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TOWN OF LEESBURG PROCUREMENT POLICY

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- I. **Purpose, General** – The policies contained herein have been developed pursuant to the Virginia Public Procurement Act, Sections 2.2-4300 through 2.2-4383 of the Code of Virginia (“VPPA”). These policies are intended to provide the framework to respond to user needs, maintain a strong public confidence in the integrity of public procurement, promote competition, and foster the most favorable price for the purchase of needed goods, services, insurance and construction by the Town.

- II. **Policy** – All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance or construction, shall be awarded after competitive sealed bidding or competitive negotiation pursuant to the VPPA and approved optional policies contained herein, unless otherwise authorized or exempted by law or regulation.

These policies and procedures apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration, except those specifically exempted in the VPPA or herein.

The Town of Leesburg originally adopted the provisions of the VPPA on August 8, 2000, as its procurement policy. A copy of the VPPA can be found on the Commonwealth of VA’s Legislative Information System at <http://leg1.state.va.us/>.

III. Responsibility

- 1. The Town Manager shall exercise overall responsibility for the conduct of the Town’s procurement system through the Director of Finance (Director or CFO).

- 2. The Town Manager may make administrative changes to this Policy consistent with the general duties assigned to the Town Manager in Section 4-2.1 et seq. of the Town Charter.

- 3. The Chief Procurement Officer (CPO) serves as the purchasing agent for the Town under the direction of the CFO. The CPO shall have the duty and responsibility to:
 - a. Keep current, observe and enforce the policies and procedures adopted herein;

 - b. Ensure that procurement transactions be conducted in a fair and impartial manner, that competition be promoted and that the best interests of the Town be served;

 - c. Manage the procurement process for the purchase or contracting of budgeted goods, services, construction and insurance. Present or assist in

the presentation of such contracts to Council as deemed necessary; serve as the designated official for all bid protest activities under Code of Virginia 2.2-4360;

- d. Issue a Procurement Procedures Manual which shall contain instructions for Town employees for the processing of requisitions, delegation of purchase authority, issuance of purchase orders and contract orders, contract administration, specification development, source selection, supplier list maintenance, receipt, acceptance and payment for purchases, supplier performance, cooperative purchasing, property management, and disposition of surplus;
 - e. Implement procedures that ensure that all goods, services or construction purchased are properly inspected and conform to the purchase order, contract and/or specifications;
 - f. Ensure that appropriate personnel are trained and have access to the Procurement Policy and the Procurement Procedures Manual; and
 - g. Participate in national, state and regional cooperative purchasing programs and organizations.
4. Department Directors of the Town shall be responsible for the following:
- a. Assuring compliance by the personnel of their departments with the procurement policies herein and procedures implemented to comply with such policies;
 - b. Assuring that procurements are made for authorized purposes and within the budgetary limits approved by the Town Council and the Town Manager;
 - c. Ensuring that all goods, services or construction purchased are properly inspected and conform to the purchase order, contract and/or specifications;
 - d. Exercising delegated procurement responsibility within the limits and procedures established by this regulation and procedures implemented by the CPO; and
 - e. Assuring that appropriate personnel are trained and possess copies of this Procurement Policy and the Procurement Procedures Manual.

5. Failure to follow the provisions of these Policies and established procurement procedures may be grounds for disciplinary action up to and including termination.

IV. Small Purchase Policy (VPPA 2.2-4303.G & H) – The competitive pricing methods set forth below shall be followed for purchases not expected to exceed the limit set in the VPPA.

1. *Goods, Services, Insurance and Other than professional services:*
 - a. *Purchases less than \$5,000* must be authorized by a Department Director or authorized representative. Telephone quotations, catalogue comparisons, written quotes or other similar quotes may be obtained, as is practicable. Single quotes deemed reasonable are acceptable.
 - b. *Purchases greater than or equal to \$5,000 and less than \$30,000* must be authorized by a Department Director and the CPO or authorized representative(s). Price quotes are to be obtained from three or more sources, as is practicable. Written quotes are recommended but verbal quotes are acceptable provided all pertinent information is properly documented. Proper documentation includes: item description, date and time of quotation, company name, quoted unit and extended price, and name of authorized representative providing the quotation.
 - c. *Purchases greater than or equal to \$30,000 and less than the VPPA limit* must be authorized by the Department Director the CFO and the CPO, or authorized representative(s). A minimum of four written quotes resulting from a Request for Quotation (RFQ) is required. Notice of the solicitation must be posted on either the Town of Leesburg or Commonwealth of VA website.
2. *Professional Services:* Purchases less than the VPPA limit must be authorized by the Department Director, the CFO and the CPO or authorized representative(s). A minimum of four written quotes resulting from an informal written RFQ are required. Notice of the solicitation must be posted on either the Town of Leesburg or Commonwealth of VA website.
3. *When a procurement transaction is made under subsections 1 or 2, of this section,* the purchase shall be made from the supplier quoting the lowest price unless it is documented in writing that the award to another supplier quoting a higher price is in the best interest of the Town.

4. Nothing in this Policy shall prevent the use of competitive sealed bidding or competitive negotiation in procurements less than the formal bid VPPA limit if properly documented and deemed appropriate by the CPO.
5. Orders may not be arbitrarily split so as to constitute a small purchase.

SMALL PURCHASE POLICY

Type of Purchase	Estimated Cost	Required Authorization	Required Procurement Method	Min. # of Quotes Required
Goods, construction, insurance and other than professional services	<\$5,000*	Department Director or authorized representative	Purchase Card, Request for Quotation – verbal or written	1
	\$5,000 up to \$29,999*	Department Director and CPO	Request for Quotation – verbal or written, (written preferred)	3
	\$30,000 up to the VPPA formal bid limit**	Department Director, CFO and CPO	Written Request for Quotation, informal written quotes	4
Professional Services	<VPPA formal RFP limit**	Department Director, CFO, CPO	Written Request for Quotation, informal – written quotes	4

* Effective January 1, 2020, the single quote threshold will be <\$5,000

** Effective July 1, 2018, the VPPA formal IFB and RFP limits are \$100,000 for goods, construction, insurance and other than professional services and \$80,000 for professional services

V. Contract Review and Approval

1. Only the Town Manager or his designees are authorized to execute contracts which bind the Town for the acquisition of goods, services, insurance or construction.
 - a. The CPO is the authorized designee to execute contracts resulting from procurements made up to \$29,999.

- b. The CPO and the Town Manager are the authorized designees to duly execute contracts resulting from procurements made from \$30,000 up to the formal bid limit.
 - c. Town Council approval is required for all contracts totaling \$100,000 or more. The aggregate or sum of all phases for single or term contracts should be included in the total contract amount. The Town Manager is authorized to execute contracts resulting from procurements after Council award approval is obtained. The Council Resolution authorizing the award of the contract should be included with the contracts.
 - d. Town Council approval is required for all unbudgeted contracts regardless of the price.
2. Contracts shall be processed as follows:
- a. The using department shall draft the contract documents using standard established templates and forward them to the CPO for review;
 - b. After review, the CPO shall forward them to the Town Attorney for approval as to legal form; and,
 - c. The contract is then returned to the CPO to secure the signature of the Contractor, and the Town Manager or his designee. Procurement staff shall file, maintain and distribute the contract documents.

VI. Distributing projects resulting from multiple award contracts (VPPA 2.2-4303.1.C)

- 1. Task Orders: The Task Order will be offered to one or more of the Architectural or Engineering (A/E) Contractors at the Town's discretion. The Task Order must include a scope of work, a definition of the product required, a request for a project schedule and a request for a fee proposal. Upon receipt of the Contractor's proposal, the Town may award the Task Order deemed to be the best suited for the project. Evaluation Criteria for Task Order awards is generally included in the original RFP. Criteria may include such things as schedule, special skills, cost, etc.
- 2. Fees: The fee for the services on each Task Order shall be negotiated individually on a lump sum basis considering the Scope of Services required, the estimated man-hours required for each skill level/discipline and the labor rates agreed upon and listed in the Contract. If an estimate of the time required to perform the Work cannot be reasonably estimated, the A/E may be directed to proceed with work on an hourly basis with a maximum or not-to exceed amount. The compensation /

fee shall be determined by the A/E's certified record of man-hours expended by classification / skill level / discipline and the hourly rates for each as listed in the contract.

VII. Small, woman-, minority- and service disabled veteran-owned business (VPPA 2.2-4310) – The Town will undertake every reasonable effort to increase the opportunity for participation in the procurement process by small, minority-, women- and service disabled veteran-owned firms.

All employees with purchasing responsibility are expected to notify and give every reasonable consideration to using qualified small business suppliers for their procurement needs. Whenever the Town engages in a solicitation or request for quotes that exceed \$30,000, it will post the notice on either the Town's or eVA's web site or both.

Additionally, the Procurement Office will:

1. Participate in training seminars for the purpose of informing small, minority-, women- and service disabled veteran-owned bidders of the procurement opportunities and procedures.
2. Participate to the maximum extent possible in all local and regional vendor or procurement fairs for small, minority-, women- and service disabled veteran-owned businesses.
3. Cooperate with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies.

VIII. Petition for recycled goods and products; periodic review of procurement standards (VPPA 2.2-4313) – Any person who believes that particular goods or products with recycled content are functionally equivalent to the same goods or products produced from virgin materials may petition the CPO to include the recycled goods or products in its procurement process. The petitioner shall submit documentation which establishes that the goods or products (i) contain recycled content and (ii) can meet the performance standards set forth in the applicable specifications prior to bid/proposal due date. If the CPO determines that the documentation demonstrates that the goods or products with recycled content will meet the performance standards set forth in the applicable specifications, it shall incorporate such goods or products into its procurement process.

IX. Petition for procurement of less toxic goods and products; periodic review of procurement standards (VPPA 2.2-4314) – Any supplier, who manufactures, sells or supplies goods or products may petition the CPO to include requirements for less toxic goods and products into its procurement process. The supplier shall submit, prior to or during the procurement process, documentation which establishes that the goods or products meet the applicable performance standards. If the CPO determines that the documentation establishes that the less toxic goods or products meet the performance standards set forth in the applicable specifications, they shall incorporate the specifications for the less toxic goods and products into their procurement process. The

Town will revise procedures and specifications on a continuing basis to encourage the use of less toxic goods and products; however, the Town is not required to purchase, test or evaluate any particular good or product other than those that would be purchased under regular procurement procedures.

X. Comments Concerning Specifications (VPPA 2.2-4316) – Unless otherwise instructed, the Procurement Contact is the sole point of contact for questions or comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal. Questions or comments concerning specifications must be made in writing and received by the Town by the question deadline specified in the Invitation to Bid or Request for Proposal or at least ten (10) calendar days prior to the bid/proposal due date. Any interpretation deemed to be material in nature or that alters the scope of the goods or services being requested will be expressed in the form of a written addendum. Such addendum will be posted on the Town’s website and emailed to all properly registered bidders or offerors at least seven (7) calendar days prior to the bid/proposal due date. Verbal communications will not be binding.

XI. Negotiation with lowest responsible bidder (VPPA 2.2-4318) – If the bid from the lowest responsible bidder exceeds available funds, the Town may negotiate with the apparent low bidder to obtain a contract price with available funds if the solicitation contains the following clause:

“Unless all bids are cancelled or rejected, the Town reserves the right granted by Section 2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available. For the purpose of determining when such negotiations may take place, the term “available funds” shall mean those funds which were budgeted by the Town for this contract prior to the issuance of the written Invitation to Bid. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The Town shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the Town wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the Town and the lowest responsive, responsible bidder.”

(This clause may be used only in an Invitation to Bid (IFB) for goods or services in those circumstances where, due to unknown cost factors, there may be a need to negotiate to remain within available funds. This clause shall not be used as a matter of routine.)

If the CPO decides to negotiate in such circumstances, the decision must be documented in writing in advance of the negotiations. Otherwise, unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted.

“Available funds” are those budgeted by the agency for the requirement and designated as such prior to the issuance of the IFB. The purpose of this provision is not to force a bidder to take a lower price but rather to negotiate an acceptable change in requirements,

including price, that is agreeable to both parties. Negotiations might include an extended delivery date, reduced quantity, different accessories, etc., with a corresponding reduction in price.

XII. Debarment Policy (VPPA 2.2-4321) – After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the CPO is authorized to debar a person for cause. During the period of debarment, a supplier will not be eligible to receive solicitations, contract awards, or have contracts renewed or extended. The debarment shall not be for a period of more than three years.

The causes for debarment include but are not limited to:

1. Conviction for 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;
2. Conviction under state or federal anti-trust statutes arising out of the submission of bids or proposals.
3. Unsatisfactory performance on a contract with the Town, including but not limited to, failure to comply with contract terms and conditions or to meet specification/scope of service requirements.
4. Offering any gift, gratuity, favor, or advantage to any Town employee who exercises official responsibility for procurement transactions.
5. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, partner, or agent of the supplier in a contract or purchase order awarded by the Town.
6. Conviction of any criminal offense, or a judgment in civil litigation, which indicates a lack of moral or business integrity.

It is the supplier's responsibility to request reinstatement at the end of the debarment period.

XIII. Withdrawal of bid due to error, VPPA 2.2-4330.C

1. **Amendments or Withdraw PRIOR to opening:** A bid may be amended and/or withdrawn by a bidder or offeror if the CPO receives such a request in writing before the due date and hour. The request must be signed by a person authorized to represent the person or firm that submitted the bid/proposal.

Amendments must be initialed by the person signing the bid or proposal. The proper procedure is to draw a single line through the information to be changed and insert the desired information and initial the change. Erasures, strikeovers, or the use of opaque fluid on bid or proposal forms that affect unit price, quantity,

quality, or delivery may result in the rejection of the line item or items involved in the bid or proposal.

2. **Amendments or Withdrawal after Opening but Before Award**

a. **Informality.** An informality is a minor defect or variation of a bid or proposal from the exact requirements of the Invitation for Bid, or the Request for Proposal, which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured. The CPO may, in its sole discretion, waive such informalities or permit the bidder/offeror to correct them, whichever procedure is in the best interest of the Town. Examples include failure of a bidder offeror to:

- Return the number of signed bids/proposals required by the solicitation.
- Sign the face of the bid/proposal in the space provided, but only if the unsigned bid/proposal is accompanied by other signed documents indicating the bidder's/offeror's intent to be bound.
- Acknowledge receipt of an addendum to the solicitation, but only if it is clear from the bid/proposal that the bidder/offeror received the addendum and intended to be bound by its terms, or the addendum involved had a negligible effect on price, quantity, quality, or delivery.

b. **Judgment Errors.** Bids may not be withdrawn if the mistakes are attributable to errors in judgment, nor may such mistakes be waived or corrected.

c. **Nonjudgmental Mistakes.**

- **Mistakes Where the Intended Correct Bid is Evident.** If the mistake and the intended correct bid are clearly evident in the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident in the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
- **Mistakes Where the Intended Correct Bid is Not Evident.** A bidder may be permitted to withdraw a low bid if a mistake is clearly evident from the bid documents submitted by the bidder and/or a comparison with other bids.

3. **Mistakes Discovered After Award.** Bids containing mistakes shall not be corrected or withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a bid or resulting contract shall be available as a defense in any legal proceeding brought upon a contract or purchase order

awarded to a bidder as a result of the breach or nonperformance of such contract or purchase order.

4. **Percentage Analysis.** If the lowest apparent responsive bid is 25% or more lower than the next low bid, the buyer may contact the bidder to confirm the bid price. If the bidder is able to verify, to the satisfaction of the CPO, that it was a nonjudgmental mistake, the bid may be withdrawn.
- a. If a bid is withdrawn, the lowest remaining bid shall be deemed to be the apparent low bid.
 - b. 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.
 - c. If the public body denies the request for 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 responsive and responsible bidder.
 - d. No bid may be withdrawn 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.

XIV. Inclement Weather Policy

Should the Town of Leesburg close due to inclement weather on a date that a solicitation is due, those bids and/or proposals will be due on the next "full" (8:30 a.m. to 5:00 p.m.) business day at the same time specified in the solicitation.

XV. Grant Administration Policy

It is the policy of the Town of Leesburg to administer and expend grant funds in accordance with the Town of Leesburg's Grant Administration Policies and Procedures adopted May 15, 2018. A copy of the Town's Grant Administration Policies and Procedures can be found on the Town's Accounting Website: <https://www.leesburgva.gov/government/departments/finance/accounting>.

Authorized By: _____


Kaj H. Dentler
Town Manager

Date: _____

01/07/2020


Approved As To Form: _____

Town Attorney