

Index No. FIN 601.0

Pages: 13

Adopted Date: 08-08-2000

Revision Date: 06-13-2012

Revision Date: 10-24-2016

Revision Date: 12-13-2019

Revision Date: 11-12-2020



TOWN OF LEESBURG PROCUREMENT POLICY

TABLE OF CONTENTS

I.	Purpose, General	3
II.	Policy	3
III.	Responsibility	3
IV.	Small Purchase Policy (VPPA 2.2-4303.G & H)	5
V.	Contract Review and Approval.....	6
VI.	Distributing projects resulting from multiple award contracts (VPPA 2.2-4303.1.C)	7
VII.	Small, woman, minority and service disabled veteran-owned business (VPPA 2.2-4310).....	8
VIII.	Petition for recycled goods and products; periodic review of procurement standards (VPPA 2.2-4313)	8
IX.	Petition for procurement of less toxic goods and products; periodic review of procurement standards (VPPA 2.2-4314).....	8
X.	Comments Concerning Specifications (VPPA 2.2-4316).....	9
XI.	Negotiation with lowest responsible bidder (VPPA 2.2-4318)	9
XII.	Debarment Policy (VPPA 2.2-4321)	10
XIII.	Withdrawal of bid due to error (VPPA 2.2-4330.C).....	10
XIV.	Inclement Weather Policy.....	12
XV.	Grant Administration Policy	12
XVI.	Purchase Order Policy.....	13

- 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 and may be made within the established Purchase Card Policy. 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. Purchases within the Purchase Card Policy may be authorized if approved by the CPO or CFO.
 - 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 or CFO	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, strikeouts, 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/offeree to correct them, whichever procedure is in the best interest of the Town. Examples include failure of a bidder/offeree 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/offeree'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/offeree 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 less 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>.

XVI. Purchase Order Policy

Unless otherwise permitted by law, every undertaking involving the expenditure of Town funds shall be in writing, in the form of a purchase order or contract, unless it falls within the Purchase Card Policy limits and guidelines. A purchase order is a legally binding contract, issued by the Procurement Office, which combines the necessary good or service with the legal terms and conditions that govern the purchase. A purchase order also authorizes the vendor/contractor to ship and invoice for goods and services as specified. A purchase order must be issued by the Procurement Office **BEFORE** goods are ordered or services are rendered.

The Town's Purchase Order Terms and Conditions, included as Appendix A to this Policy, shall be used by all Town employees who have the responsibility for a procurement transaction. Unless agreed to otherwise in writing, all vendors who wish to do business with the Town must adhere to the Purchase Order Terms and Conditions. A vendor/contractor may also send their own form for the acknowledgement of an order. However, Town representatives may not sign acknowledgement forms without the approval of the Procurement Office, as these forms create a risk of changing the terms of the agreement between the Town and the vendor. Vendor acknowledgement forms may contain terms and conditions that differ from those in the purchase order, may supersede the Purchase Order Terms and Conditions, and may not be in the best interest of the Town. Please contact the Procurement Office if a contractor refuses to ship or confirm an order without a signed acknowledgment.

Authorized By:



Kaj H. Dentler
Town Manager

Date: 11/13/2020

Approved As To Form:



Town Attorney

TOWN OF LEESBURG, VIRGINIA

PURCHASE ORDER TERMS AND CONDITIONS

1. Applicable Laws: This Purchase Order (PO) shall be governed by and is subject in all respects, whether as to validity, construction, capacity, performance, or otherwise to the laws of the Commonwealth of Virginia and the Town of Leesburg, Virginia, Procurement Policy adopted August 8, 2000, as amended. This PO is subject to, and the Contractor shall at all times observe and comply with, all applicable federal, state, or local laws, ordinances, and regulations which in any manner affect the conduct of the work or those engaged or employed on the work, including but not limited to: the Civil Rights Act of 1964; the Virginia Fair Employment Contracting Act of 1975; the Federal Immigration Reform and Control Act of 1986; the Rehabilitation Act of 1973 Section 504; the Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act of 1990.

2. Definitions: As used herein, the following terms shall have the following meanings:

Town: Any entity for whom the Procurement Office, Town of Leesburg, Virginia has served as the Purchasing Agent, including, without limitation, the Town of Leesburg, Virginia, its officers, agents and employees.

Contractor: The individual or organization named on the front of a PO issued by the Town, whether identified on the PO as "Contractor", "Vendor", or any similar term.

3. Precedence of Terms: To the extent that Contractor has entered into a separate written agreement with the Town for the equipment, goods or services provided pursuant to this PO and this PO is issued in accordance with such agreement, the Terms and Conditions of that agreement shall control in the event of any conflict with the terms and conditions stated in this PO.

4. Acceptance: This PO constitutes the Town's offer and shall be accepted by the Contractor only in accordance with the terms hereof. Any acceptance of an offer of Contractor, or any confirmation herein of a prior agreement between the Town and the Contractor, is expressly made conditional on Contractor's assent to the additional or different terms contained herein. This PO may be accepted by Contractor by commencement of work, shipment of goods, or furnishing of services hereunder. Dispatch of Contractor's acknowledgement form or other written document will also act as acceptance if the terms of such document agree with this PO. Notwithstanding (a) any oral communications or instructions, (b) terms and conditions contained in any quotation, acknowledgement, invoice or other written document of Contractor, or (c) previous waiver in any instance, no addition to, waiver for the future, or modification of any of the provisions herein contained shall be of any force or effect unless made in writing and executed by the Town. The Town will not be bound in any manner for goods delivered or services rendered except on the basis of this PO and all conditions contained herein. By accepting this PO the Contractor understands and agrees that any and all terms and conditions contained on Contractor's acknowledgement or other Contractor forms that are in conflict with those contained herein are null and void.

5. Right to Inspection and Rejection: By accepting this order, Contractor warrants that goods or services delivered must be strictly in accordance with the referenced bid, proposal or quote, and shall not deviate in any way from terms, conditions or specifications of such bid, proposal or quote. Equipment, materials and/or supplies delivered on this order shall be subject to inspection and test upon receipt. If rejected, same shall remain the property of the Contractor. Contractor will bear the cost of Town's inspection of rejected merchandise and the cost of return thereof.

6. Changes and Modifications: No substitution, change or deviation shall be made without approval from the Town in writing. The Town shall have the right at any time to make changes in this PO by written notice to Contractor, and Contractor agrees to comply with such changes. If such changes cause a material increase or decrease in Contractor's costs or time of performance of this PO, Contractor shall notify the Town immediately and negotiate an adjustment.

7. Sales Tax: As a political subdivision of the Commonwealth of Virginia, the Town is exempt from local, state and federal taxes. Such taxes must not be charged or included in the price. If tax is included, the amount thereof will be deducted from the invoice amount.

8. Delivery and Title: Unless agreed to otherwise by the Town in writing, delivery shall be F.O.B. Destination and the title shall pass to the Town upon acceptance. Risk of damages or loss following shipment and prior to acceptance by the Town shall be the responsibility of the Contractor. All freight and transportation charges are to be pre-paid by the Contractor to the carrier without further liability to the Town. Delays in shipment shall be reported immediately to the Town. If shipment is made by freight or express and charges added to invoice, the original bill of lading properly receipted shall accompany invoice. Charges for boxing, packaging or cartage will not be allowed or paid by the Town unless otherwise expressly stated on this PO.

9. Invoices: All invoices shall be mailed to the Town location indicated on the Town's PO and the Town's PO number shall be shown by Contractor on all related invoices, delivery memoranda, bills of lading, packages and/or correspondence. An invoice shall be rendered for each order or for each shipment if more than one is made on an order. If delivery is made by carrier, an itemized delivery ticket must be attached to the package or other shipping unit.

10. Payment Terms: Payment will be authorized by the Town following receipt of a valid invoice and delivery of goods or completion of services, whichever is later. Payment terms shall be "Net 45 Days" unless otherwise agreed by the Town in writing. The payment terms stated herein must appear on the Contractor's invoice, and failure to comply with this requirement may result in the invoice being returned to the Contractor for correction. Unless otherwise agreed by the Town in writing, late payment charges shall not exceed one percent (1%) per month of the invoice amount due. If offered by the Contractor, a payment discount shall begin from the date of proper receipt of a valid invoice, or from the date of acceptable receipt of the goods or services, which occurs later.

11. Time of the Essence: Time of shipment and of other aspects of performance hereunder is of the essence of this agreement.

12. Insurance: Unless otherwise agreed by the Town in writing, Contractors performing work on Town property shall maintain at a minimum the following insurance coverages: (a) Commercial General Liability Insurance, with limits no less than \$1,000,000 per occurrence; (b) Commercial Automobile Liability (including all owned, hired and non-owned vehicles), with limits no less than \$1,000,000.00; and (c) Worker's Compensation with statutory limits. Evidence of such coverage, in the form of a Certificate of Insurance endorsed to name the Town as an additional insured, shall be provided to the Town prior to the commencement of work.

13. Indemnification: To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the Town, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by Contractor's performance of this PO and the referenced bid, proposal or quote.

14. Termination at Option of Town: The Town, by written notice, may terminate this PO in whole or in part for any reason (including but not limited to non-appropriation or reductions in appropriations). If this PO is terminated for convenience of the Town, the Contractor will be compensated to the extent that the goods or services have been accepted by the Town prior to the effective date of the termination. Other than such compensation, the Town shall not be liable to the Contractor for any damages on account of the Town's failure to accept all of the items or services ordered.

15. Cancellation for Default: In the event this PO is cancelled by the Town as a result of default by the Contractor, including failure to deliver the goods or services ordered by the time specified, the Contractor shall be liable for all damages available to the Town in law or in equity, including the excess cost to re-procure similar items from other sources. The Contractor shall reimburse the Town for all costs in excess of the price stated in this PO when re-procurement is made from an alternative source; or, in the event that there is a balance the Town owes to the Contractor from prior transactions, an amount equal to the additional expense incurred by the Town as a result of the Contractor's nonperformance shall be deducted from such balance as payment.

16. Force Majeure: No delay in, or failure of, performance by either the Town or the Contractor will constitute default or give rise to any claim for damages if and to the extent caused by the occurrence of an event beyond the control of the affected party, including but not limited to, acts of governmental authority, acts of God, strikes or other concerted acts of workmen, fire, flood, riots, war, rebellion, terrorism, or sabotage.

17. Authorization to Conduct Business in Virginia: Contractor, if organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership, or registered as a registered limited liability partnership, shall be authorized to transact business in Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. If Contractor is a business entity as described in this paragraph, Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in Virginia (if applicable) to be revoked or cancelled at any time during the term of the contract. The Town may void this PO if Contractor fails to remain in compliance with the provisions of this paragraph.

THE FOLLOWING PROVISIONS APPLY TO ALL PURCHASE ORDERS OVER \$10,000.00:

18. Non-discrimination in Employment: During the performance of this contract, the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin 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, including the names of all contracting agencies with which the Contractor has contracts of over \$10,000.

B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that such Contractor is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this provision.

The Contractor shall include the provisions of the subdivisions A and B in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each subcontractor or vendor.

19. Drug-free Workplace: During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.