal Services
- Insurance Reimbursements
- Community Center Plays/Productions and Production Materials
- The Fairfax County Print Shop

SECTION 15. BID BONDS AND PERFORMANCE AND PAYMENT BONDS

Except in cases of emergency, all bids or proposals for construction contracts in excess of \$100,000.00 shall be accompanied by a bid bond from a surety company selected by the bidder, which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent (5%) of the amount bid.

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

At the Town's discretion, bidders/offerors for a construction contract may be required to submit a bid bond in compliance with the foregoing requirements on a bid or proposal of less than \$100,000.00. Such condition and the amount of the bid bond required shall, if applicable, be specified in the Invitation for Bid or Request for Proposal. (See VPPA § 2.2-4336-A)

All bid bonds must be returned to the bidders/offerors upon contract execution.

A. Performance and Payment Bonds

Upon the award of any construction contract exceeding \$100,000.00 awarded to any prime contractor, such contractor shall furnish to the Town the following bonds:

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

A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractors to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rental is actually used at the site.

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

At the discretion of the Town, the Invitation for Bid or Request for Proposals may specify that the successful bidder or offeror shall furnish a payment or performance bonds for construction contracts below \$100,000.00.

B. Bonds Generally

1 Bonds shall be made payable to the Town of Vienna.

Each of the bonds shall be filed with the Town, in a form acceptable to the Procurement Official.

Nothing in this Ordinance shall preclude a contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

C. Alternative Forms of Security

In lieu of a bid, payment or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

If approved by the Town Attorney, a bidder may furnish a personal bond, property bond, or bank or saving and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Town equivalent to a corporate surety's bond.

SECTION 16. RETAINAGE ON CONSTRUCTION CONTRACTS

In any Town contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent (95%) of the earned sum when payment is due, with not more than five percent (5%) being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

Any subcontract for a Town project which provides for similar progress payments shall be subject to the same limitations.

In any contract directly between the Town and a contractor in the amount of \$200,000.00 or over for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, or the installation of water, gas, sewer lines or pumping stations where portions of the contract price are to be retained, the Bid Proposal shall include an option for the contractor to use an escrow account procedure for utilization of the Town's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the "Escrow Agreement" form included in the Bid Proposal and Contract shall be executed and submitted to the Town within fifteen calendar days after notification. If the "Escrow Agreement" form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an "Escrow Agreement" form. The Contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth of Virginia. The "Escrow Agreement" and all regulations promulgated by the Town shall be substantially the same as that used by the Commonwealth of Virginia Department of Transportation.

These provisions concerning escrow account procedures for retainage shall not apply to Town contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric

current ahead of the customer's meter, the installation or maintenance of telephone, telephone or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

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

Any subcontract for a Town project which provides for similar progress payments shall be subject to the provisions of this section.

SECTION 17. SURPLUS, OBSOLETE, WASTE MATERIALS

The Director of Finance authorizes the Procurement Officer to advise the using departments to donate or sell all goods and supplies which, in the opinion of the using department, have been or have become unsuitable or unnecessary for the Town's use, or to exchange the same for, or trade in the same on, new supplies.

Sales under this section shall be made on the basis of competitive bids when practical to obtain the highest price, selling through authorized auction websites, such as GovDeals.

APPENDIX A ETHICS IN PUBLIC CONTRACTING

FROM THE VIRGINIA PUBLIC PROCUREMENT ACT (VPPA)

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, 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.

§ 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.

§ 2.2-4376.1. Contributions and gifts; prohibition during procurement process. -- A. No bidder or offeror who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor for the award of a public contract pursuant to this chapter, and no individual who is an officer or director of such a bidder or offeror, shall knowingly provide a contribution, gift, or other item with a value greater than \$50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, during the period between the submission of the bid and the award of the public contract under this chapter. The provisions of this section shall apply only for public contracts where the stated or expected value of the contract is \$5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding.

B. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

§ 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.

APPENDIX B DEFINITIONS AND ACRONYMS

Definitions:

Addendum: An alteration or supplement to a procurement document.

Blanket Purchase Order: Issued to cover small, and/or repetitive purchases, yearly maintenance/service agreements, and competitively bid and awarded contracts for which repetitive purchases are necessary.

Change Order: A formal addendum to a contract (purchase order). A change order is required whenever a change in the contract terms will affect price, performance, the contract term, delivery, or the scope of the work in the contract.

Competitive Negotiation: A procurement method for obtaining goods, services and construction for public use in which discussion and negotiations may be conducted with responsible offerors who submit responsive proposals.

Construction: The process of utilizing labor to build, alter, repair, improve, or demolish any structure, building or public improvement; generally does not apply to routine maintenance, repair, or operation of existing real property.

Confirming Purchase Order (Document): A standard purchase order document issued after-the-fact and used under emergency purchasing situations.

Contract: All types of Town agreements, regardless of their nature, for the procurement of goods, supplies, services, insurance, or construction.

Contractor: An individual or business having a contract with a governmental body to furnish goods, services, or construction for an agreed upon price.

Department: Any unit in the Town government requiring goods, supplies, services, insurance or construction.

Emergency: A condition or occurrence of a sudden and unexpected nature threatening the public health, safety or welfare.

Evaluation Committee: A component of the Request for Proposal (RFP) process, whereby a group of individuals is established to conduct interviews and negotiations during proposal evaluation for a specific product or service. The team consists of at least three (3) individuals, but no more than five (5), with the Procurement Officer chairing the team. The team typically represents the functional areas to be addressed in the discussions

General Terms and Conditions: The section of a solicitation that contains clauses that deal primarily with the contractual obligations of the parties to a contract.

Goods: All material, equipment, supplies, printing, and automated data processing hardware or software. Anything purchased other than services or real property.

Invitation For Bid: A formal, written solicitation used for the procurement of goods and/or services expected to cost more than \$30,000.

Nonprofessional Services: Any services not specifically identified as professional services in the definition below.

Professional Services: Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, professional engineering, or as subsequently amended by the Virginia Public Procurement Act.

Proposal: A document submitted by a vendor in response to a Request for Proposal. It details the vendor's capabilities and skills, experience, services to be provided, and other details as requested in the RFP document.

Purchase Order: A written document to a vendor formalizing all the terms and conditions of a proposed transaction, such as a description of the requested items, delivery schedule, terms of payment, and transportation. It authorizes the supplier to provide the goods and services and is the purchaser's commitment for the value of the goods/services.

Purchase Price: The price quoted by a supplier for a material item; may include delivery and installation costs.

Purchase Requisition: A document created by a requestor authorizing the commencement of a purchasing transaction.

Purchaser: Those with authority to purchase goods and services for the using departments.

Quote: An informal purchasing process which solicits pricing information from several sources.

Quotation: A statement of price, terms of sale, and description of goods or services offered by a vendor to a prospective purchaser; may be non-binding if solicited to obtain market information for planning purposes.

Request For Proposal: The document used to solicit proposals from potential providers for goods and services (Offerors). Price is usually not a primary evaluation factor. Provides for the negotiation of all terms, including price prior to contract award. Typically used to procure professional services. A RFP sets for the background of the project, the general and specific contract requirements, terms and conditions.

Responsible Bidder or Offeror: A contractor, business entity, or individual who is fully capable to meet all of the requirements of the solicitation and subsequent contract. Must possess the full capability, including financial and technical, to perform as contractually required.

Responsive Bidder or Offeror: A contractor, business entity, or individual who has submitted a bid or proposal that fully conforms in all material respects to the IFB/RFP and all of its requirements, including all form and substance.

Retainage: A specified amount or percentage of the process payment due usually under a construction contract. Upon completion of all contract requirements, retained amounts must be

paid promptly.

Scope of Work: A written description of the contractual requirements for materials and services contained within an RFP. It establishes a clear understanding of what is needed from the vendor.

Sealed Bid: A formal submission from a bidder/offeror in response to an IFB. It is submitted in a sealed envelope to prevent its contents from being revealed before the time and date set for the bid opening.

Services: Any professional or general service work performed which does not result in the delivery of goods or materials.

Special Terms and Conditions: Special clauses pertaining to a specific procurement which may supplement, or in some cases supersede, one or more general terms and conditions.

Specification(s): A precise description of the physical or functional characteristics of a product, good or construction item. A description of what the purchaser seeks to buy and what a bidder must be responsive to in order to be considered for award of a contract. It may include a description of any requirement for inspecting, testing or preparing a good, service or construction item for delivery.

Unauthorized Purchases: Contracting for any goods, services, insurance or construction on behalf of the Town in a manner in conflict with the provisions of the Ordinance and Purchasing Administrative Procedures. The Town shall not be bound by any unauthorized purchases.

Using Department: A unit of the Town that requisitions items through the Purchasing Department.

Vendor: A supplier/seller of goods and services.

Waiver Form: Completed and submitted with a requisition when the purchase of goods or services is between \$2,000 and \$29,999 and competitive quotes have not been obtained and there is no contract to ride. The explanation for waiver being requested is to be detailed and specific as to the reason for not obtaining the required quotes. Also used for Sole Source and Emergency Procurement.

Acronyms Used:

IFB	Invitation For Bid
PAP	Purchasing Administrative Procedures
PC	Procurement Checklist
RFP	Request For Proposal
RFW	Request For Waiver
TOV	Town of Vienna
VPPA	Virginia Public Procurement Act