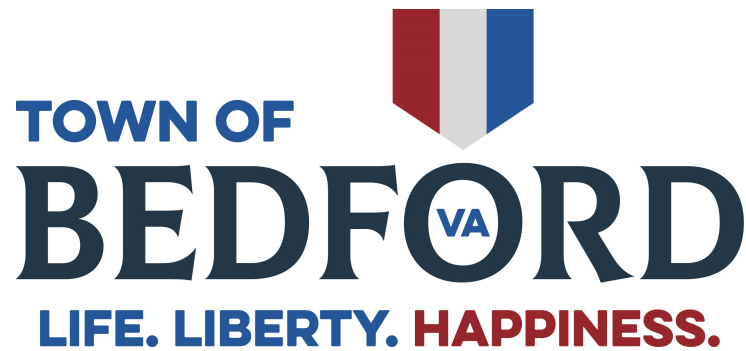


PURCHASING POLICY AND PROCEDURES MANUAL

TOWN OF BEDFORD, VIRGINIA



Adopted November 28, 2023

TOWN OF BEDFORD, VIRGINIA PURCHASING POLICY AND PROCEDURES MANUAL

TABLE OF CONTENTS

Chapter	Page
Chapter 1: General	1
1.1 Intent.....	1
1.2 Purchasing Agent.....	1
1.3 Violations.....	2
1.4 Definitions	2
1.5 Purchasing Objectives and Responsibilities	2
Chapter 2: Methods of Procurement	3
2.1 Choice of Method	3
2.2 Competitive Sealed Bidding	3
2.3 Competitive Negotiation.....	4
2.4 Small Purchases	7
2.5 Term and Job Order Contracts.....	8
2.6 Sole Source Procurement.....	9
2.7 Emergency Procurement.....	10
2.8 Design-Build or Construction Management Contracts for the Town	10
2.9 Information Technology Related Equipment and Supplies	11
Chapter 3: General Procurement Guidelines.....	12
3.1 Joint and Cooperative Procurement.....	12
3.2 Competitive Procurement by Town on State-Aid Projects	13
3.3 Modification of the Contract.....	14
3.4 Discrimination Prohibited.....	14
3.5 Employment Discrimination by Contractor Prohibited; Required Contractual Provisions	16
3.6 Immigration Reform and Control Act of 1986	16
3.7 Drug-Free Workplace to be Maintained by Contractor; Required Contract Provisions	16
3.8 Use of Brand Names	17
3.9 Prequalification.....	17
3.10 Cancellation, Rejection of Bids; Waiver of Informalities.....	19
3.11 Withdrawal of Bid Due to Error	19
3.12 Retainage on Construction Contracts.....	20
3.13 Deposit of Certain Retained Funds on Certain Contracts; Penalty for Failure to Timely Complete	20
3.14 Bidders List.....	21
3.15 Purchase Requisition	21
3.16 Purchase Order.....	22
3.17 Nonpreferential Treatment of Vendors.....	22
3.18 Conferences and Site Visits	22
Chapter 4: Prompt Payment	22
4.1 Definitions.....	22
4.2 Payment Clauses to be Included in Contracts	23
Chapter 5: Contract Security	24
5.1 Bid Bond.....	24
5.2 Performance and Payment Bonds	24

5.3 Alternative Forms of Security.....	25
5.4 Bonds on Other Than Construction Contracts	26
5.5 Actions on Payment Bonds; Waiver of Right to Sue	26
Chapter 6: Public Inspection	27
6.1 Public Inspection of Certain Records	27
Chapter 7: Exemptions.....	27
7.1 Exemptions from This Manual	27
7.2 Federally Funded Procurement.....	28
Chapter 8: Remedies and Debarment.....	28
8.1 Ineligibility	28
8.2 Contractual Disputes.....	29
8.3 Debarment; Causes	29
8.4 Debarment; Notice and Hearing	30
8.5 Debarment; Written Decision Required; Finality	30
Chapter 9: Ethics in Public Contracting.....	30
9.1 Purpose	30
9.2 Definitions	31
9.3 Proscribed Participation by Town Employees in Procurement Transactions	32
9.4 Prohibited Contracts	32
9.5 Prohibited Websites and Applications	33
9.6 Disclosure of Subsequent Employment	34
9.7 Prohibition on Solicitation or Acceptance of Gifts; Gifts by Bidders, Offerors, Contractor, or Subcontractor Prohibited	34
9.8 Kickbacks	34
9.9 Participation in Bid Preparation; Limitation on Submitting Bid for Same Procurement.....	35
9.10 Purchase of Building Materials, etc., from Architect or Engineer Prohibited	35
9.11 Certification of Compliance Required; Penalty for False Statements.....	35
9.12 Misrepresentations Prohibited	35
9.13 Penalty for Violation.....	36
Chapter 10: Designating Surplus Property and Disposal	36
10.1 Purpose and Applicability.....	36
10.2 Identifying and Designating Surplus	36
10.3 Documenting Surplus	36
10.4 Disposing of Surplus.....	36
10.5 Prohibited Disposal.....	37
Chapter 11: Affiliated Bodies	37
11.1 Affiliated Bodies and Officers	37
11.2 Responsibility & Mutual Assistance.....	37
11.3 Procurement by Redevelopment and Housing Authority	37
11.4 Procurement by Economic Development Authority	38

CHAPTER 1: GENERAL

1.1 INTENT

To the end that the Town of Bedford, Virginia (the “Town”) obtains high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to Town business, and that no offeror is arbitrarily or capriciously excluded, it is the intent of the Town that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that the Town enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the Town rather than being drawn to favor a particular vendor, and that the Town and vendor freely exchange information concerning what is sought to be procured and what is offered. The Town may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

1.2 PURCHASING AGENT

The Town Manager is designated the Town Purchasing Agent and shall serve as the principal public purchasing official for the Town. The Town Manager may authorize department heads and other qualified administrative officials to administer procurements in accordance with this Policy (such person shall be referred to herein as the “Procurement Administrator”). The Purchasing Agent shall:

- A. Purchase or supervise the purchasing of all goods, services, insurance, and construction needed by the Town;
- B. Exercise direct supervision over the Town’s physical and intangible assets and general supervision over all other inventories of goods belonging to the Town;
- C. Sell, trade, or otherwise dispose of surplus goods; and
- D. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the goods, services, and construction.

1.3 VIOLATIONS

Any purchase or contract entered into by any elected or appointed Town official, department head, or employee that violates the provisions of this Manual may be the personal financial responsibility of that individual. Violation of these policies and procedures shall be grounds for disciplinary action up to and including termination and criminal prosecution.

1.4 DEFINITIONS

Words used in this Manual should be understood to have their ordinary or usual signification and meaning, except as they may be defined in the Virginia Public Procurement Act, Va. Code § 2.2-4301, or other provision of law.

1.5 PURCHASING OBJECTIVES AND RESPONSIBILITIES

The Purchasing Agent has the following objectives and responsibilities:

- A. In competitive sealed bidding, award contracts to the lowest responsive and responsible bidder, taking into account skill, experience, and previous conduct of the contractor;
- B. In competitive negotiation, award contracts to the offeror who makes the best overall proposal for the Town, taking into account the terms of the request for proposals;
- C. To assure that all Town purchases are conducted in accordance with the Virginia Public Procurement Act or other applicable law;
- D. Keep informed of current developments in the field of purchasing, prices, market conditions, and new products;
- E. Provide to the Town the benefits of research done in the field of purchasing by other governmental jurisdictions, national societies, national trade associations, and by private business and organizations;
- F. Maintain a vendor's file containing catalogues, descriptions of commodities, prices, and discounts;
- G. Declare vendors who default on their quotations as irresponsible bidders and to disqualify them from receiving business from the Town in accordance with the procedures set forth in this Manual;
- H. Make recommendations for improvement of the purchasing system; and
- I. Perform other functions and duties in keeping with good purchasing practices as may be assigned.

CHAPTER 2: METHODS OF PROCUREMENT

2.1 CHOICE OF METHOD

In general, for purchases that are above the limits set out in the Small Purchase Policy (§ 2.3), construction must be purchased through competitive sealed bidding; professional services (including architectural and engineering services) must be purchased through competitive negotiation; insurance should be procured through competitive negotiation; and goods and non-professional services may be purchased through a number of different methods. Which method is most appropriate to use in a given circumstance is in the discretion of the Procurement Administrator.

2.2 COMPETITIVE SEALED BIDDING

A. *In General.* The process for competitive sealed bidding is as follows:

1. Issuance of a written Invitation to Bid (ITB) containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Town has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. The Town may include in the Invitation to Bid criteria that may be used in determining whether a bidder is responsible. Such criteria may include a history or good faith assurances of (i) completion by the bidder and any potential subcontractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) participation by the bidder and any potential subcontractors in apprenticeship training programs approved by state agencies or the U.S. Department of Labor; or (iii) maintenance by the bidder and any potential subcontractors of records of compliance with applicable local, state, and federal laws. No Invitation to Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.
2. Public notice of the Invitation to Bid at least ten (10) days prior to the date set for receipt of bids by posting on the Town webpage and in the Town Finance Department. The Town may also publish Invitations to Bid in a newspaper or newspapers of general circulation, on the state Department of General Services' central procurement website (eVA), or other methods reasonably calculated to reach potential bidders. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity.
3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the Invitation to Bid, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose that are helpful in determining acceptability.
 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are specified in the Invitation to Bid, awards may be made to more than one bidder.
- B. *Determination of Responsibility.* In competitive sealed bidding, a contract may only be awarded to a responsible bidder; that is, a bidder who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance.
1. Unless prequalification is required or a bidder has been debarred, the Procurement Administrator shall make a determination of responsibility. If the Procurement Administrator believes that a bidder is nonresponsible, he or she will make a recommendation to the Purchasing Agent that the bidder is nonresponsible. If the Purchasing Agent concurs that the lowest responsive bidder is nonresponsible, he or she shall follow the process set forth in this subdivision.
 2. Prior to the issuance of a written determination of nonresponsibility, the Town will (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five (5) business days after receipt of the notice.
 3. Within ten (10) business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Town shall issue its written determination of responsibility based on all information in the possession of the Town, including any rebuttal information, within five (5) business days of the date the Town receives the rebuttal information. At the same time, the Town will notify, with return receipt requested, the bidder in writing of its determination.
 4. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days.

2.3 COMPETITIVE NEGOTIATION

A. *In General.*

1. Issuance of a written Request for Proposals (RFP) indicating in general terms what is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable

contractual terms and conditions, including any unique capabilities or qualifications which will be required. Except with regard to contracts for architectural, professional engineering, transportation construction, or transportation-related construction services, the Town may include as a factor that will be used in evaluating a proposal the proposer's employment of persons with disabilities to perform the specifications of the contract. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposals or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.

2. Public notice of the Request for Proposals at least ten (10) days prior to the date set for receipt of proposals by posting on the Town website and by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. The Town must publish Requests for Proposals on the state Department of General Services' central electronic procurement website (eVA) if the Town elects not to publish notice of the Request for Proposals in a newspaper of general circulation in the area in which the contract is to be performed. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity.
3. Should the Town determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The decision to make such award shall be made by the Town Manager upon recommendation of the Procurement Administrator.
4. Goods, Non-professional Services, and Insurance: For goods, nonprofessional services, and insurance, selection will be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposals, including price if so stated in the Request for Proposals. Interviews may be held with the offerors. Negotiations will then be conducted with each of the selected offerors. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the Town will select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are specified in the Request for Proposals, awards may be made to more than one offeror.
5. Professional Services: For professional services, the Town will engage in individual discussions with two (2) or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional

competence, to provide the required services. Repetitive informal interviews are permissible. The offerors will be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors will be informed of any ranking criteria that will be used by the Town in addition to the review of the professional competence of the offeror. The Request for Proposals will not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Town may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with Va. Code § 2.2-4342(F), proprietary information from competing offerors will not be disclosed to the public or to competitors. At the conclusion of discussion, on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process to this point, the Town will select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations will then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Town can be negotiated at a price considered fair and reasonable, the award will be made to that offeror. Otherwise, negotiations with the offeror ranked first will be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposals, the Town may award contracts to more than one offeror.

B. *Special Provisions for Architecture & Engineering Contracts.*

1. The Town may award a contract for architectural or professional engineering services relating to multiple construction projects, provided that (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposals, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

Such contracts may be renewable for three (3) additional one-year terms at the option of the Town. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

2. The sum of all projects performed in a one-year contract term shall not exceed \$10 million.
3. The fee for any single project shall not exceed \$2.5 million.

2.4 SMALL PURCHASES

- A. The Virginia Public Procurement Act permits the Town to establish small purchase procedures, not requiring competitive sealed bids or competitive negotiation for single or term contracts for (i) goods and services other than professional services and (ii) non-transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$200,000; however, such small purchase procedures shall provide for competition whenever practicable. The Act also permits single or term contracts for professional services, provided that the aggregate or sum of all phases is not expected to exceed \$80,000.
- B. The following small purchase procedures have been established for use when acquiring materials, supplies, equipment, printing, and nonprofessional services under \$200,000, or professional services under \$80,000. Procurements made pursuant to these procedures do not require public bid openings or newspaper advertisements of competitively negotiated procurements. Small purchases generally do not justify the administrative time and expense necessary to conduct formal competitive sealed bidding or competitive negotiation. However, the Town will use the most competition that is practical under the circumstances. “Bid splitting” to fall under small purchase thresholds is not permitted.
 - 1. **PURCHASES OF GOODS AND NON-PROFESSIONAL SERVICES UNDER \$10,000 IN VALUE**—Purchases in this group require no quotations prior to purchase. The \$10,000 applies to the total of all items purchased on an invoice.
 - 2. **PURCHASES OF GOODS AND NON-PROFESSIONAL SERVICES BETWEEN \$10,001 AND \$50,000 IN VALUE**—For purchases of this type at least two (2) quotations from valid sources must be solicited orally, by email, in writing, or by fax.
 - 3. **PURCHASES OF GOODS AND NON-PROFESSIONAL SERVICES BETWEEN \$50,001 AND \$100,000 IN VALUE**—These purchases must be coordinated with the Finance Department. For purchases of this type at least three (3) quotations from valid sources must be solicited in writing.
 - 4. **PROFESSIONAL SERVICES UP TO \$50,000 IN VALUE**—Purchases of professional services of up to \$50,000 in value shall require two (2) written quotes.
 - 5. **PURCHASES OF GOODS AND NON-PROFESSIONAL SERVICES OVER \$100,000 IN VALUE AND PURCHASES OF PROFESSIONAL SERVICES OVER \$50,000 IN VALUE**—Full procurement as provided in this Manual (or by purchase under a term contract or cooperative contract).
 - 6. **HEAVY EQUIPMENT UP TO \$100,000 IN VALUE**—Purchases in this group require no quotations prior to purchase. “Heavy equipment” is self-propelled, self-powered or pull-type equipment and machinery, including engines, weighing 5,000 pounds or more, primarily employed for construction, industrial, maritime, mining, electrical utility, and forestry uses, as such terms are commonly used and

understood as a usage of trade. The term "heavy equipment" does not include (i) motor vehicles requiring registration and certificates of title with the Department of Motor Vehicles, (ii) farm machinery, equipment and implements sold or leased pursuant to dealer agreements with suppliers, or (iii) equipment that is "consumer goods" within the meaning of Article 9 of the Uniform Commercial Code.

7. A written quote includes a quotation submitted by fax or email, provided it otherwise meets the requirements of the solicitation. A documented attempted quote is sufficient compliance with this section, provided the attempt is made in good faith.
8. The Procurement Administrator shall submit documentation of procurement of all purchases above \$10,000 in value shall be submitted to the Finance Department.
9. ALL purchases over \$10,000 must have a Purchase Order and be approved as to availability of funds by the Finance Department.
10. ALL purchases must be approved by the Department or Division Head.
11. All purchases \$10,000 and up and all written contracts for services must have approval of the Town Manager.

2.5 TERM & JOB ORDER CONTRACTS

A. Architectural and Professional Engineering Term Contracts.

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

Such contracts may be renewable for three (3) additional terms at the option of the Town. Any unused amounts from one contract term shall not be carried forward to any additional term. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

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

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

B. *Job Order Contracts.* The Town may, through competitive negotiation or competitive sealed bidding as appropriate under § 2.2 or § 2.3, enter job order contracts, subject to the following conditions and limitations:

1. A job order contract may be awarded by the Town for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this subdivision, whichever occurs first.
2. Such contracts may be renewable for two (2) additional one-year terms at the option of the Town. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed the maximum threshold amount.

Beginning on July 1, 2019, the maximum threshold amount shall be \$6 million.

Subject to the maximum threshold amount, no individual job order shall exceed \$500,000.

3. For the purposes of this subdivision, any unused amounts from one contract term shall not be carried forward to any additional term.
 4. Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subdivision B.2 is prohibited.
 5. The Town will not issue or use a job order, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in Va. Code § 54.1-400. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term.
 6. Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass. However, job order contracting may be used for safety improvements or traffic calming measures for individual job orders up to \$250,000, subject to the maximum annual threshold amount established in this section.
- C. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the Town will (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the Town require awarding the contract.

2.6 SOLE SOURCE PROCUREMENT

Upon a determination by the Town Manager upon recommendation of the Procurement Administrator that there is only one source practicably available for goods or services other than for small purchases, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The Procurement Administrator shall document the basis for this determination. The determination shall be posted in the Town Finance Department and as otherwise provided by law on the day it is adopted.

Sole source procurement for small purchases shall be based on a written determination by the Procurement Administrator.

All writings documenting that there is only one source practicably available for that which is to be procured should address the following points:

- A. Explain why this is the only product or service that can meet the needs of the department.
- B. Explain why this vendor is the only practicably available source from which to obtain this product or service.
- C. Explain why the price is considered reasonable.
- D. Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price.

2.7 EMERGENCY PROCUREMENT

In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. The Procurement Administrator, subject to approval by the Town Manager, shall develop a memorandum adopting or rejecting the purchase and shall document the basis for the determination, what is being procured, the contractor selected, and the date on which the contract was or will be awarded. The determination shall be posted in the Purchasing Office and on the Virginia Department of General Services' central procurement website or other appropriate websites on the day the determination is adopted or as soon thereafter as practicable.

Emergency procurements for small purchases shall be based on a written determination by the Procurement Administrator of the basis for the emergency, identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. If approved, the writing shall be posted in the Finance Department on the day approved or as soon thereafter as practicable.

2.8 DESIGN-BUILD OR CONSTRUCTION MANAGEMENT CONTRACTS FOR THE TOWN

- A. The competitive sealed bid process is the preferred method of construction procurement. However, the Town may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the Town complies with the requirements of this section.

Prior to making a determination as to the use of design-build or construction management for a specific construction project, the Town shall employ or contract with a licensed architect or engineer with professional competence appropriate to the project who will advise the Town regarding the use of design-build or construction management for that project and who shall assist the Town with the preparation of the Request for Proposals and the evaluation of such proposals.

For a Request for Proposals for any design-build or construction management contract for a specific construction project, the Town will:

1. Use the written procedures described in this Manual for the procurement of nonprofessional services through competitive negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the Town determines appropriate for that particular construction project. Procedures adopted for individual procurements shall include:
 - a. Design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Commonwealth Department of General Services for state agencies.
 - b. Construction management projects shall include selection procedures and required construction management contract terms consistent with the procedures as adopted by the Secretary of Administration of the Commonwealth.
 2. Have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the Town by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.
- B. The contract will be awarded to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the Request for Proposals.

2.9 INFORMATION TECHNOLOGY RELATED EQUIPMENT AND SUPPLIES

A. Purpose and Applicability

In order to maintain a uniform procedure for the procurement of Information Technology (IT) related equipment/supplies and to endeavor to standardize systems, this policy applies to all equipment/supplies funded by the Town.

B. Procurement Policy

The Technology Services Department shall develop, maintain and coordinate the specifications for all (IT) equipment needs within the Town. These specifications will be supplied to the Procurement Administrator as necessary for procurements.

1. All requests for new or replacement equipment must be directed to the Technology Services Department for approval. The Procurement Administrator will order the equipment in accordance with the specifications as directed by the Department of Technology Services.
2. Technology Services, through the Help Desk and other means, will be the primary contact for all IT related support. This includes support for laser printers and copiers. Support will be provided through their own personnel or via contract support secured from a qualified vendor.
3. Technology Services will maintain and manage a Master Equipment List for printers and copiers by department that includes a unit description, serial number, lease/purchase and service/maintenance agreement details.

C. Transfer and Disposal

The disposal of all used and nonfunctional IT equipment will be authorized by the Technology Services Department. Disposals will be handled in accordance with the Virginia Public Procurement Act and this policy.

1. Equipment, if totally nonfunctional, will be disposed of in accordance with accepted disposal methods by the Department of Public Works. Any parts that may be beneficial to support other systems shall be removed and used as needed.
2. Equipment, if usable in another application, will be transferred by Technology Services to another department or user.
3. Functional or otherwise obsolete equipment designated as surplus will be documented with the Finance Department to be placed for auction or sealed bid as de-

terminated appropriate depending on estimated value and according to surplus procedures. All surplus computers will be delivered with no HDD (hard disk drive) so as to ensure that no Town data can be recovered by the final recipient.

CHAPTER 3: GENERAL PROCUREMENT GUIDELINES

3.1 JOINT & COOPERATIVE PROCUREMENT

- A. *Joint Procurement.* To the extent permitted in the Public Procurement Act, the Town may participate in, sponsor, conduct, or administer a joint procurement agreement with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction. It may be particularly advantageous for the Town to administer joint procurements with the Town Economic Development Authority and/or the Town Redevelopment and Housing Authority.
- B. *Cooperative Procurement.* In addition, the Town may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments even if it did not participate in the request for proposal or invitation for bid, if the request for proposal or invitation for bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies, except for:
1. Contracts for architectural or engineering services; or
 2. Construction.

3.2 COMPETITIVE PROCUREMENT BY TOWN ON STATE-AID PROJECTS

No procurement for the construction of any building or for an addition to or improvement of an existing building by the Town for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided in § 2.2. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform to this Manual.

3.3 MODIFICATION OF THE CONTRACT

- A. A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Town Council. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

- B. The Town may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.
- C. The Town may, in any contract, place greater restrictions upon any modification.
- D. Modifications made by the Town that do not comply with this section are voidable at the discretion of the Town Council, and the unauthorized approval of a modification cannot be the basis of a contractual claim under § 7.2.

3.4 DISCRIMINATION PROHIBITED

- A. In the solicitation or awarding of contracts, the Town will not discriminate against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the Town will include businesses selected from a list made available by the Department of Small business and Supplier Diversity.
- B. The Town will establish programs to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions. The programs established will be in writing and will comply with the provisions of any enhancement or remedial measures authorized by the Governor or, where applicable, by the Town Manager, and will include specific plans to achieve any goals established therein.

In awarding a contract for services to a small, women-owned, or minority-owned business that is certified by the Department of Small business and Supplier Diversity, or to a business identified by the Town as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program, the Town will include in every such contract of more than \$10,000 the following:

“If the contractor intends to subcontract work as part of its performance under this contract, the contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses.”

- C. Permitted Contracts with Certain Religious Organizations; Purpose; Limitations
 1. The Town intends to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.
 2. For the purposes of this section, “faith-based organization” means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

3. The Town, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection 5, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.
4. The Town shall ensure that all invitations for bids, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the Town does not discriminate against faith-based organizations.
5. A faith-based organization contracting with the Town (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipients' religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender, sexual orientation, gender identity, or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of 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 Town. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.
6. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with the Town shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.
7. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. § 2000e-1 et seq., to employ persons of a particular religion.
8. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Town and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Town shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

The Town shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Town and a faith-based organization a notice in bold face type that states: "Neither the Town's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate

against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form.”

3.5 EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED; REQUIRED CONTRACT PROVISIONS

Every contract of over \$10,000 shall include the following provisions:

A. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
3. Notices, advertisement and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

B. The contractor will include the provisions of the foregoing paragraphs 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

3.6 IMMIGRATION REFORM AND CONTROL ACT OF 1986

Every contract shall provide that the contractor shall certify that it shall not employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

3.7 DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR; REQUIRED CONTRACT PROVISIONS

Every contract over \$10,000 shall include the following provisions:

A. During the performance of this contract, the contractor agrees to:

1. Provide a drug-free workplace for the contractor's employees;

2. 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;
 3. 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
 4. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- B. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

3.8 USE OF BRAND NAMES

Unless otherwise provided in the Invitation for Bids, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Town, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

3.9 PREQUALIFICATION

- A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.
- B. The application form used in the prequalification process will set out the criteria upon which the qualifications of prospective contractors will be evaluated. The application form will request from prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of this Manual.

At least thirty (30) days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Town

shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by the Town denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided herein.

- C. The Town may deny prequalification to any contractor only if the Town finds at least one of the following:
1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations doing business in Virginia in the amount and type required by the Town shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
 2. The contractor does not have appropriate experience to perform the construction project in question;
 3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten (10) years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;
 4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Town, the Town Economic Development Authority, the Town Redevelopment and Housing Authority, or any agency or entity of Bedford County without good cause. If the Town has not contracted with a contractor in any prior construction contracts, the Town may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The Town may not make use of this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
 5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten (10) years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) section 12.1, (ii) the Virginia Governmental Frauds Act (Va. Code § 18.2-498.1 et seq.), (iii) Chapter 4.2 (Va. Code § 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
7. The contractor failed to provide to the Town in a timely manner any information requested by the Town relevant to subdivisions 1 through 6 of this subsection.

3.10 CANCELLATION, REJECTION OF BIDS; WAIVER OF INFORMALITIES

- A. An Invitation for Bids, a Request for Proposals, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Town shall not cancel or reject an Invitation to Bid, a Request for Proposals, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.
- B. The Town may waive informalities in bids.

3.11 WITHDRAWAL OF BID DUE TO ERROR

- A. A bidder for any contract under competitive sealed bidding, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

- B. The following procedure for withdrawal of a bid shall be stated in the advertisement for bids for a public construction contract: "The bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice."

Work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of section 6.1 of this Manual.

- C. The Town will notify a bidder seeking withdrawal of a bid under this section in writing within five (5) business days of its decision regarding the request to withdraw the bid. If the Town denies the withdrawal of a bid under the provisions of this section, it will state in the notice the reasons for its decision and award the contract to the bidder at the bid price, provided the bidder is responsible and responsive. At the same time that the notice is provided, the Town will return all work papers and copies that were submitted by the bidder.
- D. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%).
- E. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
- F. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
- G. If the Town denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

3.12 RETAINAGE ON CONSTRUCTION CONTRACTS

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

3.13 DEPOSIT OF CERTAIN RETAINED FUNDS ON CERTAIN CONTRACTS; PENALTY FOR FAILURE TO TIMELY COMPLETE

- A. When contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, the Town will include in the bid package an option for the contractor to use an escrow account procedure for using the Town's retainage funds by so indicating in the space provided in the bid package. In the event the contractor elects to use the escrow

account procedure, the escrow agreement form included in the bid package and/or Contract shall be executed and submitted to the Town within fifteen (15) calendar days after notification. If the escrow agreement form is not submitted within the 15-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

- B. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The escrow agreement shall be substantially the same as that used by the Virginia Department of Transportation.
- C. This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.
- D. Any such public contract for construction with the Town, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.
- E. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

3.14 BIDDERS LIST

The Town Bidders List is compiled with the current data from all vendors who have requested to receive solicitations for specific commodities. The Finance Department maintains a list of persons who have requested electronic notification of procurements for goods, services, insurance, and construction as required by the Town.

The bidders list is compiled from various sources including,

- Bidders Application Form
- Vendors previously used
- Vendor visits
- On-line research
- Vendors registrations lists available from eVA
- Catalogs, Periodicals, Trade Journals, Yellow Pages

3.15 PURCHASE REQUISITION

A requisition is a request for goods or services necessary for the operation of a department. Departments are encouraged to order in quantity to establish an adequate supply of goods, which may

last over a period of month, provided the necessary storage space is available. The Town utilizes its Enterprise Resource Planning (ERP) Software to process Requisitions. The department should process a requisition entry through the software and attach all relevant procurement documentation with the request. After the requisition is approved through workflow, the Finance Department will convert the requisition request into a purchase order. A copy of the purchase order may be obtained from the Finance Department or through the ERP Software.

3.16 PURCHASE ORDER

Purchases of \$10,000 or more require the completion of a Purchase Order; Purchase Order numbers are to be shown on all bills of lading, packing slips, back orders, invoices, etc. The receipt of a “purchase order” or “purchase order number” is the vendor’s authorization to ship. Once issued, copies of Purchase Orders are distributed to the vendor, requesting department, and the Finance Department.

3.17 NONPREFERENTIAL TREATMENT OF VENDORS

The Town welcomes visits to its municipal offices by current and prospective vendors. In order that the staff and vendors may schedule their time most productively, vendors are advised to make appointments with Town staff before visiting. It is the responsibility of Procurement Administrators to establish a relationship of mutual confidence and satisfaction between the Town and its vendors. Vendors provide valuable information when developing and evaluating purchasing requirements. Assistance provided by vendors is considered normal sales practice, but care must be taken to ensure that no vendor should receive preferential treatment in a competitive bid program because of such assistance. Departments are cautioned that commitments cannot be made which would lead a vendor to believe that they will subsequently receive an order.

3.18 CONFERENCES AND SITE VISITS

All pre-bid conferences and/or site visits shall be mentioned in both the IFB/RFP and any advertisement. If attendance at such a conference or site visit is a prerequisite for bidding, the public notice period shall be long enough to provide adequate opportunity for potential bidders to obtain a copy of the IFB/RFP and attend. Mandatory pre-bid conferences scheduled during a period of suspended Town business operations should be rescheduled by the Procurement Administrator to a date and time which will permit proper notification to all potentially interested participants. Any changes in the requirements of the solicitation must be made by written addendum. The due date for receipt of bids should not be less than ten (10) days after the issue date of the addendum.

CHAPTER 4: PROMPT PAYMENT

4.1 DEFINITIONS

"Construction contract" means a contract relating to the construction, alteration, repair, or maintenance of a building, structure, or appurtenance to such building or structure, including moving,

demolition, and excavation connected with such building or structure, or any provision contained in any contract relating to the construction of projects other than buildings.

"*Contractor*" or "*general contractor*" means the entity that has a direct contract with the Town.

"*Debtor*" means any individual, business, or group having a delinquent debt or account with the Town that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

"*Payment date*" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) forty-five (45) days after receipt by the Town for approval of such invoices for the amount of payment due, or (b) forty-five (45) days after receipt by the Town, whichever is later.

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

4.2 PAYMENT CLAUSES TO BE INCLUDED IN CONTRACTS

Any contract awarded by any state agency, or any contract awarded by Town shall include:

- A. A payment clause that obligates the contractor on a construction contract, in the event that the contractor has not received payment from the Town for work performed by a subcontractor under such contract, to be liable for the entire amount owed to such subcontractor and to pay such subcontractor within sixty (60) days of the receipt of an invoice following satisfactory completion of the work for which the subcontractor has invoiced. Such contractor shall not be liable for amounts otherwise reducible due to the subcontractor's non-compliance with the terms of the contract. However, in the event that the contractor withholds all or a part of the amount invoiced by the subcontractor under the terms of the contract, the contractor shall notify the subcontractor within fifty (50) days of the receipt of such invoice, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment, specifically identifying the contractual noncompliance, the dollar amount being withheld, and the lower-tier subcontractor responsible for the contractual noncompliance. Payment by the party contracting with the contractor shall not be a condition precedent to payment to any lower-tier subcontractor, regardless of that contractor's receiving payment for amounts owed to that contractor. Any provision in a construction contract contrary to this section shall be unenforceable.
- B. A payment clause that obligates the contractor to take one of the two following actions within seven (7) days after receipt of amounts paid to the contractor by the Town for work performed by the subcontractor under that contract:
 - 1. Pay the subcontractor for the proportionate share of the total payment received from the Town attributable to the work performed by the subcontractor under that contract; or

2. Notify the Town and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
- C. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
- D. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Town for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision B.
- E. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."
- F. Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- G. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Town. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

CHAPTER 5: CONTRACT SECURITY

5.1 BID BONDS

- A. Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 of Chapter 2 of Title 33.2 that are in excess of \$350,000 and are partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, a guarantee that if the contract is awarded to the bidder, he 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 of the bid.
- B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid; or (i) the face amount of the bid bond.

5.2 PERFORMANCE AND PAYMENT BONDS

- A. Upon the award of any (i) nontransportation-related public construction contract exceeding \$500,000 to any prime contractor; (ii) transportation-related project authorized pursuant to

Article 2 of Chapter 2 of Title 33.2 exceeding \$350,000 that is partially or wholly funded by the Commonwealth, the contractor shall furnish to the Town the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.
 2. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment of all such material furnished or labor supplied or performed in the prosecution of the work.
- B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.
- C. Such bonds shall be payable to the Town of Bedford.
- D. Each of the bonds shall be filed with the Finance Department.
- E. Nothing in this section shall preclude the Town from requiring payment or performance bonds for construction contracts below the thresholds set forth in subsection A.
- F. Nothing in this section shall preclude such 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.
- G. For indefinite delivery or quantity contracts awarded, any locality may by ordinance allow the contractor awarded such contract to furnish to the local public body a performance bond and a payment bond, each of which shall be equal to the dollar amount of the individual tasks identified in the underlying contract. Such contractor shall not be required to pay the performance bond and payment bond in the sum of the contract amount if the contracting locality has adopted such an ordinance pursuant to this subsection. "Indefinite delivery or quantity contract" means a contract that only requires performance of contractual obligations upon the request of the locality and which establishes an annual cap for the total work that may be authorized for such contract.
- H. The Town reserves the right, if so provided in the IFB or RFP, to require performance and payment bonds on contracts for less than the minimum thresholds identified above.

5.3 ALTERNATIVE FORMS OF SECURITY

- A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.
- B. If approved by the Town Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Town equivalent to a corporate surety bond.

5.4 BONDS ON OTHER THAN CONSTRUCTION CONTRACTS

Bid, payment, and/or performance bonds will typically be required for all contracts for goods or services over \$500,000 and will be provided in the Invitation to Bid or Request for Proposal. Nothing herein shall be construed to prevent the purchasing agent from requiring bonds for contracts under \$500,000. A bond requirement may, however, be waived at the discretion of the purchasing agent when, in the judgment of the agent, requiring a bond would not be practical or fiscally advantageous to the Town.

5.5 ACTIONS ON PAYMENT BONDS; WAIVER OF RIGHT TO SUE

- A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of ninety (90) days after the day on which such claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to such action.
- B. Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under section 4.2 but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under section 4.2 but who has no contractual relationship, express, or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

- C. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

CHAPTER 6: PUBLIC INSPECTION

6.1 PUBLIC INSPECTION OF CERTAIN RECORDS

- A. Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.
- B. Cost estimates relating to a proposed procurement transaction prepared by or for the Town shall not be open to public inspection.
- C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event the Town decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.
- D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.
- E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to section 3.8 shall not be subject to the Virginia Freedom of Information Act (Code of Virginia, § 2.2-3700 *et seq.*); however, the bidder or offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

CHAPTER 7: EXEMPTIONS

7.1 EXEMPTIONS FROM THIS MANUAL

The provisions of this Manual shall not apply to:

- A. The purchase of insurance or electric utility services if purchased through an association of which the Town is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Town has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public, and documented such determination in writing.
- B. Incentive contracting which offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.
- C. The purchase of goods or services that are produced or performed by:
 - 1. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or
 - 2. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped.
- D. The purchase of legal services or expert witnesses and other services associated with litigation or regulatory proceedings.
- E. If the Town so chooses, other procurements exempt from competition or entirely exempt from the provisions of the Public Procurement Act, as provided therein. However, the Town may elect to use the procedures provided in this Manual to procure goods or services that are otherwise exempt, in its sole discretion.

7.2 FEDERALLY FUNDED PROCUREMENT

When the Town is using federally-appropriated funds to which the provisions of 2 C.F.R. Part 200 or other federal requirements are applicable, such as the Davis-Bacon Act, Buy America provisions, or special provisions for Federal Highway Administration projects, such federal provisions shall control over the provisions of this Manual. The Town is fully committed to compliance with Title VI of the Civil Rights Act of 1964, as amended, in all federally-funded programs.

CHAPTER 8: REMEDIES AND DEBARMENT

8.1 INELIGIBILITY

- A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the

bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five (5) business days after receipt of the notice.

Within ten (10) business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Town shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Town, including any rebuttal information, within five (5) business days of the date the Town 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 Town 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 Town shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days after receipt of the notice to the Town Attorney.

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

8.2 CONTRACTUAL DISPUTES

- A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
- B. Contractual claims shall be decided by the purchasing agent within thirty (30) days of the written submission, and the claimant shall be informed of the decision in writing. The claimant may appeal the decision within ten (10) days of the receipt by filing a notice of appeal with the Town Manager. The appeal shall be decided by the Town Manager whose decision thereon shall be final unless timely appealed.

8.3 DEBARMENT; CAUSES

The causes for debarment of a bidder or prospective bidders shall include without limitation:

- A. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

- B. Conviction under state and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility of a Town contractor;
- C. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- D. Violation of a contract provision of a character which is regarded by the Town Council to be so serious as to justify debarment action. Such violations shall include without limitation:
 - 1. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract; or
 - 2. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- E. Any other cause the Town Council determines to be so serious and compelling as to affect responsibility as a Town contractor including debarment by another governmental entity for any cause similar to those described herein; and for violation of the ethical standards set forth in this Manual.
- F. In addition, a prospective bidder shall be debarred from contracting with all public bodies and covered institutions whenever the Tax Commissioner so determines pursuant to § 58.1-1902.

8.4 DEBARMENT; NOTICE AND HEARING

Contractors will be given at least ten (10) days' notice of the Town Council meeting during which the Council will consider debarment. The contractor will be given an opportunity to be heard prior to the Council's decision.

8.5 DEBARMENT; WRITTEN DECISION REQUIRED; FINALITY

The Town Council shall issue a written decision to debar or suspend a contractor. The decision shall state the reasons for the action taken. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended contractor. The decision of the Council shall be final and conclusive.

CHAPTER 9: ETHICS IN PUBLIC CONTRACTING

9.1 PURPOSE

The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (Va. Code § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Va. Code § 18.2-498.1 et seq.), and Articles 2 (Va. Code § 18.2-438 et seq.), the Virginia Fraud Against Taxpayers Act (Va. Code § 8.01-216.1 et seq.) and Article 3 (Va. Code § 18.2-446 et seq.) of Chapter 10 of Title 18.2.

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

9.2 DEFINITIONS

As used in this article:

"Committee on Foreign Investment in the United States" means an interagency committee (i) operated pursuant to § 721 of the Defense Production Act of 1950 (50 U.S.C. § 4501 et seq.), as amended, and as implemented by Executive Order 11858, as amended, and the regulations set forth in 31 C.F.R. § 800 and (ii) authorized to (a) review certain real estate transactions by foreign persons in order to determine the effect of such transactions on the national security of the United States and (b) respond to new and emerging threats and vulnerabilities in the context of foreign investments.

"Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making a profit.

"ByteDance Ltd." means the Chinese internet technology company founded by Zhang Yiming and Liang Rubo in 2012, and any successor company or entity owned by such company.

"Foreign adversary" means any foreign government or nongovernment person determined by the U.S. Secretary of Commerce to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons.

"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, and 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 (Va. Code § 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” shall mean any person employed by the Town, including elected officials or appointed members.

“Scrutinized company” means any company owned, controlled, or operated in whole or in part by a foreign adversary, other than a company for which the Committee on Foreign Investment in the United States has determined that there are no unresolved national security concerns regarding the transaction that created such ownership or permitted such operation.

“Tencent Holdings Ltd.” means the Chinese multinational technology and entertainment conglomerate and holding company headquartered in Shenzhen, China, and any successor company or entity owned by such company.

“TikTok” means the video-sharing application developed by ByteDance Ltd. that hosts user-submitted videos.

“WeChat” means the multi-purpose social media, messaging, and payment application developed by Tencent Holdings Ltd.

9.3 PROSCRIBED PARTICIPATION BY TOWN EMPLOYEES IN PROCUREMENT TRANSACTIONS

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

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

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

9.4 PROHIBITED CONTRACTS

- A. The Town shall not contract for goods or services with a scrutinized company or any affiliate of a scrutinized company. A scrutinized company shall be prohibited from bidding on or submitting a proposal, directly or indirectly through a third party, for a contract with the Town.
- B. The Town shall require any company that submits a bid or proposal with respect to a contract for goods or services to certify in writing that the company is not a scrutinized company. If the Town determines that the company has falsified information in submitting such certification, (i) the Town shall terminate the contract with the company, (ii) the company shall be prohibited from bidding on any future Town contracts, and (iii) the company shall be liable for a civil penalty in an amount equal to the greater of \$250,000 or twice the amount of the contract for which the bid or proposal was submitted.
- C. If the Town is considering a determination that the company has falsified information in submitting such certification, the Town shall proceed as follows:
 - 1. Prior to the issuance of a determination, the Town shall (i) notify the company in writing that the Town is considering such a determination and (ii) disclose the factual support for such a determination.
 - 2. Within ten (10) business days after receipt of such notice, the company may submit rebuttal information to demonstrate that its certification was truthful and that it is not a scrutinized company.
 - 3. The Town shall issue its written determination on the basis of all information in its possession, including any rebuttal information, within ten (10) business days of the date the state agency received the rebuttal information. At the same time, the Town shall notify the company of such determination in writing.
 - 4. Such notice shall state the basis for the determination, which shall be final unless the company appeals the decision within ten (10) days after receipt of the notice by instituting legal action.

9.5 PROHIBITED WEBSITES AND APPLICATIONS

- A. No employee or agent of the Town or person or entity contracting with the Town shall download or use any application, including TikTok or WeChat, or access any website developed by ByteDance Ltd. or Tencent Holdings Ltd. (i) on any government-issued device or government-owned or government-leased equipment, including mobile phones, desktop computers, laptop computers, tablets, or other devices capable of connecting to the Internet,

or (ii) while connected to any wired or wireless Internet network owned, operated, or maintained by the Town.

- B. The Chief of the Town Police Department may grant an exception for the purpose of allowing any employee, agent, person, or entity to participate in any law-enforcement-related matters.

9.6 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 Town unless the employee or former employee provides written notification to the Town, or a public official if designated by the Town, or both, prior to commencement of employment by that bidder, offeror or contractor.

9.7 PROHIBITION ON SOLICITATION OR ACCEPTANCE OF GIFTS; GIFTS BY BIDDERS, OFFERORS, CONTRACTOR, OR SUBCONTRACTOR PROHIBITED

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

9.8 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, and deposit of money, services or anything of value in return for any 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 Town and will be recoverable from both the maker and the recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

9.9 PARTICIPATION IN BID PREPARATION; LIMITATION ON SUBMITTING BID FOR SAME PROCUREMENT

No person who, for compensation, prepares an invitation for bids or request for proposals for or on behalf of the Town 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, the Town may permit such person to submit a bid or proposal for that procurement or any portion thereof if the Town determines that the exclusion of the person would limit the number of potential qualified bidder or offerors in a manner contrary to the best interests of the Town.

9.10 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 the Town shall be sold by or purchased from any person employed as an independent contractor by the Town 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 Code of Virginia § 2.2-3101.
- B. No building materials, supplies or equipment for any building or structure constructed by or for the Town 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 Town to furnish architectural or engineering services in which such person has a personal interest as defined in Code of Virginia § 2.2-3101.
- C. The provisions of subsection A and B shall not apply in cases of emergency.

9.11 CERTIFICATION OF COMPLIANCE REQUIRED; PENALTY FOR FALSE STATEMENTS

- A. The Town 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 chapter.
- B. Any Town 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 by law.

9.12 MISREPRESENTATIONS PROHIBITED

No Town 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.

9.13 PENALTY FOR VIOLATION

A willful violation of any provision of this chapter shall be a Class 1 misdemeanor. Upon conviction, any Town employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

CHAPTER 10: DESIGNATING SURPLUS PROPERTY AND DISPOSAL

10.1 PURPOSE AND APPLICABILITY

Acting in accordance to the Code of Virginia 15.2-951 and 2.2-1124 and the guidelines set forth by the Virginia Department of General Services, these procedures are created for the purpose of identifying, documenting, and disposing of the Town's surplus property. Surplus property is defined as any materials, supplies, or equipment purchased by the Town for use by Town officials and employees that is in excess of need, no longer in use, broken/outdated/or, disabled in some way and not serving a functional purpose. Additional policies governing the disposition of information technology related equipment and supplies are provided under Methods of Procurement, above.

10.2 IDENTIFYING AND DESIGNATING SURPLUS

Department heads shall identify materials, supplies, or equipment no longer in use within their operations, whether because of need or service issues. Periodically, preferably on an annual basis, these retired items, once identified, shall be listed and described, including estimated values, and submitted to the Finance Department.

10.3 DOCUMENTING SURPLUS

Department heads hold the responsibility of documenting and coordinating the disposal of surplus property. Items requested for surplus by Departments must be approved by the Town Manager before transfer or disposal. Disposal shall be administered by the department head or other Procurement Administrator.

10.4 DISPOSING OF SURPLUS

Disposal of surplus property should progress as follows:

- A. First, consider transfer to another Town office/department or agency or another locality or government office.
- B. Second, notify DGS/OSPM of available property; making it available for sale to other government bodies.
- C. Or, make available to the public through the posting to GovDeals.com or otherwise through public auction or sealed bidding, or public consignment as may be available.
- D. Non-functional property may be transferred/sold as-is for parts, or for recycling material.
- E. Or, otherwise disposed of properly by accepted disposal methods at a lawfully permitted waste disposal facility. Any usable parts should be kept or transferred to appropriate user; or sold as specified above.

10.5 PROHIBITED DISPOSAL

In accordance with state guidelines, surplus Town property CANNOT be given to a Town employee, nor can it be bought by Town employees, except through an open public auction.

CHAPTER 11: AFFILIATED BODIES

11.1 AFFILIATED BODIES AND OFFICERS

Other public bodies and public officers affiliated with Town government may also adopt and use this Manual for their procurement, mutatis mutandis. Affiliated public officers and public bodies include: (1) the Town of Bedford Redevelopment and Housing Authority and (2) the Economic Development Authority of the Town of Bedford, Virginia.

11.2 RESPONSIBILITY & MUTUAL ASSISTANCE

Notwithstanding any other provision of this Manual, each public officer or public body that adopts and administers this Manual shall be solely and completely responsible for its administration. However, in the interest of centralizing and simplifying procedures and attaining administrative efficiencies, the Finance Department will assist the Town of Bedford Redevelopment and Housing Authority and the Economic Development Authority of the Town of Bedford, Virginia, in their application of this Manual upon request.

11.3 PROCUREMENT BY REDEVELOPMENT AND HOUSING AUTHORITY

The Redevelopment and Housing Authority may adopt this Manual for use in its procurement. In the event it adopts this Manual, its Board of Commissioners shall stand in the stead of the Town Council wherever “Town Council” is written in this Manual. In the event it appoints an Executive Director, this Executive Director shall stand in the stead of the Town Manager or Procurement

Administrator. Otherwise, all decisions delegated to the Town Manager or Procurement Administrator shall be made by the Board of Commissioners. Town staff will assist the Authority in administration of procurements when requested.

11.4 PROCUREMENT BY ECONOMIC DEVELOPMENT AUTHORITY

The Economic Development Authority may adopt this Manual for use in its procurement. In the event it adopts this Manual, its Board of Directors shall stand in the stead of the Town Council wherever “Town Council” is written in this Manual. In the event it appoints an Executive Director, this Executive Director shall stand in the stead of the Town Manager or Procurement Administrator. Otherwise, all decisions delegated to the Town Manager or the Procurement Administrator shall be made by the Board of Directors. The Purchasing Officer will assist the Economic Development Authority in administration of procurements when requested.

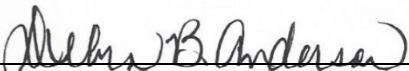
In accordance with the Industrial Development and Revenue Bond Act, the Economic Development Authority has a limited exemption from competitive procurement for items of cost related to authority facilities. The Board of Directors and/or the Executive Director shall have sole responsibility for determining when to exercise this exemption and when to comply fully with the provisions of this Manual.

ADOPTION & ATTESTATION

Adopted by the Town Council of the Town of Bedford, Virginia, by the following recorded vote on November 28, 2023, to be effective for all procurements initiated on or after November 28, 2023:

Tim Black, Mayor	aye
C.G. Stanley, Vice Mayor	aye
Robert Carson	aye
Stacey Hailey	aye
Bruce Hartwick	aye
Bruce Johannessen	aye
Darren Shoen.....	aye

A teste:



Clerk to the Town Council