

TOWN OF ONANCOCK, VA PROCUREMENT POLICY

February 27, 2023

Section 1 - Organization

The use of taxpayer funds is one of the most significant responsibilities of any employee. The Town Manager supervises all procurements on behalf of the Town following the total appropriations allowed by the Town Council in its annual budget. The Town Manager shall adhere to and comply with the rules and regulations consistent with this policy, the Virginia Public Procurement Act (VPPA). Willful failure to do so may be considered a breach of the terms of the employment agreement. Employees must always use the most restrictive policy when making purchases under this policy. This means that if the Town Procurement Policies are more restrictive than the funding source requires, the Town Policies must be followed. The Town Manager shall propose amendments to this Procurement Policy from time to time as needed.

The Town Manager shall coordinate procurement procedures among departments, shall ensure that procurement actions are properly documented, and shall maintain all related records. Records shall be kept for each procurement that documents adherence to this policy. If sufficient funds have been appropriated for the purchase, the Town Council delegates the decision of who is awarded a contract to the Administration, except as noted herein.

The Town will make every effort to obtain the highest quality goods and services at the best possible price. We highly value our local businesses and whenever reasonable, the Town commits to purchasing from local businesses if it complies with this policy and is in the best interest of the Onancock taxpayer. All procurement procedures will be conducted fairly and impartially with the avoidance of any impropriety.

Section 2 – Conflict of Interest

The VPAA contains a special set of rules for anyone involved in the procurement transaction, including Town Council members if they approve the contract or are otherwise involved in the procurement or the contract. These are in addition to the requirements of the Conflict-of-Interest Act. Employees shall ensure that transactions comply with the “Ethics in Public Contracting” sections found in Article 6 of the Virginia Public Procurement Act (Va. Code § 2.2-4367 *et seq.*) and the Virginia State and Local Government Conflict of Interest Act (Va. Code § 2.2-3100 *et seq.*) to ensure there is no actual conflict of interest. Town Council and employees should read the Acts and seek legal guidance before engaging in an activity for which a conflict may exist.

Section 4 – Procurement Policies

4(A) – Purchases \$25,000.01 and over.

Whenever the Town seeks to procure goods or services estimated to cost more than \$25,000, a formal Invitation to Bid or a Request for Proposal shall be issued and subject to Town Council approval. Purchases shall not be split to avoid the \$25,000 limit.

Invitation to Bid

Invitation to Bid (IFB), or Competitive Sealed Bidding, is a written document that indicates exactly what the Town wants to purchase and sets forth the contract terms and other specifications. Each bidder must bid on the same specifications that are included in the bid (Va. Code § 2.2-4302.1). Notice of the IFB must be posted 10 days before the bids being received on the Town's website and may be advertised in the local newspaper with the highest circulation. The Town is required to award the contract to the lowest responsive and responsible bidder.

To be "responsive" the bidder must conform in all material respects to the Invitation to Bid. The Town may waive informalities in the bid (e.g., a minor defect or variation of from the exact requirements of the Invitation to Bid, or Request for Proposal, which does not affect the price, quality, quantity, or delivery schedule for the goods, services or construction being procured), but the low bidder must have substantially complied with all bid requirements.

To be "Responsible" the bidder must have the capability in all respects to do the work specified. If the Town has evidence that the low bidder has performed substandard work, or they have never performed the work listed in the IFB, then the Town Manager may determine that this bidder is non-responsible. In that case, the Town must provide a written response to the bidder that details the reasons for this determination and allow the bidder to protest the decision.

Request for Proposal

Requests for Proposals (RFP), or Competitive Negotiation, are normally used for service contracts where price is not the most important consideration. and does not require an award to the lowest bid.

A notice indicating that an RFP has been issued must be published on the Town's website and may be published in the local newspaper with the highest circulation at least 10 days before the proposals are due. Once the RFP is received, the Town Manager and Mayor shall jointly review the proposals to determine which proposers shall be interviewed. If the Mayor is unavailable, then a member of the Town Council will review the proposals with the Town Manager. This process is called Short Listing. At least two firms need to be interviewed by at least two staff members and the mayor, or one Town Council

member unless only one is fully qualified or one is more qualified than the others.

During the interviews, the firms are asked to describe why they should be given the contract, and the cost may be negotiated. No information obtained from one firm may be shared with any other firm being interviewed.

At the end of the interviews, the group that performed the interview is to award the contract to the offeror who makes the best proposal.

If no bidder is deemed responsive and responsible, or no proposal provides the best value for the Town, the Town may begin the procurement process again. The reasons for cancellation or rejections must be made part of the contract file.

4(B) - Purchases between \$5,000 to \$25,000

Purchases between \$5,000 to \$25,000 require written quotes from three vendors. The solicitation by the Town may be made in writing (including email) to each vendor known to have done responsive and responsible work for the Town in the past. If three quotes cannot be obtained, the Town Manager shall document the names of the vendors approached for quotes and any reasons given for the failure or refusal to bid or document the reason why it is not practicable to obtain 3 vendors. If the vendor responds verbally with its intent not to bid or does not respond to communications from the Town within three business days, the Town Manager shall provide the time and date of that communication with the final purchase information. The final approval of the award will rest with the Town Manager.

The Town Manager shall compile a list of all vendors or contractors from whom quotes, or bids have been requested and the quotes or bids offered. Information gathered in complying with this procedure shall be filed with the documentation supporting the subsequent purchase or contract.

4(C) - Purchases under \$5,000 (Small Purchase)

All purchases under \$5,000 will not be subject to the IFB or RFP process. Quotes are encouraged but not required. Authorized Town employees are encouraged to continue to look for the best price when purchasing goods or services. When practicable, the Town should make every reasonable effort to invite as many vendors as possible to work with the Town. To notify vendors of possible bidding opportunities, the Town shall make efforts to list projects requiring procurement of goods or services on the Town's website. With justification, the Town Manager may select any vendor he or she chooses that makes the best proposal.

When Neither an IFB nor RFP is Required

4(D) – Sole Source

Sole source procurement may be permitted if there is only one source practicably available for the required goods or services. In sole source procurement, a contract may be negotiated and awarded to the sole source provider without competition. It must be articulated in writing with the backup materials for the purchase which measures were taken to verify that competition is not available. Unless it is an emergency purchase, sole source justification based solely upon a single vendor's capability to deliver in the least amount of time is not an appropriate justification since availability alone is not a valid basis for determining sole source procurement.

A notice must be issued that states that the contract is being awarded to a sole source, what is being procured, the contractor selected, and the date on which the contract was or will be awarded. This can be either posted on a website or published in a newspaper.

4(E) – Emergency Procurements

In case of an emergency, where a delay in seeking multiple proposals may threaten public buildings, public property, or the life, health, safety, or welfare of the residents, a contract may be awarded without competitive sealed bidding or competitive negotiation. Any such procurement shall be made with such competition as is practical under the circumstances. Any such procurement must be approved in writing by the Town Manager. The Town Council must be notified via email in advance of such a purchase if the amount is over \$10,000. This notification must include the details of the emergency, and the consequences suffered if the purchase was not made under these emergency conditions.

Section 5 – Protests

Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Town Manager no later than ten days after the award or the announcement of the decision to award. The written protest must state the grounds for the protest. Bidders or offerors are the only parties allowed to file a protest; citizens cannot file a protest or sue the Town on the basis that VPPA was not followed.

The Town Manager shall issue a decision in writing within ten days and the bidder or offeror has ten days to file an appeal to the Town Council, which shall serve as the administrative panel, to decide on the appeal. The protesting bidder and the Town Manager shall meet with the Administrative Panel at the first possible opportunity, considering public meeting rules.

Section 6- Preferences and Tie Bids for IFB's

In the case of a tie bid, it is possible according to Va. Code § 2.2-4328 to award the

contract to a Virginia company. Otherwise, the tie shall be decided by lot.

Section 7- Non-Discrimination

The Town of Onancock conforms, as applicable, to the provisions of the Federal Civil Rights Act of 1964, as amended; the Virginia Fair Employment Contracting Act of 1975, as amended; the Virginians with Disabilities Act; the Americans with Disabilities Act, and §2.2-4310. All bidders/offerors who submit bids/proposals to the Town are required to certify that they conform to these same anti-discrimination requirements and all other provisions of the Virginia Public Procurement Act.

Section 8- Debarment or Suspension

Debarment is the Town's exclusion of certain individuals or firms from contracting with the Town for a specified period. The Town Manager may debar a person or company from consideration for awards or contracts with the consent of the Town Council upon a finding of cause that the vendor has engaged in any of the following activities.

1. Unsatisfactory performance on a contract with the Town of Onancock or another public body, including but not limited to, failure to comply with contract terms and conditions or to meet specification/scope of services requirements.
2. A history of failure to perform or of unsatisfactory performance following the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
3. Offering any gift, gratuity, favor, or advantage to any Town employee or official who exercises official responsibility for procurement transactions.
4. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner of the vendor in a contract or purchase order awarded by the Town.
5. Conviction of any officer, director, owner, partner, or agent of the vendor of any criminal offense involving public contracting.
6. Court judgment finding a violation of Federal or State antitrust laws.
7. Conviction, or a plea of guilty or nolo contendere, under state and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects

responsibility as a Town contractor.

8. Abandonment of performance or termination for default on any other Town of Onancock project.
9. Default on any surety bond or written guaranty on which the Town of Onancock is an obligee.
10. The filing of a bankruptcy petition, by, against, or regarding the contractor.
11. Any other cause that the Town Manager determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or prior reprimands.
12. Whenever the Tax Commissioner determines so according to § 58.1-1902.

In debarring or suspending any individual or firm from contracting with the Town, the Town Manager shall follow all applicable procedures outlined herein.

Appeal of Ineligibility or Disqualification Determination or Debarment (Code of Virginia, § 2.2- 4357)

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

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

If the evaluation reveals that the bidder, offeror, or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall notify the bidder, offeror, or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within the time frame provided by the Code of Virginia.

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

Section 9- Excess and Surplus Property

The Town Manager shall be responsible for:

1. Redistribution of serviceable excess personal property.
2. Disposal of surplus Town personal property through sealed bid, auction, trade-in, or fixed price sales. Some personal property may also be disposed of by junking, sale as scrap metal, or cannibalization.
3. Disposal of unclaimed property in the custody of the Police Department following the current Code of Virginia.

Surplus Town property may be donated to charitable organizations where appropriate. The Town Manager shall evaluate the donation request and first determine whether the requested item is needed by the Town. Any item disposed of by the Town is done as-is where-is with no warranty or performance guarantee of any kind.