

**BERRYVILLE TOWN COUNCIL
MEETING AGENDA
Work Session
Berryville-Clarke County Government Center
101 Chalmers Court, Second Floor
Main Meeting Room
July 10, 2017
3:00 p.m.**

Item

Attachment

1. **Call to Order** – Patricia Dickinson, Mayor

2. **Approval of Agenda**

3. **Discussion** Draft Cash Disbursements and Procurement Work Plan 1

4. **Other**

5. **Closed Session** – No closed session scheduled

6. **Adjourn**

↑ denotes an item on which a motion for action is included in the packet

Cash Disbursements and Procurement Work Plan
30 June 2017

Table of Contents

Overview	.	.	.	.	.	.	.	.	.	3
Purpose	.	.	.	.	.	.	.	.	.	4
GAP Log	.	.	.	.	.	.	.	.	.	5
GAP/Issues/Recommendations	.	.	.	.	.	.	.	.	.	7
GAP/Action(s)/Responsible Position or Department/Timeframe	.	.	.	.	.	.	.	.	.	9
Constraints	.	.	.	.	.	.	.	.	.	13
Appendix A: Audit	.	.	.	.	.	.	.	.	.	15
Appendix B: Policies and Forms	.	.	.	.	.	.	.	.	.	95
Appendix C: Job Descriptions	.	.	.	.	.	.	.	.	.	206

Overview

On 13 June 2017, the Town Council accepted an Internal Audit of Cash Disbursements and Procurement (“Audit”) prepared by PBMares, LLP of Harrisonburg, Virginia (Audit: APPENDIX A).

The Audit was commissioned by the Town Council to review the control environment related to the Town’s cash disbursements and procurement processes. PBMares reviewed the following areas: new vendor setup and maintenance, procurement credit card (P-Card), fuel card maintenance, purchasing, invoice processing, check processing, wire transfers / ACH payments, P-Card payments, and monthly reporting to Town Council.

Within the Audit, internal control weaknesses are enumerated and recommendations are provided for addressing each of the identified weaknesses. Town staff reviewed the Audit and developed this work plan (“Plan”) to strengthen the Town’s internal controls.

The Plan was approved by the Town Council on _____.

Purpose

This Plan identifies the actions to be taken either by Town Council and or Town staff to address the weaknesses enumerated in the Audit. The Plan also identifies the means by which these actions will be executed and a schedule for their implementation.

The Plan provides revised policies that will be adopted and implemented. Forms that will be used by Town staff as they complete required tasks are attached to the Plan.

Also attached to the Plan are revised job descriptions for Town staff who are directly involved in procurement and cash disbursements.

Lastly, the Plan identifies constraints that may limit or slow progress in implementing the recommendations contained therein.

Town of Berryville, Virginia

GAP Log

Process	Sub-Process	Risk No.	Risk	GAP No.	GAPs
Procurement	Vendor Management	R_2	Purchases are made to unauthorized or fraudulent/non-existent vendors.	GAP_1	Prior to doing business with a new vendor, vendors are not required to submit business information, including an IRS Form W-9.
	Purchasing	R_4	Purchases are made at unauthorized prices or terms.	GAP_3	Per the Town of Berryville's Procurement Policy Manual, one (1) quote is required to be obtained for purchases less than \$5,000. Documentation of quotes is not being consistently maintained.
		R_4	Purchases are made at unauthorized prices or terms.	GAP_4	Department heads are not required to sign off on invoice or purchase requisition indicating approval of price, amount, terms, and GL expenditure account.
		R_5	Expenditures are posted to incorrect accounts or periods.		
		R_4	Purchases are made at unauthorized prices or terms.	GAP_5	Per the Town of Berryville's Procurement Policy Manual, four (4) quotes are required to be obtained for purchases of goods or nonprofessional services over \$5,000 to the small purchase limits set in the VPPA. Documentation of quotes is not being consistently maintained.
		R_11	Non-compliance with Virginia Public Procurement Act.		
		R_4	Purchases are made at unauthorized prices or terms.	GAP_6	Per the Town of Berryville's Procurement Policy Manual, all sole source procurements for goods and services must be approved in advance by the Town Manager or designee. Additionally, the Town is required to maintain written determination documenting that there is only one source practicably available for that which is to be procured. Such procedures are not being performed.
		R_4	Purchases are made at unauthorized prices or terms.	GAP_7	Per the Town of Berryville's Procurement Policy Manual, in the case of emergency procurement, written documentation shall be maintained indicating the nature of the emergency and reason for selection of the particular contractor. Such written determination shall be signed by the Town Manager or designated representative. Such procedures are not being performed.
		R_4	Purchases are made at unauthorized prices or terms.	GAP_12	The Town utilizes the ability to ride other jurisdictions' contracts when practicable; however, the Town does not require Council approval for large purchases made through riding another jurisdiction's contract.
		R_4	Purchases are made at unauthorized prices or terms.	GAP_13	Purchase orders are generally completed after a purchase has been made and an invoice has been received. Purchase orders should be generated and approved before purchases are made.
	Procurement Credit Card	R_9	Cash disbursements for unauthorized purchases are issued.	GAP_8	Per the Town of Berryville's Purchasing Card Policies and Procedures, cardholders are required to sign the monthly statement or individual receipts, documenting his or her review and certification that all purchases listed are correct and made for official purposes. Currently, cardholders are not signing monthly P-Card statements or receipts.
		R_4	Purchases are made at unauthorized prices or terms.	GAP_10	The Front Desk Clerk reviews all purchasing credit card activity by department heads to ensure receipts are present and transactions are reasonable, and approves within "Works"; however, the reviewer is not required to physically sign off indicating approval. Additionally, the system does not prevent the approver from being the same person as the initiator.

Town of Berryville, Virginia

GAP Log

Process	Sub-Process	Risk No.	Risk	GAP No.	GAPs
Cash Disbursement	Wire Transfers	R_9	Cash disbursements for unauthorized purchases are issued.	GAP_9	The online banking portal is not configured to segregate duties between initiator and approver of wire transfers. Additionally, the bank is not set up to only allow wire transfers/ACH payments to approved bank accounts.
All	All	R_3	There are misappropriations of cash or fraudulent payments.	GAP_2	Segregation of duties do not exist between procurement, invoice processing, check processing, and vendor maintenance.
All	All	R_12	There is a loss of business continuity.	GAP_11	There is a lack of adequate cross-training for employees on different roles and responsibilities within the procurement and cash disbursement functions.

Town of Berryville, Virginia

Issues and Recommendations

The following table provides a summary of the issues identified during our procedures. We have assigned a relative risk rating to each issued identified. The definitions of the risk ratings are provided below. This is the evaluation of the severity of the concern and potential impact. Items are rated as High, Moderate, or Low.

- *High Risk Items* are considered to be of immediate concern and could cause significant issues if not addressed in a timely manner.
- *Moderate Risk Items* may also cause operational issues and do not require immediate attention, but should be addressed as soon as possible.
- *Low Risk Items* could escalate into operational issues, but can be addressed through the normal course of conducting business.

Procurement Process			
Ratings	Gap No.	Issues	Recommendations
High	GAP_1	Prior to doing business with a new vendor, vendors are not required to submit business information, including an IRS Form W-9.	Prior to doing business with a new vendor, Department Heads should contact the vendor and obtain an IRS Form W-9 and should submit a "New Vendor Request" Form with attached IRS Form W-9 to the designated Purchasing Agent for input into FMS.
High	GAP_2	Segregation of duties do not exist between procurement, invoice processing, check processing, and vendor maintenance.	System access should be designed to segregate duties between procurement, invoice processing, check processing, and vendor maintenance. The Town should consider establishing a Purchasing Agent, who would be responsible for vendor maintenance and procurement documentation.
High	GAP_4	Requesting department heads are not required to sign off on purchase requisition or invoice indicating approval of price, amount, terms, and GL expenditure account.	Invoices should be stamped/documentated for payment approval by department heads. Stamps/documentation should require coding of General Ledger expenditure accounts, signature, and date, as part of payment approval.
High	GAP_3	Per the Town of Berryville's Procurement Policy Manual, one (1) quote is required to be obtained for purchases less than \$5,000. Documentation of quotes is not being consistently maintained.	The Town should implement and enforce purchasing guidelines that are representative of the Town's size, including when quotes are required, how many are required, required documentation, and purchase order requirements. The Policy should also include documentation requirements for sole source procurement and emergency procurement procedures. An example is included in Appendix A .
High	GAP_5	Per the Town of Berryville's Procurement Policy Manual, four (4) quotes are required to be obtained for purchases of goods or nonprofessional services over \$5,000 to comply with the small purchase limits set in the VPPA. Documentation of quotes is not being consistently maintained.	
High	GAP_6	Per the Town of Berryville's Procurement Policy Manual, all sole source procurements for goods and services must be approved in advance by the Town Manager or designee. Additionally, the Town is required to maintain written determination documenting that there is only one source practicably available for that which is to be procured. Such procedures are not being performed.	
High	GAP_7	Per the Town of Berryville's Procurement Policy Manual, in the case of emergency procurement, written documentation shall be maintained indicating the nature of the emergency and reason for selection of the particular contractor. Such written determination shall be signed by the Town Manager or designated representative. Such procedures are not being performed.	
High	GAP_12	The Town utilizes the ability to ride other jurisdictions' contracts when practicable; however, the Town does not require Council approval for large purchases made through riding another jurisdiction's contract.	
High	GAP_13	Purchases orders are generally completed after a purchase has been made and an invoice has been received. Purchase orders should be generated and approved before purchases are made.	

Town of Berryville, Virginia

Issues and Recommendations

Procurement Process (Continued)

Ratings	Gap No.	Issues	Recommendations
High	GAP_8	Per the Town of Berryville's Purchasing Card Policies and Procedures, cardholders are required to sign the monthly P-Card statement or individual receipts, documenting his or her review and certification that all purchases listed are correct and made for official purposes. Currently, cardholders are not signing monthly P-Card statements or receipts.	The Town should require cardholders to sign monthly P-Card statements or receipts, documenting his or her review and certification that all purchases listed are correct and made for official purposes. Additionally, department heads should sign off indicating his or her review/approval of the purchases.
High	GAP_10	The Front Desk Clerk reviews all purchasing credit card activity by department heads to ensure receipts are present and transactions are reasonable, and approves within "Works"; however; the reviewer is not required to physically sign off indicating approval. Additionally, the system does not prevent the approver from being the same person as the initiator.	The Town should require the designated Purchasing Agent to sign department heads' P-Card statements or expense reports indicating approval of the transactions. If the designated Purchasing Agent uses his or her P-Card, the Treasurer should sign the respective P-Card statement or expense report, indicating approval of the transactions.
Medium	GAP_11	There is a lack of adequate cross-training for employees on different roles and responsibilities within the procurement and cash disbursement functions.	The Town should consider cross-training a designated staff member on the current roles and responsibilities of the Treasurer.

Cash Disbursements Process

Ratings	Gap No.	Issues	Recommendations
High	GAP_9	The online banking portal is not configured to segregate duties between initiator and approver of wire transfers. Additionally, the bank is not set up to only allow wire transfers/ACH payments to approved bank accounts.	The Town should require new wire recipient bank accounts for wire transfers/ACH payments to be approved by the Mayor or designated member of Council prior to the first payment. Additionally, bank statements should be provided to the Mayor monthly with all wire/ACH payments made, and include the corresponding signed Electronic Disbursement Request Forms and supporting documentation for comparison.

Additional Recommendations

Ratings	
Low	The Town should consider performing an annual review of all vendors to ensure they are valid and still active.
Medium	The Town should consider requiring the Town Clerk to communicate any potential conflicts disclosed in the Statements of Economic Interest to the designated Purchasing Agent.

Process	Sub-Process	Risk No.	Risk	GAP No.	GAPs	RESOLUTION/ACTION	POSITION RESPONSIBLE	COMPLETION DATE
Procurement	Vendor Management	R_2	Purchases are made to unauthorized or fraudulent/non-existent vendors.	GAP_1	Prior to doing business with a new vendor, vendors are not required to submit business information, including an IRS Form W-9.	A. Develop a Vendor Registration Form with W-9 (Appendix B)	ATMF	COMPLETED
						B. Require all recurring vendors; excluding residential refunds, employee reimbursements, vendors for travel-related expenses, and the like, to complete a Vendor Registration Form with W-9.	FC	1/1/2018
	Purchasing	R_4	Purchases are made at unauthorized prices or terms.	GAP_3	Per the Town of Berryville's Procurement Policy Manual, one (1) quote is required to be obtained for purchases less than \$5,000. Documentation of quotes is not being consistently maintained.	No Action – If a purchase is made from a vendor, it is given that documentation of a price from at least one vendor is provided.	None	None
		R_4	Purchases are made at unauthorized prices or terms.	GAP_4	Department heads are not required to sign off on invoice or purchase requisition indicating approval of price, amount, terms, and GL expenditure account.	A. Amend Purchasing Policy to require Department Head signature.	Town Council	11/1/2017
						B. Purchase Order form will be amended to include a signature line for requesting Department Head.	ATMF	COMPLETED
		R_5	Expenditures are posted to incorrect accounts or periods.	GAP_4	Department heads are not required to sign off on invoice or purchase requisition indicating approval of price, amount, terms, and GL expenditure account.	C. Develop a Request for Payment form (Appendix B).	ATMF	COMPLETED
						D. Department Head signature will be required on Purchase Order Request forms and Request for Payment forms before processing.	FC	1/1/2018
		R_4	Purchases are made at unauthorized prices or terms.	GAP_5	Per the Town of Berryville's Procurement Policy Manual, four (4) quotes are required to be obtained for purchases of goods or nonprofessional services over \$5,000 to the small purchase limits set in the VPPA. Documentation of quotes is not being consistently maintained.	A. Develop a Price Quote Record form (Appendix B).	ATMF	COMPLETED
		R_11	Non-compliance with Virginia Public Procurement Act.			B. Require Price Quote Record form to be completed and signed by Department Heads and attached to a Request for Payment form.	FC	1/1/2018
	R_4	Purchases are made at unauthorized prices or terms.	GAP_6	Per the Town of Berryville's Procurement Policy Manual, all sole source procurements for goods and services must be approved in advance by the Town Manager or designee. Additionally, the Town is required to maintain written determination documenting that there is only one source practicably available for that which is to be procured. Such procedures are not being performed.	A. Amend Purchasing Policy to require signature by Department Head and Town Manager.	Town Council	11/1/2017	
					B. Develop a Sole Source Procurement form (Appendix B).	ATMF	COMPLETED	
					C. Require that the Sole Source Procurement form be completed by Department Head and signed by both the Department Head and the Town Manager and the form attached to the Request for Payment form or Purchase Order Request form.	FC	1/1/2018	

Process	Sub-Process	Risk No.	Risk	GAP No.	GAPs	RESOLUTION/ACTION	POSITION RESPONSIBLE	COMPLETION DATE
Procurement	Purchasing	R_4	Purchases are made at unauthorized prices or terms.	GAP_7	Per the Town of Berryville's Procurement Policy Manual, in the case of emergency procurement, written documentation shall be maintained indicating the nature of the emergency and reason for selection of the particular contractor. Such written determination shall be signed by the Town Manager or designated representative. Such procedures are not being performed.	A. Amend Purchasing Policy to require Emergency Justification form be signed by Department Head and Town Manager.	ATMF/Town Council	11/1/2017
						B. Develop an Emergency Procurement Justification form (Appendix B).	ATMF	COMPLETED
						C. Require that the Emergency Procurement Justification form be completed by Department Head and signed by both the Department Head and the Town Manager and the form attached to the Request for Payment form.	FC	1/1/2018
		R_4	Purchases are made at unauthorized prices or terms.	GAP_12	The Town utilizes the ability to ride other jurisdictions' contracts when practicable; however, the Town does not require Council approval for large purchases made through riding another jurisdiction's contract.	A. Amend Purchasing Policy to require the Cooperative Procurement form be signed by Department Head and Town Manager.	Town Council	11/1/2017
						B. Develop a Cooperative Procurement form (Appendix B).	ATMF	COMPLETED
						C. Require that the Cooperative Procurement form be completed by Department Head and signed by both the Department Head and the Town Manager and the form attached to the Request for Purchase Order or Request for Payment form.	FC	1/1/2018
		R_4	Purchases are made at unauthorized prices or terms.	GAP_13	Purchase orders are generally completed after a purchase has been made and an invoice has been received. Purchase orders should be generated and approved before purchases are made.	A. Develop a Request for Payment form (Appendix B).	ATMF	COMPLETED
						B. Require Department Heads to complete a Request for Payment form when submitting bills for payment.	FC	1/1/2018
		Procurement Credit Card	R_9	Cash disbursements for unauthorized purchases are issued.	GAP_8	Per the Town of Berryville's Purchasing Card Policies and Procedures, cardholders are required to sign the monthly statement or individual receipts, documenting his or her review and certification that all purchases listed are correct and made for official purposes. Currently, cardholders are not signing monthly P-Card statements or receipts.	A. Amend the P-Card Policy to require cardholder signature on P-Card Expense Report form.	Town Council	11/1/2017
	B. Amend the P-Card Expense Report form (Appendix B) in order to provide for cardholder certification.						ATMF	COMPLETED
	C. Require that both the cardholder and the Department Head complete the P-Card Expense Report form.						FDC	1/1/2018
	R_4		Purchases are made at unauthorized prices or terms.	GAP_10	The Front Desk Clerk reviews all purchasing credit card activity by department heads to ensure receipts are present and transactions are reasonable, and approves within "Works"; however, the reviewer is not required to physically sign off indicating approval. Additionally, the system does not prevent the approver from being the same person as the initiator.	A. FC will, prior to electronic approval in Works, print Works Report, sign it, and provide it to the ATMF.	FC	1/1/2018
B. Works Reports on which the FC has been an initiator will also be reviewed and signed by ATMF prior to the FC approving within "Works".						FC	1/1/2018	

Process	Sub-Process	Risk No.	Risk	GAP No.	GAPs	RESOLUTION/ACTION	POSITION RESPONSIBLE	COMPLETION DATE
Cash Disbursement	Wire Transfers	R_9	Cash disbursements for unauthorized purchases are issued.	GAP_9	The online banking portal is not configured to segregate duties between initiator and approver of wire transfers. Additionally, the bank is not set up to only allow wire transfers/ACH payments to approved bank accounts.	A. Wire transfers and new ACH payments will be approved by the Mayor or Recorder.	FC / Mayor or Recorder	1/1/2018
						B. FC will sign transfers and new ACH payments.	FC	1/1/2018
						C. ATMF will complete the transaction for the Town.	ATMF	1/1/2018
All	All	R_3	There are misappropriations of cash or fraudulent payments.	GAP_2	Segregation of duties do not exist between procurement, invoice processing, check processing, and vendor maintenance.	A. Appropriation of funds for Finance Clerk position.	Town Council	7/1/2017
						B. Create and amend job descriptions as required.	TM and ATMF	COMPLETED
						C. Structure system access to only permit responsible position and backup position access.	ATMF	1/1/2018
						D. Fill Finance Clerk position.	TM and ATMF	11/1/2017
						E. Train Administrative Department staff and Administrative Assistant – Police in new or revised primary roles as well as backup roles.	ATMF	11/1/17-7/1/18
All	All	R_12	There is a loss of business continuity.	GAP_11	There is a lack of adequate cross-training for employees on different roles and responsibilities within the procurement and cash disbursement functions.	A. FC will have primary responsibility for accounts payable functions. ATMF will serve as backup to FC for accounts payable functions.	FC / ATMF	1/1/2018
						B. ATMF will have primary responsibility for procurement functions. TC will serve as backup to ATMF for procurement functions.	ATMF / TC	1/1/2018

Key for completion dates:

Completion Date 1/1/2018
Completion Date 11/1/17-7/1/18
Completion Date 11/1/2017
Completion Date 7/1/2017

Key for Positions:

ATMF - Assistant Town Manager for Finance
FC - Finance Clerk
FDC - Front Desk Clerk
TC - Town Clerk
TM - Town Manager

“Additional Recommendations” from Audit

The Town should consider should consider performing an annual review of all vendors to ensure they are valid and still active.

Actions: Expand scope of the annual audit to require that the Town’s Auditor, to examine the vendor files and perform random tests to determine whether the chosen vendors are valid and active.

The Town should consider requiring the Town Clerk to communicate any potential conflicts disclosed in the Statements of Economic Interest to the designated Purchasing Agent.

At present, this matter is addressed as follows:

The Town’s Auditor reviews the Statements of Economic Interest as a part of the annual audit. If a potential conflict is identified it will be reported in the audit. Upon receiving the auditor’s opinion that a potential conflict exists, the Town Manager will discuss the matter with the Town’s Auditor and Legal Counsel, as needed, and will issue a finding in the matter. The Town Manager’s finding, and any action that resulted from the finding, would be communicated to the Town Council.

The Town Clerk is in no position to review the documents in question for potential conflicts.

Staff recommends no changes in this process.

CONSTRAINTS

Personnel

It has been long recognized that the size of Town Business Office staff limits the organization's ability to provide for optimal segregation of duties. This issue is discussed as a part of the Town's Annual Financial Audit. When the Town's auditors identify control weakness and suggest mitigating controls, the Town adopts the suggested measures.

In early 2017, the job description for the Administrative Assistant- Police was amended to provide for sharing of the position between the Police and Administrative Departments. It is expected that this position will divide its time between the departments in the following fashion:

80% Police Department

20% Administrative Department

The individual currently in the position began work in February 2017 and thus far no Administrative duties have been assigned. This has enabled the new Administrative Assistant-Police Department to devote her time to learning tasks associated with the Police Department. Further the Town Manager chose to permit the results of the Audit to inform him as to how the position would be best utilized. The Administrative Assistant – Police Department job description is provided in this plan (Administrative Assistant – Police Department Job Description: APPENDIX C). The revised duties assigned to the position will provide support to Administrative staff.

The Fiscal Year 2018 Budget funds a new position in the Administrative Department. The new position, Finance Clerk, will be filled as soon as possible. The job description for the Finance Clerk was developed after receiving the Audit in order to best utilize the new position. The Finance Clerk job description is provided in this plan (Finance Clerk Job Description: APPENDIX C).

The Town Manager expects that the Administrative Department will be fully staffed by November 2017.

The Administrative Assistant – Police Department and Administrative Department staff will require training in principle job duties as well as training in areas for which they will provide back-up and assistance.

It is important to note that, for a period of time, the Assistant Town Manager for Finance and Administration will continue to perform many of the tasks in question while training staff to assume new duties.

Funding

Training

Several factors account for the need for training. Current employees have had limited training opportunities in recent years because of budget constraints and difficulty scheduling training related absences around critical tasks. The new Finance Clerk will likely require considerable training. Positions assuming new roles or serving as backup to others in specific roles will also require training.

Cost: TBD

Update of Narratives and Maps

The Audit's narrative and maps will need to be updated once the Town implements the steps contained in the approved work plan.

Estimated cost: \$1,500 and \$2,000.

Additional services requested of in annual audit

It is likely that the approved work plan will expand the scope of services for the Town's annual audit. As tasks are added, the cost of the audit will increase.

Cost: TBD

Work Plan Appendix A

TOWN OF BERRYVILLE, VIRGINIA



Internal Audit of Cash Disbursements and Procurement

June 5, 2017



ASSURANCE, TAX & ADVISORY SERVICES

TOWN OF BERRYVILLE, VIRGINIA

TABLE OF CONTENTS

Transmittal Letter	1
Overview	2
Objectives and Approach	3
Procurement Process Narrative and Mapping	4 – 19
Cash Disbursements Process Narrative and Mapping	20 – 28
Significant Risks and Controls Matrix	29 – 30
GAP Log	31 – 32
Issues and Recommendations	33 – 34
Appendix A: Example of Purchasing Guidelines	35 – 36
Appendix B: Procurement Policy Manual – as of September 2012	<i>attached</i>
Appendix C: Purchasing Card Policies and Procedures – as of December 2012	<i>attached</i>
Appendix D: Fuel Card Policies and Procedures – as of January 2013	<i>attached</i>
Appendix E: Town Code, Sec. 2-6 – as of July 2006	<i>attached</i>



June 5, 2017

To the Honorable Members of Town Council
Town of Berryville, Virginia
101 Chalmers Court
Berryville, Virginia 22611

Pursuant to our Internal Audit Services Agreement RFP #FIN-2017-001, we hereby present the internal audit of the Town of Berryville, Virginia's (Town) cash disbursements and procurement processes. Our report is summarized into the following sections:

- ❖ Overview
- ❖ Objectives and Approach
- ❖ Procurement Process Narrative and Mapping
- ❖ Cash Disbursements Process Narrative and Mapping
- ❖ Significant Risks and Controls Matrix
- ❖ GAP Log
- ❖ Issues and Recommendations

We appreciate the courtesies and cooperation extended to us from all of those involved in assisting us in connection with our internal audit.

Respectfully submitted,

PBMares, LLP

Town of Berryville, Virginia

Overview

The Town of Berryville, Virginia (Town) contracted with PBMares, LLP to review and assess the Town's cash disbursements and procurement processes, provide process and control documentation and mapping, define any significant risks and assess how they are managed, assess the controls in place and identify any significant failings or weaknesses, consider whether the findings indicate a need for more extensive monitoring of the system of internal controls and provide examples of best practices to remediate the deficiencies. The internal audit included, but was not limited to, the following procedures: reviewing and analyzing existing policies and procedures, interviewing key personnel, documentation and mapping of processes and detailed transaction testing of cash disbursements and procurements for the period from July 2015 through April 2017. Our approach focused on determining whether proper controls existed and whether existing controls are appropriate for mitigating certain financial and operational inherent risks.

Overall, the Town's internal controls were found to be improperly designed for the cash disbursements and procurement processes. While internal control weaknesses were found, the testing did not identify any instances of fraud or abuse of Town funds. The internal audit team identified the following areas where internal controls need improvement:

1. Segregation of duties
2. Implementation and enforcement of purchasing guidelines and procedures
3. Wire transfers / ACH payment approval
4. Cross-training of staff

Detailed issues and recommendations are included in this report.

The recommendations provided focus principally on the need for the revision of existing policies, implementation of new procedures that more accurately reflect current practices in place, and significantly increase desired levels of controls and oversight.

The internal audit team discussed observations and recommendations with the Town Council in a meeting conducted on May 8, 2017.

Town of Berryville, Virginia

Objectives and Approach

Objectives and Scope

The objective of our internal audit focused on reviewing the control environment related to the cash disbursements and procurement processes. This internal audit covered the following areas:

1. New Vendor Setup and Maintenance
2. Procurement Credit Card Maintenance
3. Fuel Card Maintenance
4. Purchasing
5. Invoice Processing
6. Check Processing
7. Wire Transfers / ACH Payments
8. Procurement Credit Card Payments
9. Monthly Reporting to Town Council

Approach

Our audit approach consisted of three phases:

A. Understanding and Documentation of the Processes

During this phase, we conducted interviews with Patricia Dickinson, Mayor; Erecka Gibson, Ward Three Council Member; (Jay) Harry Lee Arnold, Jr, Recorder; Keith Dalton, Town Manager; Desiree Moreland, Assistant Town Manager/Treasurer; Heather Fiddler, Front Desk Clerk; and Ann Phillips, Town Clerk. We discussed scope and objectives of the audit work, obtained existing policies and established fieldwork dates.

B. Detailed Testing

The purpose of this phase was to test compliance and internal controls, based on our understanding of the applicable Virginia and Town codes, policies and procedures. Our fieldwork was conducted utilizing auditing techniques to meet our audit objectives. Specific procedures performed included inquiry, observation, and review of check disbursements, wire/ACH payments, and purchasing credit card transactions for supporting documentation.

C. Reporting

At the conclusion of our audit, we summarized our observations related to the processes and conducted exit conferences with management. Issues and recommendations are included in this report.

Town of Berryville, Virginia

Process Narrative: Procurement

Procurement Sub-Processes

01. New Vendor Setup and Maintenance
02. Procurement Credit Card Maintenance
03. Fuel Card Maintenance
04. Purchasing
05. Invoice Processing

Key Personnel Involved in the Process

- ❖ Keith Dalton, Town Manager
- ❖ Desiree Moreland, Assistant Town Manager/Treasurer (referred to hereafter as Treasurer)
- ❖ Heather Fiddler, Front Desk Clerk
- ❖ Department Heads

Related IT Systems/Applications

- ❖ Southern Software – Financial Management System (FMS)
- ❖ Bank of America – “Works”

Related Policies and Procedures

- ❖ Procurement Policy Manual – as of September 2012, attached as Appendix B.
- ❖ Purchasing Card Policies and Procedures – as of December 2012, attached as Appendix C.
- ❖ Fuel Card Policies and Procedures – as of January 2013 , attached as Appendix D.

Process Owner Sign Off

Name	Title	Signature	Date

Town of Berryville, Virginia

Process Narrative: Procurement

Sub-Process 01. *New Vendor Setup and Maintenance*

New Vendor Setup

Prior to making payments to a vendor, the Town must add the vendor to its accounting software, Southern Software's Financial Management System (FMS). When the Treasurer receives invoices from Town personnel requiring payment to a new vendor, the Treasurer uses the information from the invoice to add the new vendor to the FMS. To do this, the Treasurer uses the function "Add New Vendor," and enters a unique vendor number, vendor name, and address. FMS prevents duplicate vendor numbers from being used [AP_5]. Vendors are not required to submit an IRS Form W-9 or provide business information [GAP_1].

Vendors are paid via check by default. If at any time a vendor requires ACH or wire payments, the Treasurer will work directly with the vendor to set this up; this is on an as-needed basis, and the process depends on the vendor's requirements.

Vendor Maintenance

Access to vendor maintenance in FMS is restricted to the Treasurer and Front Desk Clerk [AP_1]. However, segregation of duties does not exist between procurement, invoice and check processing, and vendor maintenance [GAP_2].

Sub-Process 02. *Procurement Credit Card Maintenance*

New Procurement Credit Card

Procurement Credit Cards (P-Cards) are primarily used for small purchases, office supplies, and travel expenses. P-Cards are also used to pay certain monthly bills, such as telephone.

Upon hire, each employee is provided a P-Card, and is required to sign a "Bank of America Purchasing Card Employee Agreement," which acknowledges compliance with the Town's *Purchasing Card Policies and Procedures*. The signed agreement is maintained in the employee's personnel file.

The Treasurer assigns each employee a "spend control profile" for their P-Card, based on their job position, which gives them a specified credit and usage limit [AP_6]. If an employee reaches the assigned credit limit, his or her card will be denied. Dollar usage limits range from \$500 – \$55,000; depending on the employee's job title. Additionally, usage limits can be restricted to travel only.

Town of Berryville, Virginia

Process Narrative: Procurement

Sub-Process 02. Procurement Credit Card Maintenance (Continued)

Procurement Credit Card Maintenance

The Town utilizes the Bank of America “Works” service for its P-Card management. Employees submit hard copy receipts to their Department Heads on a minimum of a monthly basis. Per the Town's *Purchasing Card Policies and Procedures*, cardholders are required to sign the monthly P-Card statement or individual receipts, documenting his or her review and certification that all purchases listed are correct and made for official purposes. Currently, cardholders are not signing monthly P-Card statements or receipts [GAP_8]. The respective Department Heads log into “Works,” where they view all P-Card transactions for that month for their employees. The Department Heads review receipts, and approve the P-Card charges electronically within “Works” and assign each transaction to a designated General Ledger (GL) expenditure code [AP_7]. If there are any transactions without receipts, the Department Heads contact the respective employees to obtain receipts. If a receipt is missing, the employee is required to submit an alternate receipt or Missing Receipt Affidavit, as described in the Town’s *Purchasing Card Policies and Procedures*.

If a Department Head uses his or her P-Card, he or she submits a “BOA P-Card Expense Report” with attached P-Card receipts and GL expenditure account to the Front Desk Clerk. Currently, Department Heads are not signing the BOA P-Card Expense Report, monthly P-Card statement, or receipts, documenting his or her review and certification that all purchases listed are made for official purposes [GAP_8]. The Front Desk Clerk then reviews the receipts, and approves the P-Card charges electronically within “Works.” Department Heads can make purchases up to \$15,000 on their P-Cards without going through the procurement process of obtaining one (1) quote prior to purchase [GAP_3]. Additionally, the Treasurer can make purchases up to \$55,000 and the Town Manager up to \$50,000. All P-Card transactions have to be electronically approved within “Works;” however, the system does not prevent the approver from being the same person as the initiator [GAP_10].

Once the transaction is approved in “Works” by the Department Head or Front Desk Clerk, the transaction will get added to a Listing of Transactions Requiring Closure. The Front Desk Clerk reviews each transaction within this listing, verifies a receipt is attached, and closes the action within “Works.”

Town of Berryville, Virginia

Process Narrative: Procurement

Sub-Process 03. Fuel Card Maintenance

Fuel Cards

The Town utilizes Mansfield Oil Company's Voyager Fleet Card Program ("Voyager") for its vehicle fuel purchases. Upon hire, employees within the Police, Public Works, and Utilities departments must sign an "Employment Agreement Form," which acknowledges compliance with the Town's *Fuel Card Policies and Procedures*. The signed agreement is maintained in the employee's personnel file. Each Voyager Fuel Card is assigned to a specific vehicle, rather than an individual employee.

The Voyager Fuel Cards will only allow fuel purchases [AP_8]. Additionally, when purchasing fuel, the driver must key in the odometer reading at the pump. Employees submit hard copy receipts to the Front Desk Clerk on a minimum of a monthly basis. If a receipt is missing, the employee is required to submit an alternate receipt or Missing Receipt Affidavit, as described in the Town's *Fuel Card Policies and Procedures*. If there are any transactions without receipts, the Department Heads contact the respective employee to obtain receipts.

On a monthly basis, the Front Desk Clerk receives an invoice from Mansfield Oil Company for the vehicle fuel purchases made for that respective month. The Front Desk Clerk then downloads a spreadsheet from Mansfield Oil Company's online portal, which lists all purchases by vehicle for the month, and the respective quantity of fuel purchased, cost at the pump, and discounted cost that the Town pays. The Front Desk Clerk reviews all fuel purchases to ensure reasonableness based on quantity of gas purchased per vehicle for the month. The Front Desk Clerk reconciles all receipts submitted by employees to the downloaded spreadsheet, and then to the invoice received from Mansfield Oil Company [AP_9]. Any missing receipts or discrepancies are investigated. After the Front Desk Clerk has reconciled the invoice to the supporting spreadsheet and receipts, the Front Desk Clerk provides the invoice with the reconciliation and all supporting documentation attached to the Treasurer for payment.

The Treasurer reviews the invoice and the attached reconciliation. Once the Treasurer approves the invoice and attached reconciliation, the Treasurer processes an electronic wire transfer/ACH payment following the process as defined in the Cash Disbursements Narrative, *Sub-Process 02: Wire Transfers/ACH Payments*.

Town of Berryville, Virginia

Process Narrative: Procurement

Sub-Process 04. *Purchasing*

Procurement Levels¹

1. Small Purchases – up to \$5,000 where the Town’s estimated cost of goods or nonprofessional services is \$5,000 or less, purchases may be made upon receipt of a minimum of one (1) written, telephone (oral) or electronic quotation.
2. Over \$5,000 up to the small purchase limits set in the Virginia Public Procurement Act (VPPA):
 - a. Unsealed Bidding – solicit minimum of four (4) valid sources. If fewer, document reasons why.
 - b. Unsealed Proposals – Town may use an informal Request for Proposal (RFP).
3. Large Purchases – over the VPPA defined limit (VPPA Limit defined as threshold amount requiring competitive negotiation set in the VPPA).
 - a. Competitive Sealed Bidding (IFB) – goods and nonprofessional services over \$100,000.
 - b. Competitive Negotiation (RFP) – procurement of all professional services over \$60,000.

Small Purchases: Less than \$5,000

For all purchases less than \$5,000 (excluding purchases made on P-Cards), individual Department Heads have the authority to purchase the necessary goods and services upon receipt of a minimum of one (1) written, telephone (oral) or electronic quotation, without prior approval from the Treasurer. Documentation of quotes is not currently being consistently maintained for small purchases [GAP_3]. Once the service has been performed or goods have been received, the purchaser will receive an invoice and check it for accuracy against the services performed or goods received [AP_10]. The requestor then submits a Purchase Requisition (PR), invoice, and PO to the Treasurer, and includes any specific instructions and GL expenditure account to be used. Completed PRs include vendor number, vendor name, date requested, requestor, GL expenditure account, description, and amount. Neither invoices nor PRs are required to be signed by requestor/Department Head [GAP_4].

Upon receipt of a PR and invoice, the Treasurer reviews for accuracy by matching the PR to the invoice [AP_02]. The Treasurer then uses the PR to generate a purchase order (PO) within the “Accounts Payable” function in FMS. POs should be generated and approved before purchases are made, not after [GAP_13]. In order to generate the PO, the Treasurer needs to enter the total amount, department, PO date, description, vendor number (if current vendor), shipping information, GL expenditure account, quantity, and unit price. If the vendor is not an existing vendor, the Treasurer will add the vendor in accordance with *Sub-Process 01: New Vendor Setup and Maintenance*. Once the PO has been generated, it is automatically added into the “Unapproved Purchase Order List” in FMS.

¹ Town of Berryville Purchasing Policy 2012

Town of Berryville, Virginia

Process Narrative: Procurement

Sub-Process 04. Purchasing (Continued)

Purchases between \$5,000 and the VPPA Limit

If the Town's estimated cost of goods or nonprofessional services is between \$5,000 and the Virginia Public Procurement Act (VPPA) Limit (\$100,000), a minimum of four (4) quotes from different sources are required to be solicited or an informal RFP can be used. Currently, record of solicitation of sources is not consistently being maintained in accordance with the Town's *Purchasing Policy* [GAP_5].

For such instances, the requestor submits a PR and quotes to the Treasurer. The Treasurer uses this request to create a PO within the "Accounts Payable" function in FMS, following the same process as small purchases. Once the goods have been received or the services have been performed, the receiving department submits the invoice, attached to the PR and PO, to the Treasurer.

Large Purchases: Professional Services over \$60,000

The Town uses competitive negotiation for procurement of all professional services estimated to be over the VPPA Limit (\$60,000). In this situation, the Department Head prepares a formal RFP. The formal RFP describes the services to be performed, and must specify the requirements to be addressed by the offerors that will be used to evaluate the proposal. The formal RFP is reviewed by the Town Manager prior to issuance [AP_11].

The Department Head sends the formal RFP to anyone that has expressed interest, and typically posts to Virginia's eProcurement Portal (eVA). A submission due date will be established, with a minimum of ten days from issue date of the formal RFP. The Town is required to send the formal RFP to at least six (6) valid sources. If the Town does not solicit the required number of sources, the reason(s) must be stated in writing and placed in the purchase file.

Once a deadline has been reached, the Department Head establishes an evaluation team, consisting at a minimum of the Department Head and Town Manager, to evaluate all submissions received, based on pre-determined criteria. Interviews are conducted as deemed necessary. The Department Head conducts negotiations with the selected offeror. Once negotiations are finalized and the offeror has been selected as the winning offeror, the Department Head posts the Intent to Award Notice on the Town's website.

Large Purchases: Goods and Nonprofessional Services over \$100,000

The Town uses competitive sealed bidding for procurement of all goods and nonprofessional services estimated to be over the VPPA Limit (\$100,000). In this situation, the Department Head prepares an Invitation for Bid (IFB), which describes the goods or services to be procured, and includes specifications, scope of work/purchase description, and any contractual terms and conditions applicable. The IFB is reviewed by the Town Manager prior to issuance [AP_11].

The Department Head sends the IFB to anyone that has expressed interest, and will publicly post the IFB to eVA. A submission due date will be established, with a minimum of ten days from issuance date of the IFB. The Town is required to send the IFB to at least six (6) valid sources. If the Town does not solicit the required number of sources, the reasons must be stated in writing and placed in the purchase file.

Once the submission deadline has been reached, the Department Head opens bids publicly and reads them aloud. The Department Head will award the bid to the lowest responsive and responsible bidder.

Town of Berryville, Virginia

Process Narrative: Procurement

Sub-Process 04. Purchasing (Continued)

The Town utilizes the ability to ride other jurisdictions' contracts when practicable. In these cases, the Treasurer searches for another jurisdiction with a contract that allows for others to ride the contract as awarded. The Town then operates under the assumption that the other jurisdiction followed proper procurement. Currently, the Town does not require Town Council approval for large purchases made through riding another jurisdiction's contract [GAP_12].

Sole Source Procurement

As per the Town's *Procurement Policy Manual*, sole source procurement is authorized when there is only one source practicably available for the goods or services required. In the case of sole source procurement, competition is not required; however, all sole source procurements for goods and services exceeding \$5,000 require advance approval by the Town Manager or designee. Additionally, a written quotation must be obtained from the vendor, and written determination documenting that there is only one source practicably available for that which is to be procured must be included in the procurement file.

Currently, the Town Manager is not approving sole source procurement purchases exceeding \$5,000 in advance. Additionally, quotes and written determinations are not being maintained in accordance with the *Procurement Policy Manual* [GAP_6].

Emergency Procurement

As per the Town's *Procurement Policy Manual*, in the case of emergency procurement where competition is not used due to an emergency-required purchase, the Town is required to maintain written documentation indicating the nature of the emergency and reason for the selection of the particular contractor. Such written determination is to be signed by the Town Manager or designated representative.

Currently, for emergency procurement, written documentation indicating the nature of the emergency and reason for the selection of the particular contractor is not being maintained in accordance with the *Procurement Policy Manual* [GAP_7].

There is a lack of adequate cross-training for employees in different roles and responsibilities within the procurement and cash disbursements functions [GAP_11].

Sub-Process 05. Invoice Processing

Approximately twice a month, the Treasurer prints the "Unapproved Purchase Order Listing," and performs a check by manually adding all hard copies of POs and comparing the total to the "Unapproved Purchase Order Listing" total. After checking for accuracy, the Treasurer approves the POs within FMS. The Treasurer then prints out all POs and makes two carbon copies (one yellow and one white). Both carbon copies of the PO are attached to the PR and invoice. The Treasurer then performs a match between invoice, PR and PO [AP_2]. Upon the Treasurer's approval, the Treasurer will "Post" in FMS, which sends the PO to a "Posted Purchase Orders" Report. The Treasurer will sign the hard copy of the PO indicating approval, and provide all documents to the Town Manager for review and approval. The Town Manager reviews all POs for reasonableness, and signs off as secondary reviewer after the Treasurer [AP_3].

Town of Berryville, Virginia

Process Narrative: Procurement

Sub-Process 05. *Invoice Processing (Continued)*

Once the Town Manager has reviewed and signed all POs, indicating approval, the Treasurer keys in the vendor number and invoice number of each invoice to “Invoice Processing” in FMS. If there is a corresponding PO, the Treasurer tags the PO to the invoice, and the amount will automatically be entered to match the PO amount. The Treasurer can manually override this amount; however, the Treasurer cannot enter an amount that is greater than the PO. If there is no corresponding PO, the Treasurer manually enters a payment amount based on the invoice.

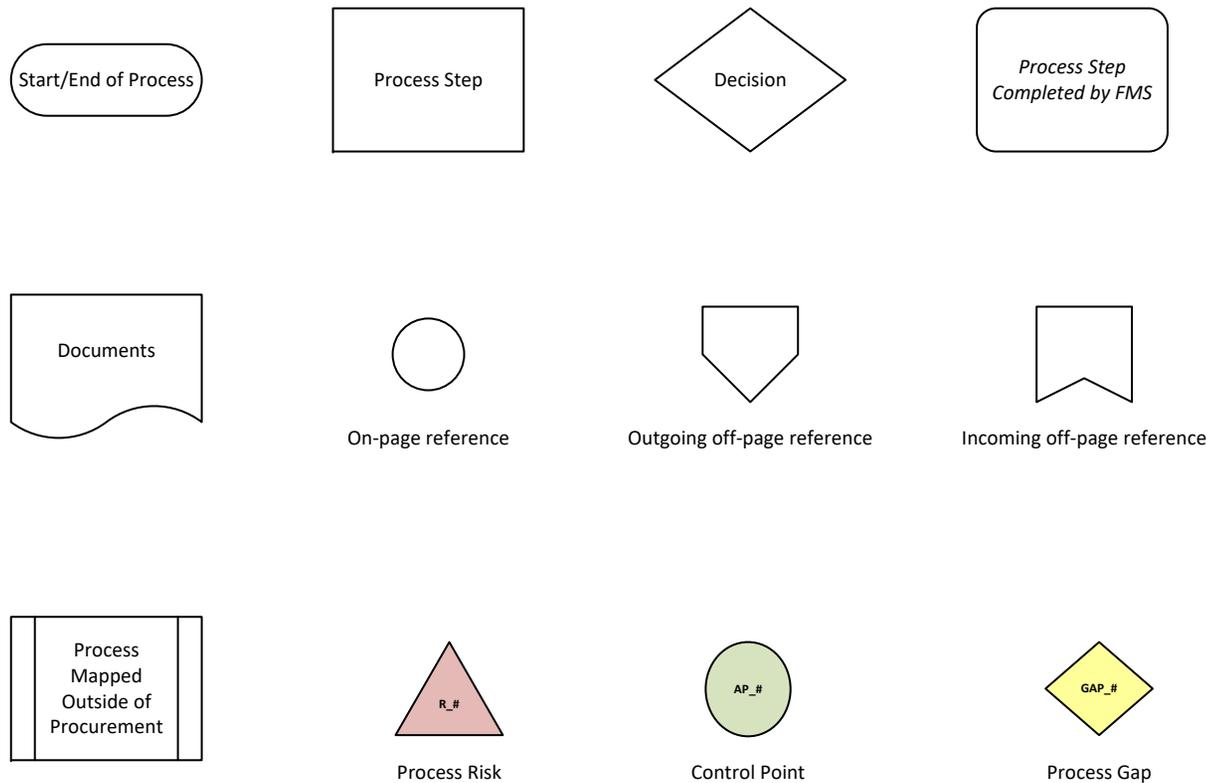
Once all invoices for a check run have been entered, the Treasurer manually adds all invoices on a calculator tape, and matches the total of all invoices with the total on the invoice processing screen [AP_4]. Once confirmed, the Treasurer prints the Invoice Register, and then clicks “Post,” which posts all invoices to the general ledger. At this point, checks are ready for processing.



TOWN OF
BERRYVILLE
Virginia

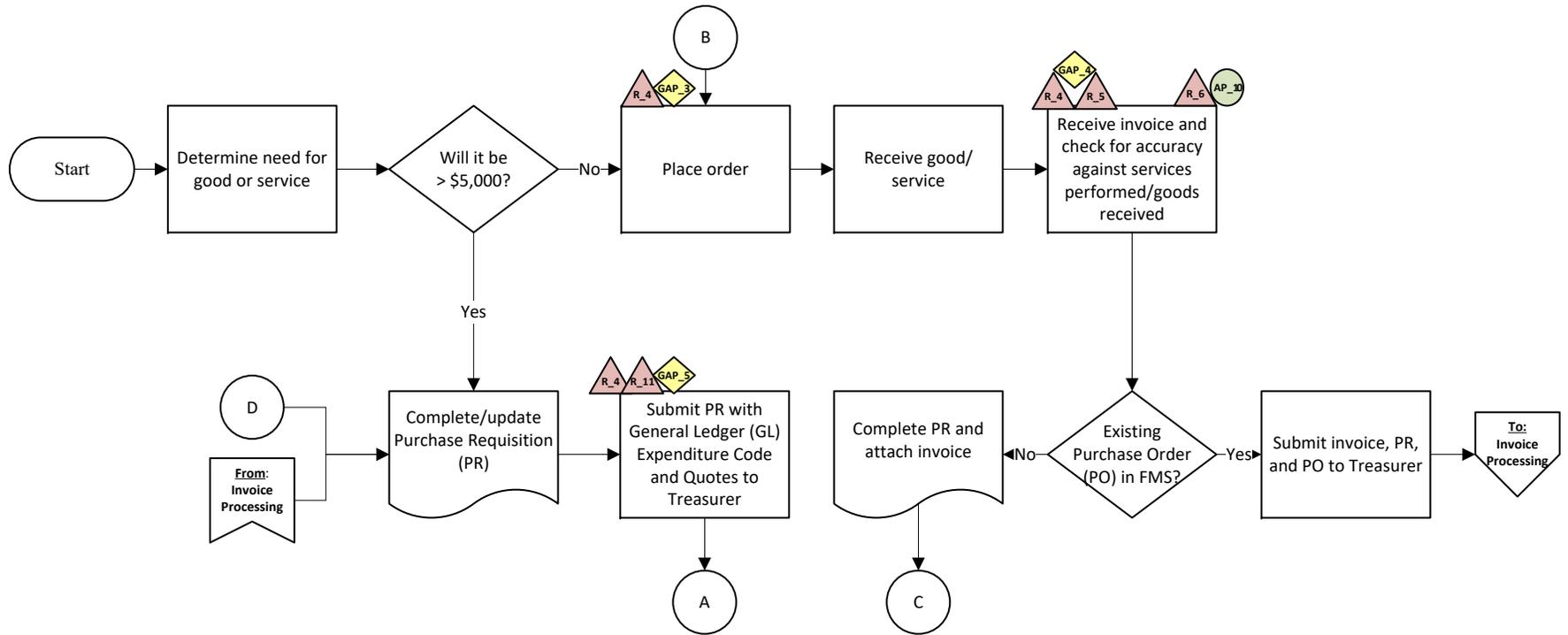
Process Flow: *Procurement*

Process Mapping Symbols Key:

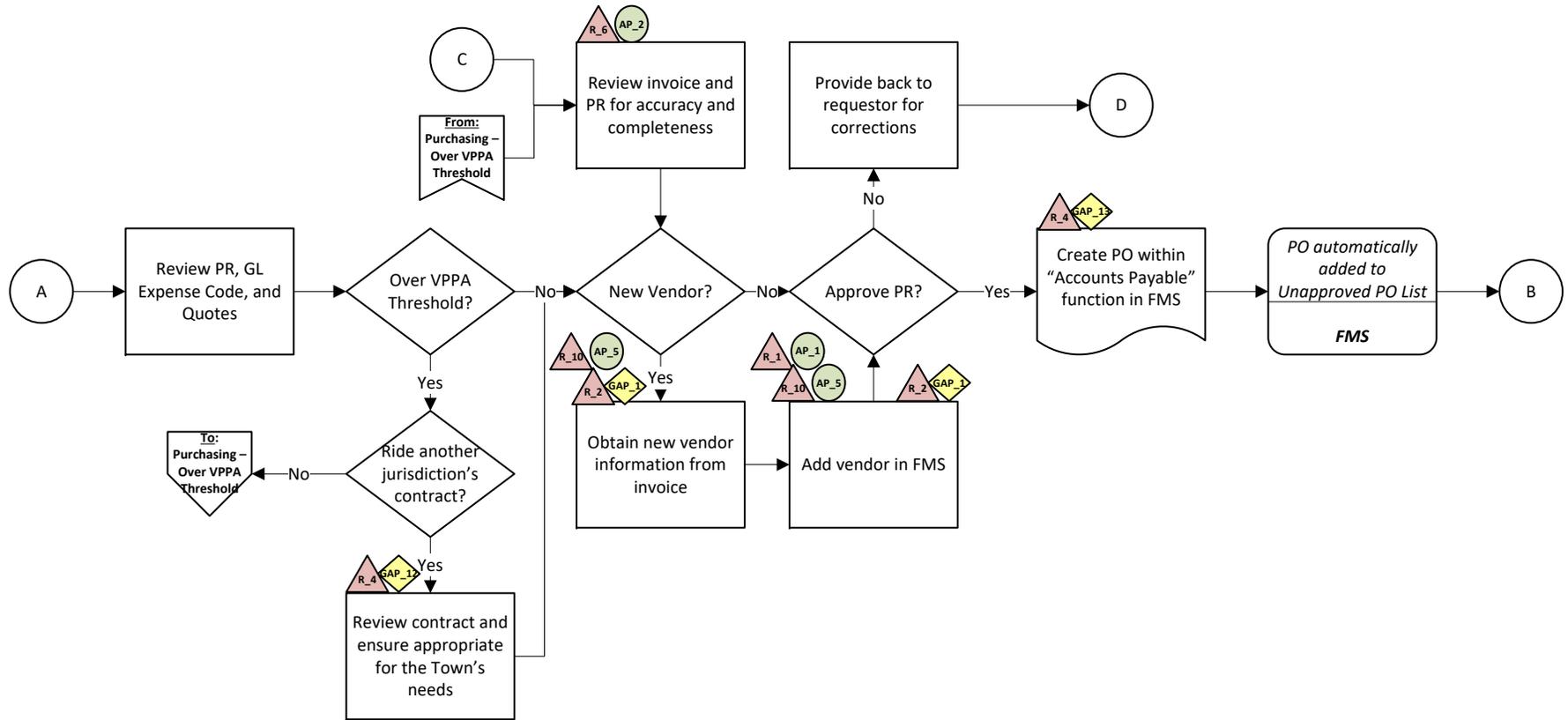


Department Head

The following risks and gaps, related to segregation of duties and cross-training of employees, apply throughout the entire procurement process:

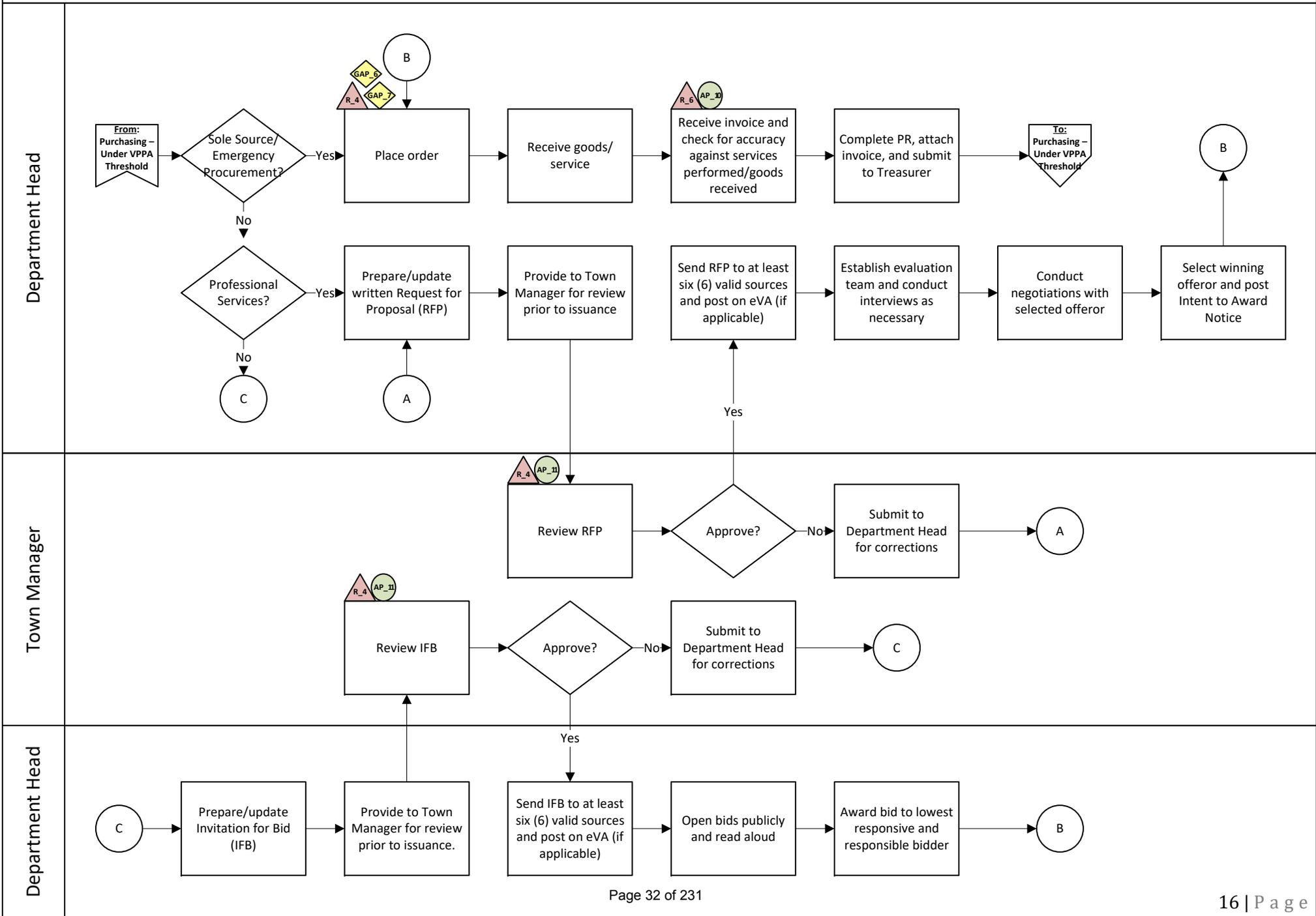


Treasurer



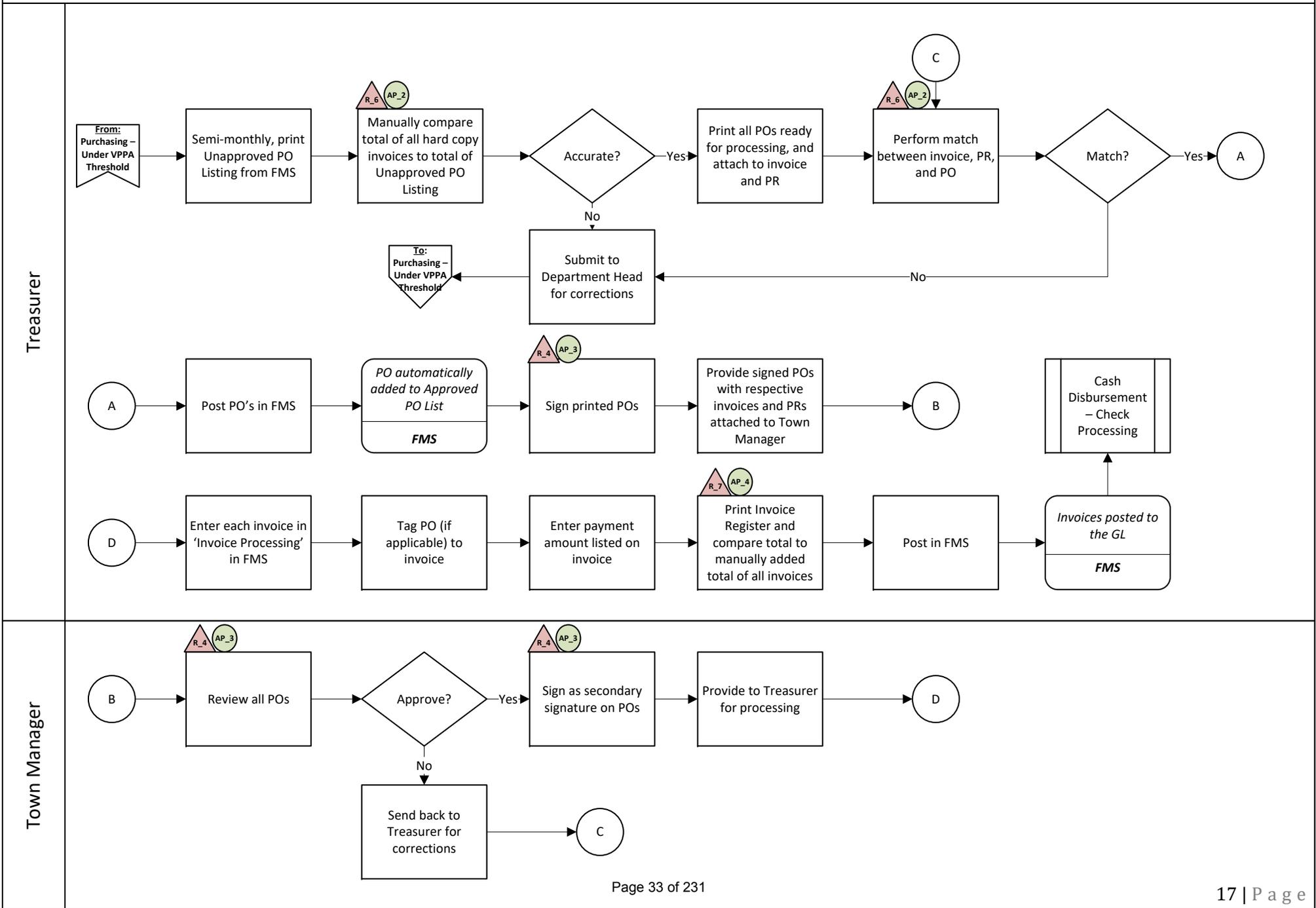
Purchasing – Over VPPA Threshold

As Needed



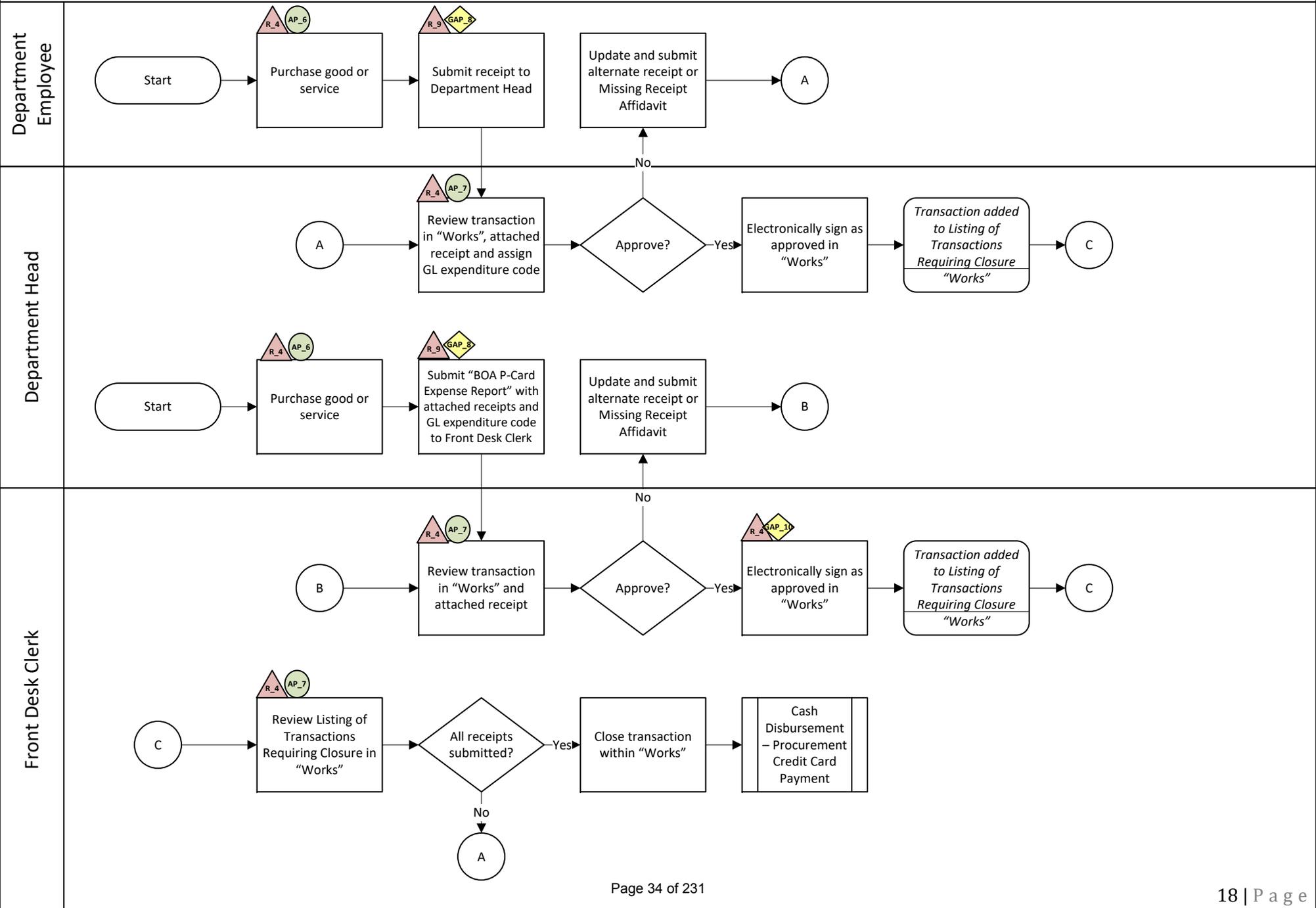
Invoice Processing

Semi-Monthly



Procurement Credit Card Maintenance

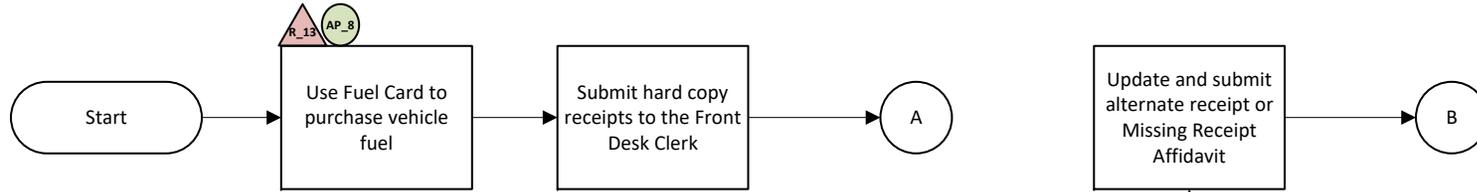
Monthly



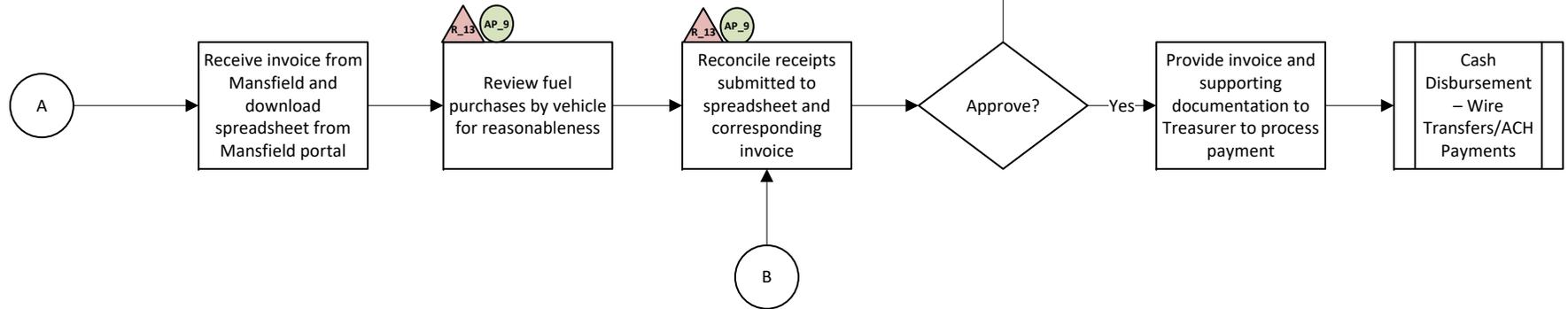
Fuel Card Maintenance

Monthly

Department Employee



Front Desk Clerk



Town of Berryville, Virginia

Process Narrative: Cash Disbursements

Cash Disbursements Sub-Processes

01. Check Processing
02. Wire Transfers / ACH Payments
03. Procurement Credit Card Payment
04. Monthly Reporting to Town Council

Key Personnel Involved in the Process

- ❖ Patricia Dickinson, Mayor
- ❖ (Jay) Harry Lee Arnold, Jr., Recorder
- ❖ Town Council
- ❖ Keith Dalton, Town Manager
- ❖ Desiree Moreland, Assistant Town Manager/Treasurer (referred to hereafter as Treasurer)
- ❖ Heather Fiddler, Front Desk Clerk

Related IT Systems/Applications

- ❖ Southern Software – Financial Management System (FMS)
- ❖ Bank of Clarke County *Online*
- ❖ Bank of America “Works”

Related Policies and Procedures

- ❖ Procurement Policy Manual – as of September 2012, attached as Appendix B.
- ❖ Purchasing Card Policies and Procedures – as of December 2012, attached as Appendix C.
- ❖ Fuel Card Policies and Procedures – as of January 2013, attached as Appendix D.
- ❖ Town Code, Sec. 2-6 – as of July 2006, attached as Appendix E.

Process Owner Sign Off

Name	Title	Signature	Date

Town of Berryville, Virginia

Process Narrative: Cash Disbursements

Sub-Process 01. *Check Processing*

After all invoices ready for payment have been posted in FMS, the Treasurer enters the “Check Processing” function in FMS. The Treasurer selects all checks that are to be processed within the batch, and creates an “Invoice Pay List.” The Treasurer prints the check pre-audit report and compares the vendor, invoice amount, and GL expenditure code to the hard copy invoice [CD_6].

After the Treasurer has reviewed the report, the Treasurer prints the checks from FMS. Blank check stock is maintained in the Town Treasurer’s office, which is only accessible by authorized personnel through badged entry [CD_1]. After all of the checks have been printed, the Treasurer signs as the first signature on the dual signature checks. The Treasurer then “Posts” in FMS, which will post the checks within the General Ledger (GL) to remove the accounts payable and post to cash. The Treasurer then generates and prints an “Accounts Payable Check Register with Detail” Report and files it in the monthly transaction folder.

All supporting documentation, including the Purchase Order (if applicable), Purchase Requisition, and Invoice get attached to the checks, which are provided to the Mayor or Recorder for secondary signature. Per Section 2-6 of the Town Code, all checks require two (2) signatures: the first signature being the Treasurer or the Town Manager, the second being the Mayor or Recorder [CD_2]. The Mayor or Recorder will review for reasonableness prior to signing.

If at any point during the process a check does not pass review, the Treasurer will void the check and follow up with the respective Department Head.

The Front Desk Clerk mails out the checks, and files the purchase order and check stubs with supporting documentation in each vendor’s file [CD_3].

Note: AP Batches are run approximately semi-monthly (mid-month, and end of month). However, individual checks can also be processed if there is an immediate need. The process is the same whether the check is included in a batch or individually.

Town of Berryville, Virginia

Process Narrative: Cash Disbursements

Sub-Process 02. *Wire Transfers / ACH Payments*

The Town uses wire transfers/ACH payments to pay for the following recurring monthly charges: Town of Berryville fuel card payment, US Bank equipment lease payment, USDA loan payment, and Federal and State withholding payments.

On a monthly basis, the Treasurer receives bills from vendors that require wire transfers. The Treasurer fills out an “Electronic Fund Disbursement Payment Request” form, and signs, indicating the Treasurer’s review and approval of the wire transfer. The Treasurer then provides the signed form with the invoice and supporting documentation attached to the Mayor or Recorder for secondary signature, who reviews for reasonableness prior to signing [CD_4].

Once the proposed wire transfer has been approved by the Mayor or Recorder, the Treasurer enters the online portal for the bank and posts the wire transfer. The Treasurer then receives an online payment confirmation, which the Treasurer prints and attaches to the signed request form and invoice. The Treasurer enters the cash disbursements as a disbursement in FMS based on assigned GL expenditure codes.

The Treasurer has the ability to make wire transfers/ACH payments up to \$45,000 per day. Bank of Clarke County is not configured to segregate duties between initiator and approver of wire transfers. Additionally, the bank is not set up to only allow wire transfers/ACH payments to approved bank accounts [GAP_9].

Sub-Process 03. *Procurement Credit Card Payment*

Procurement Credit Card Payment

Once all P-Card transactions for the respective month have been approved within “Works,” the Front Desk Clerk prints an excel spreadsheet of all transactions and ensures all receipts are present. Once the Front Desk Clerk has verified all receipts are present, the Front Desk Clerk enters the transactions as cash disbursements in FMS, using the documented GL code and vendor.

After all cash disbursements have been entered, the Front Desk Clerk prints the “GL Cash Disbursements Entries” Report, and reconciles to the Bank of America monthly statement [CD_5]. If there are any discrepancies, the Front Desk Clerk follows up with the respective Department Heads for clarification.

After the reconciliation has been completed, the Front Desk Clerk prints the reconciliation, attaches it to the Bank of America monthly statement and corresponding receipts, and provides it to the Treasurer for payment.

The Treasurer matches the total per the cash disbursements entry to the total on the Bank of America statement prior to payment [CD_5]. Payment is automatically deducted from Bank of Clarke County each month to pay Bank of America.

Town of Berryville, Virginia

Process Narrative: Cash Disbursements

Sub-Process 04. *Monthly Reporting to Town Council*

On a monthly basis, the Treasurer prepares a Council Packet to provide to the Town Council at the monthly meeting. The Council Packet includes the following for the respective month:

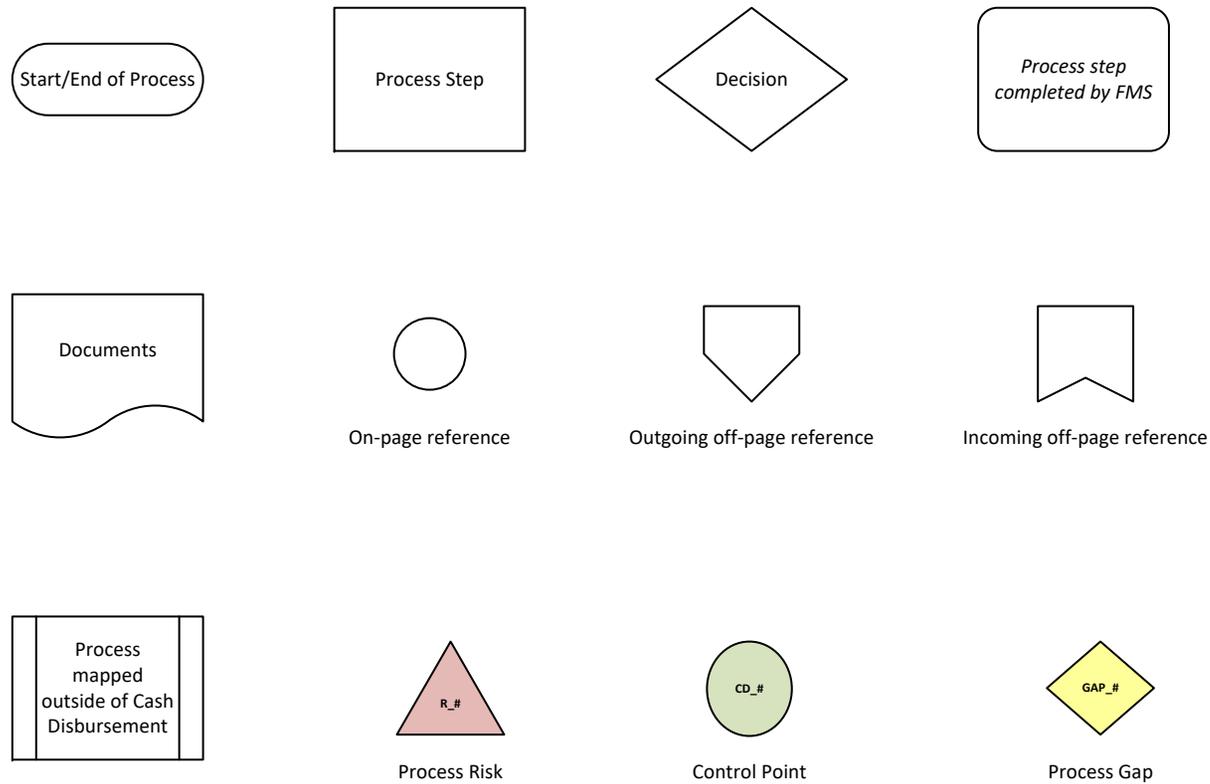
- List of all checks written during the month; and
- Bank of America P-Card Statement.



TOWN OF
BERRYVILLE
Virginia

Process Flow: *Cash Disbursement*

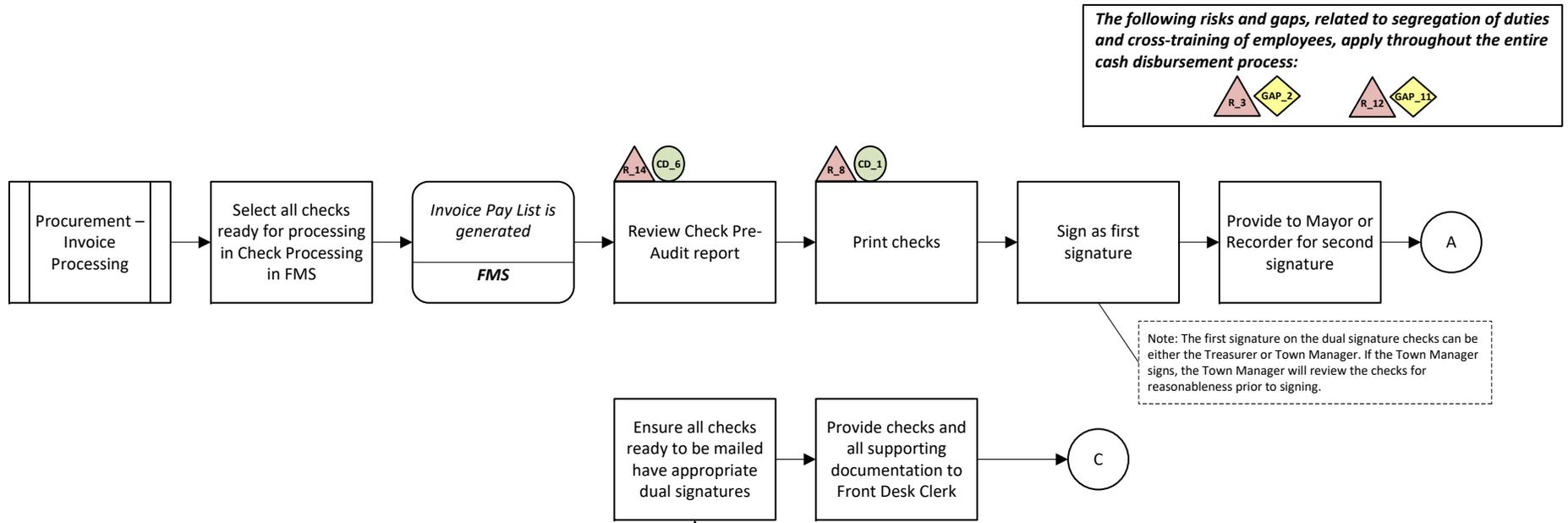
Process Mapping Symbols Key:



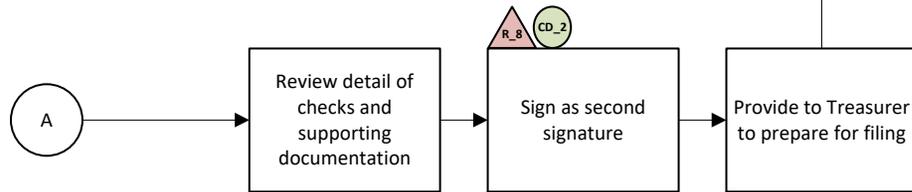
Check Processing

Semi-Monthly

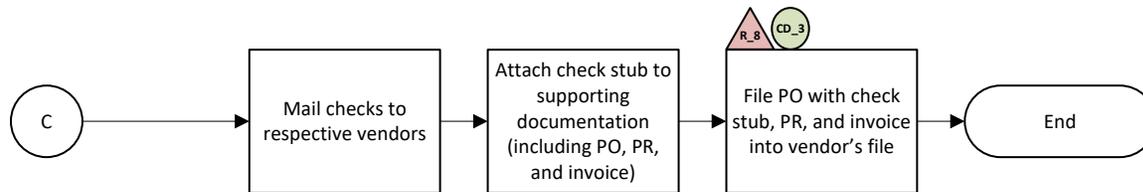
Treasurer



Mayor or Recorder



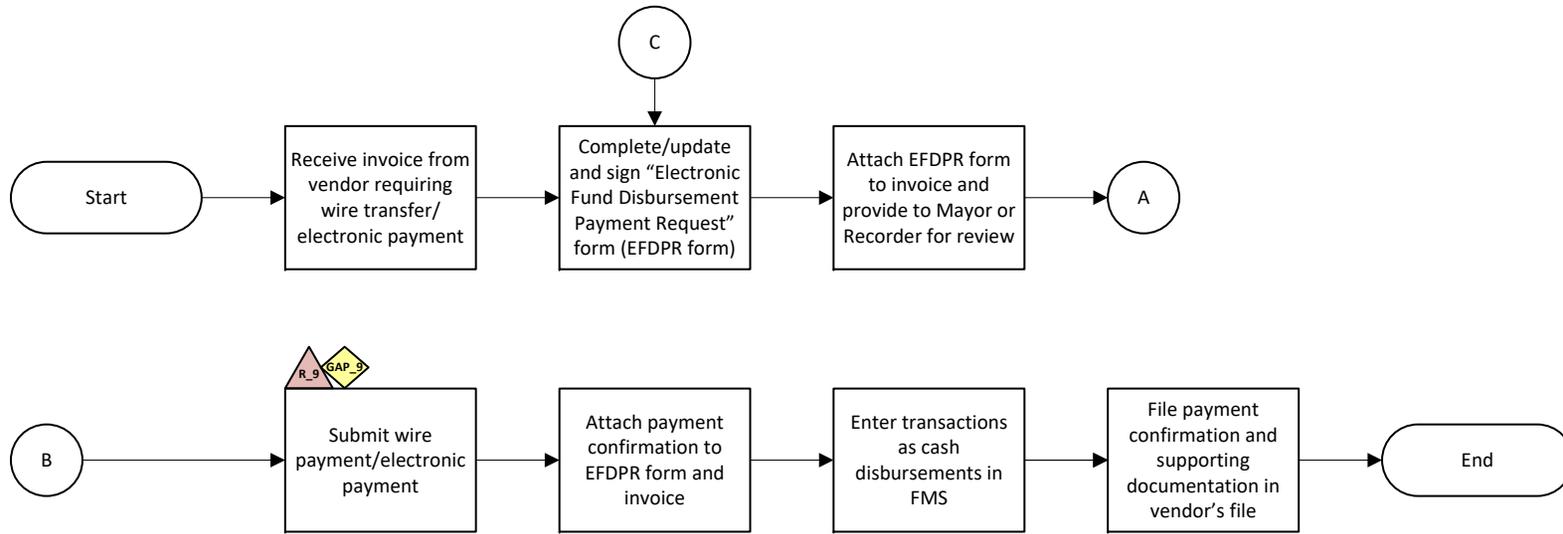
Front Desk Clerk



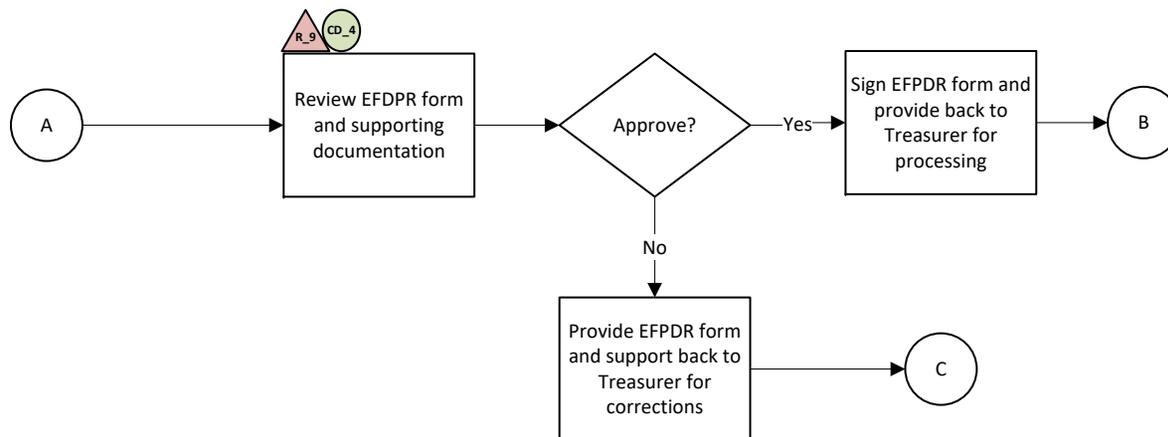
Wire Transfers/ACH Payments

As Needed

Treasurer



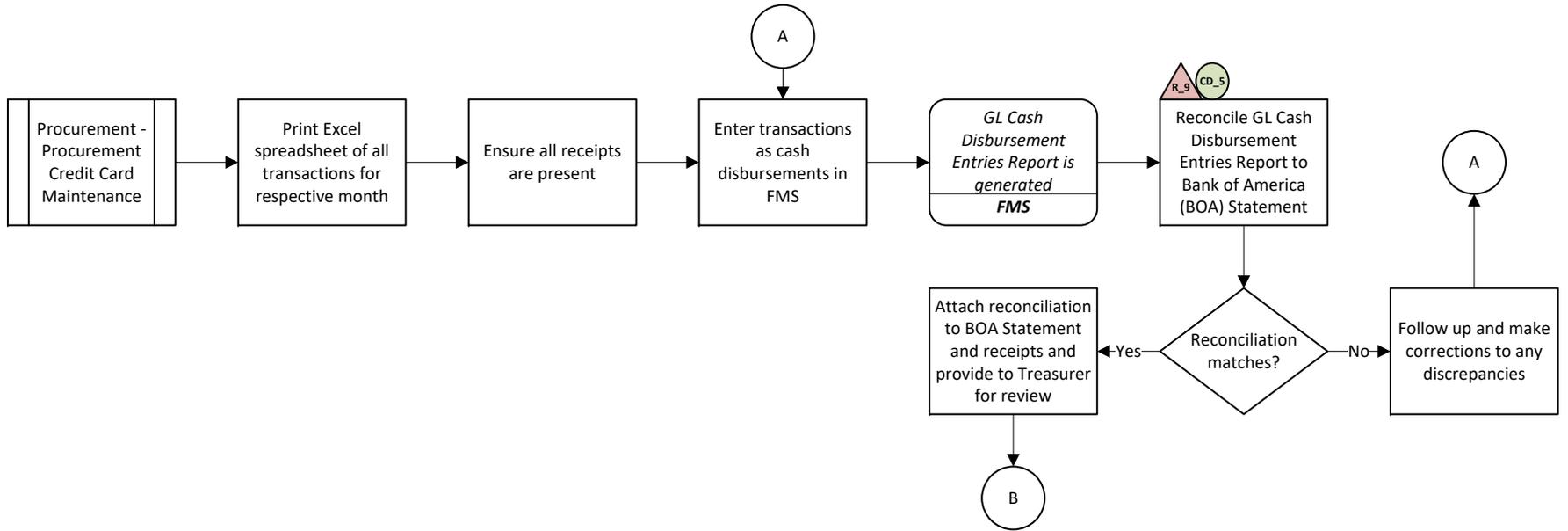
Mayor or Recorder



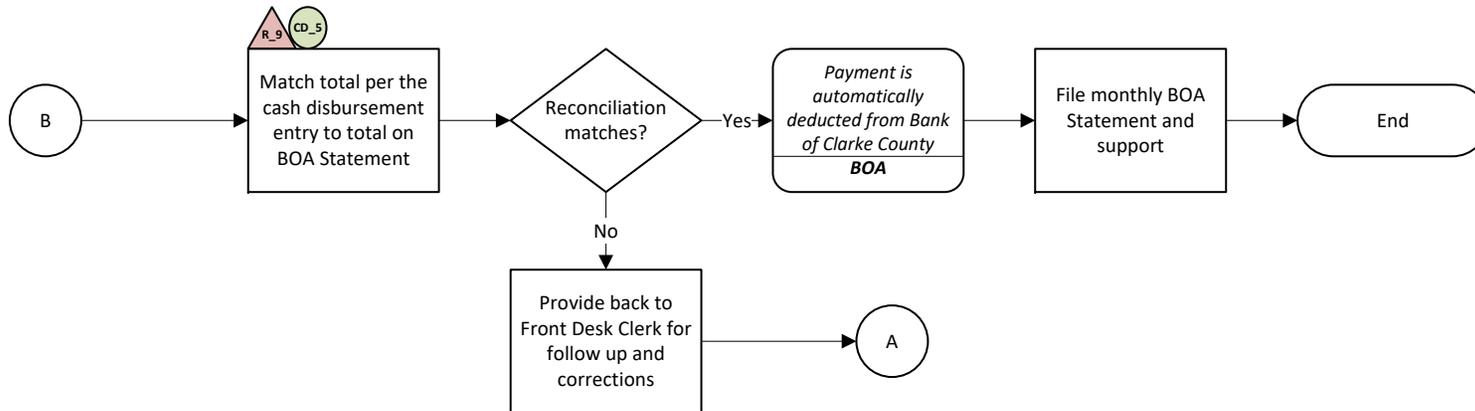
Procurement Credit Card Payment

Monthly

Front Desk Clerk



Treasurer



Town of Berryville, Virginia

Significant Risks and Controls Matrix

Process	Sub-Process	Risk No.	Risk	Control No.	Control Description
Procurement	Vendor Management	R_1	Purchases are made to unauthorized or fraudulent/non-existent vendors.	AP_1	Access to vendor maintenance in FMS is restricted to the Treasurer and Front Desk Clerk.
		R_10	Payments are made to the wrong vendor.	AP_5	The system is configured to prevent duplicate vendor numbers from being used.
	Purchasing	R_6	Receiving records are not matched to invoices.	AP_10	The purchaser reviews the invoice and checks for accuracy against the services performed or goods received.
		R_4	Purchases are made at unauthorized prices or terms.	AP_11	The Town Manager reviews all Request for Proposals and Invitation for Bids prior to issuance.
	Purchasing; Invoice Processing	R_6	Receiving records are not matched to invoices.	AP_2	The Treasurer matches every invoice to the respective purchase requisition and purchase order (if applicable), and approves all invoices for payment. Any invoices not approved are investigated.
	Invoice Processing	R_4	Purchases are made at unauthorized prices or terms.	AP_3	All Purchase Orders are signed by both the Treasurer and the Town Manager prior to processing invoices for payment.
		R_7	Not all invoices are recorded in the accounts payable system.	AP_4	A calculator tape is prepared totaling all invoices for that check run, and the total is compared to the batch posting in the AP Ledger.
	Procurement Credit Card	R_4	Purchases are made at unauthorized prices or terms.	AP_6	Each employee who is provided a p-card is assigned a "spend control profile", which assigns them a specified credit and usage limit. If an employee reaches the assigned credit limit, his or her card will be denied.
		R_4	Purchases are made at unauthorized prices or terms.	AP_7	All procurement credit card transactions are reviewed by either the respective department head or the Front Desk Clerk to ensure all receipts have been submitted.
	Fuel Card	R_13	Purchases are made for unauthorized purposes.	AP_8	The Voyager Fuel Cards only allow purchases of vehicle fuel.
		R_13	Purchases are made for unauthorized purposes.	AP_9	The Front Desk Clerk reviews all fuel purchases to ensure reasonableness based on quantity of gas purchased per vehicle for the month. The Front Desk Clerk then reconciles all receipts submitted by employees for fuel card purchases to a downloaded report from the Mansfield online portal, showing all purchases by vehicle for the month and the respective quantity of fuel purchased, cost at the pump, and discounted cost that the Town pays. The Front Desk Clerk then reconciles the spreadsheet back to the invoice received from Mansfield Oil.

Town of Berryville, Virginia

Significant Risks and Controls Matrix

Process	Sub-Process	Risk No.	Risk	Control No.	Control Description
Cash Disbursement	Check Processing	R_8	Checks for unauthorized purposes are issued.	CD_1	Blank check stock is maintained in the Treasurer's office, which is only accessible by authorized personnel through badged entry.
		R_8	Checks for unauthorized purposes are issued.	CD_2	Authorized limits for check signatories, including dual signatures, are defined and adhered to.
		R_8	Checks for unauthorized purposes are issued.	CD_3	Supporting documentation for each disbursement, including purchase requisitions, purchase orders (if applicable based on amount of purchase), and invoice from vendor, is prepared, reviewed, and maintained.
		R_14	Cash disbursements are made for the wrong amount or to the wrong vendor.	CD_6	The Treasurer prints the check pre-audit report from FMS, which displays all invoices that have been entered. The Treasurer compares the vendor, invoice amount, and GL expenditure code entered in FMS to the hard copy invoices.
	Wire Transfers	R_9	Cash disbursements for unauthorized purchases are issued.	CD_4	Prior to posting a wire or ACH payment, the Treasurer completes and signs an "Electronic Fund Disbursement Payment Request" form, and provides to the Mayor or Recorder. The Mayor or Recorder reviews for reasonableness and signs the form as secondary authorized signer.
	Procurement Credit Card	R_9	Cash disbursements for unauthorized purchases are issued.	CD_5	The Front Desk Clerk performs a reconciliation between the monthly Bank of America purchasing card statement and all approved actions within "Works." The reconciliation is reviewed by the Treasurer prior to payment.

Town of Berryville, Virginia

GAP Log

Process	Sub-Process	Risk No.	Risk	GAP No.	GAPs
Procurement	Vendor Management	R_2	Purchases are made to unauthorized or fraudulent/non-existent vendors.	GAP_1	Prior to doing business with a new vendor, vendors are not required to submit business information, including an IRS Form W-9.
	Purchasing	R_4	Purchases are made at unauthorized prices or terms.	GAP_3	Per the Town of Berryville's Procurement Policy Manual, one (1) quote is required to be obtained for purchases less than \$5,000. Documentation of quotes is not being consistently maintained.
		R_4	Purchases are made at unauthorized prices or terms.	GAP_4	Department heads are not required to sign off on invoice or purchase requisition indicating approval of price, amount, terms, and GL expenditure account.
		R_5	Expenditures are posted to incorrect accounts or periods.		
		R_4	Purchases are made at unauthorized prices or terms.	GAP_5	Per the Town of Berryville's Procurement Policy Manual, four (4) quotes are required to be obtained for purchases of goods or nonprofessional services over \$5,000 to the small purchase limits set in the VPPA. Documentation of quotes is not being consistently maintained.
		R_11	Non-compliance with Virginia Public Procurement Act.		
		R_4	Purchases are made at unauthorized prices or terms.	GAP_6	Per the Town of Berryville's Procurement Policy Manual, all sole source procurements for goods and services must be approved in advance by the Town Manager or designee. Additionally, the Town is required to maintain written determination documenting that there is only one source practicably available for that which is to be procured. Such procedures are not being performed.
		R_4	Purchases are made at unauthorized prices or terms.	GAP_7	Per the Town of Berryville's Procurement Policy Manual, in the case of emergency procurement, written documentation shall be maintained indicating the nature of the emergency and reason for selection of the particular contractor. Such written determination shall be signed by the Town Manager or designated representative. Such procedures are not being performed.
		R_4	Purchases are made at unauthorized prices or terms.	GAP_12	The Town utilizes the ability to ride other jurisdictions' contracts when practicable; however, the Town does not require Council approval for large purchases made through riding another jurisdiction's contract.
		R_4	Purchases are made at unauthorized prices or terms.	GAP_13	Purchase orders are generally completed after a purchase has been made and an invoice has been received. Purchase orders should be generated and approved before purchases are made.
	Procurement Credit Card	R_9	Cash disbursements for unauthorized purchases are issued.	GAP_8	Per the Town of Berryville's Purchasing Card Policies and Procedures, cardholders are required to sign the monthly statement or individual receipts, documenting his or her review and certification that all purchases listed are correct and made for official purposes. Currently, cardholders are not signing monthly P-Card statements or receipts.
		R_4	Purchases are made at unauthorized prices or terms.	GAP_10	The Front Desk Clerk reviews all purchasing credit card activity by department heads to ensure receipts are present and transactions are reasonable, and approves within "Works"; however, the reviewer is not required to physically sign off indicating approval. Additionally, the system does not prevent the approver from being the same person as the initiator.

Town of Berryville, Virginia

GAP Log

Process	Sub-Process	Risk No.	Risk	GAP No.	GAPs
Cash Disbursement	Wire Transfers	R_9	Cash disbursements for unauthorized purchases are issued.	GAP_9	The online banking portal is not configured to segregate duties between initiator and approver of wire transfers. Additionally, the bank is not set up to only allow wire transfers/ACH payments to approved bank accounts.
All	All	R_3	There are misappropriations of cash or fraudulent payments.	GAP_2	Segregation of duties do not exist between procurement, invoice processing, check processing, and vendor maintenance.
All	All	R_12	There is a loss of business continuity.	GAP_11	There is a lack of adequate cross-training for employees on different roles and responsibilities within the procurement and cash disbursement functions.

Town of Berryville, Virginia

Issues and Recommendations

The following table provides a summary of the issues identified during our procedures. We have assigned a relative risk rating to each issued identified. The definitions of the risk ratings are provided below. This is the evaluation of the severity of the concern and potential impact. Items are rated as High, Moderate, or Low.

- *High Risk Items* are considered to be of immediate concern and could cause significant issues if not addressed in a timely manner.
- *Moderate Risk Items* may also cause operational issues and do not require immediate attention, but should be addressed as soon as possible.
- *Low Risk Items* could escalate into operational issues, but can be addressed through the normal course of conducting business.

Procurement Process			
Ratings	Gap No.	Issues	Recommendations
High	GAP_1	Prior to doing business with a new vendor, vendors are not required to submit business information, including an IRS Form W-9.	Prior to doing business with a new vendor, Department Heads should contact the vendor and obtain an IRS Form W-9 and should submit a "New Vendor Request" Form with attached IRS Form W-9 to the designated Purchasing Agent for input into FMS.
High	GAP_2	Segregation of duties do not exist between procurement, invoice processing, check processing, and vendor maintenance.	System access should be designed to segregate duties between procurement, invoice processing, check processing, and vendor maintenance. The Town should consider establishing a Purchasing Agent, who would be responsible for vendor maintenance and procurement documentation.
High	GAP_4	Requesting department heads are not required to sign off on purchase requisition or invoice indicating approval of price, amount, terms, and GL expenditure account.	Invoices should be stamped/documented for payment approval by department heads. Stamps/documentation should require coding of General Ledger expenditure accounts, signature, and date, as part of payment approval.
High	GAP_3	Per the Town of Berryville's Procurement Policy Manual, one (1) quote is required to be obtained for purchases less than \$5,000. Documentation of quotes is not being consistently maintained.	The Town should implement and enforce purchasing guidelines that are representative of the Town's size, including when quotes are required, how many are required, required documentation, and purchase order requirements. The Policy should also include documentation requirements for sole source procurement and emergency procurement procedures. An example is included in Appendix A .
High	GAP_5	Per the Town of Berryville's Procurement Policy Manual, four (4) quotes are required to be obtained for purchases of goods or nonprofessional services over \$5,000 to comply with the small purchase limits set in the VPPA. Documentation of quotes is not being consistently maintained.	
High	GAP_6	Per the Town of Berryville's Procurement Policy Manual, all sole source procurements for goods and services must be approved in advance by the Town Manager or designee. Additionally, the Town is required to maintain written determination documenting that there is only one source practicably available for that which is to be procured. Such procedures are not being performed.	
High	GAP_7	Per the Town of Berryville's Procurement Policy Manual, in the case of emergency procurement, written documentation shall be maintained indicating the nature of the emergency and reason for selection of the particular contractor. Such written determination shall be signed by the Town Manager or designated representative. Such procedures are not being performed.	
High	GAP_12	The Town utilizes the ability to ride other jurisdictions' contracts when practicable; however, the Town does not require Council approval for large purchases made through riding another jurisdiction's contract.	
High	GAP_13	Purchases orders are generally completed after a purchase has been made and an invoice has been received. Purchase orders should be generated and approved before purchases are made.	

Town of Berryville, Virginia

Issues and Recommendations

Procurement Process (Continued)

Ratings	Gap No.	Issues	Recommendations
High	GAP_8	Per the Town of Berryville's Purchasing Card Policies and Procedures, cardholders are required to sign the monthly P-Card statement or individual receipts, documenting his or her review and certification that all purchases listed are correct and made for official purposes. Currently, cardholders are not signing monthly P-Card statements or receipts.	The Town should require cardholders to sign monthly P-Card statements or receipts, documenting his or her review and certification that all purchases listed are correct and made for official purposes. Additionally, department heads should sign off indicating his or her review/approval of the purchases.
High	GAP_10	The Front Desk Clerk reviews all purchasing credit card activity by department heads to ensure receipts are present and transactions are reasonable, and approves within "Works"; however; the reviewer is not required to physically sign off indicating approval. Additionally, the system does not prevent the approver from being the same person as the initiator.	The Town should require the designated Purchasing Agent to sign department heads' P-Card statements or expense reports indicating approval of the transactions. If the designated Purchasing Agent uses his or her P-Card, the Treasurer should sign the respective P-Card statement or expense report, indicating approval of the transactions.
Medium	GAP_11	There is a lack of adequate cross-training for employees on different roles and responsibilities within the procurement and cash disbursement functions.	The Town should consider cross-training a designated staff member on the current roles and responsibilities of the Treasurer.

Cash Disbursements Process

Ratings	Gap No.	Issues	Recommendations
High	GAP_9	The online banking portal is not configured to segregate duties between initiator and approver of wire transfers. Additionally, the bank is not set up to only allow wire transfers/ACH payments to approved bank accounts.	The Town should require new wire recipient bank accounts for wire transfers/ACH payments to be approved by the Mayor or designated member of Council prior to the first payment. Additionally, bank statements should be provided to the Mayor monthly with all wire/ACH payments made, and include the corresponding signed Electronic Disbursement Request Forms and supporting documentation for comparison.

Additional Recommendations

Ratings	
Low	The Town should consider performing an annual review of all vendors to ensure they are valid and still active.
Medium	The Town should consider requiring the Town Clerk to communicate any potential conflicts disclosed in the Statements of Economic Interest to the designated Purchasing Agent.

Town of Berryville, Virginia

Appendix A: Example of Purchasing Guidelines

Orders up to \$5,000

- ❖ Single Quote.
- ❖ P-Card purchase whenever possible.
- ❖ If not a P-Card purchase, invoices shall be stamped with the appropriate GL code, signature, and date, and turned in to the Treasurer.

Orders between \$5,001 and \$15,000

- ❖ Requires Purchase Requisition with three verbal quotes. Quotes may be verbal from vendor, but must appear on the requisition.
- ❖ Vendor with lowest quote will be selected unless otherwise noted.
- ❖ If lowest quote is NOT selected, justification (such as quality) must be noted.
- ❖ Authorized approval is **Department Head**.
- ❖ Requisitions are sent to the designated Purchasing Agent with a copy of the receipt, invoice or correspondence.
- ❖ Requisitions shall be stamped with the appropriate GL code, signature, and date.
- ❖ Purchase Order, if required by vendor, is created by designated Purchasing Agent.
- ❖ Authorized signature is designated **Purchasing Agent**.

Orders between \$15,001 and \$30,000

- ❖ Requires Purchase Requisition with three written quotes.
 - If choosing to ride another jurisdiction's contract, quotes not required, but approval and signature authority should be followed.
- ❖ Requisitions are sent to Purchasing Agent with copy of receipt, invoice or correspondence.
- ❖ Requisitions shall be stamped with the appropriate GL code, signature, and date.
- ❖ Vendor with lowest quote will be selected unless otherwise noted.
- ❖ If lowest quote is NOT selected, justification (such as quality) must be noted.
- ❖ Authorized approval is **Department Head**.
- ❖ Purchase Order is written by designated Purchasing Agent.
- ❖ Authorized signature is **Town Manager**.

Town of Berryville, Virginia

Appendix A: Example of Purchasing Guidelines

Orders between \$30,001 and \$50,000

- ❖ Requires Purchase Requisition with three written quotes.
 - If choosing to ride another jurisdiction's contract, quotes not required, but approval and signature authority should be followed.
- ❖ Requisitions shall be stamped with the appropriate GL code, signature, and date.
- ❖ Vendor with lowest quote will be selected unless otherwise noted.
- ❖ If lowest quote is NOT selected, justification (such as quality) must be noted.
- ❖ Requisitions with any supporting documentation are sent to Purchasing Agent.
- ❖ Prior to purchase, designated Purchasing Agent will acquire Town Manager signature and prepare Purchase Order.
- ❖ Will be noted to Council as an FYI item.

Orders \$50,000 and over

- ❖ Require Council approval and Sealed Bid Procurement
 - If choosing to ride another jurisdiction's contract, bidding procedures not required, but approval and signature authority should be followed.

Sole Source Procurement

- ❖ Prior to purchase, designated Purchasing Agent will obtain Town Manager signature and prepare Purchase Order.
- ❖ Justification for only one source practicably available for that which is to be procured must be documented and maintained.

Emergency Procurement

- ❖ Written determination indicating the nature of the emergency and selection of the particular contractor must be signed by the Town Manager or designated representative.
- ❖ Signed written determination must be maintained.

Appendix B: Procurement Policy Manual – as of September 2012



The Town Of Berryville

Procurement Policy Manual

On September 11, 2012, the Town Council of the Town of Berryville adopted the Virginia Public Procurement Act of the Code of Virginia and this manual as its procurement policy.

I. Purpose, General

The policies contained herein have been developed pursuant to the Virginia Public Procurement Act of the Code of Virginia (“VPPA”). The VPPA has certain mandatory provisions and allows for the use of certain optional policies provided they are adopted in writing by the governing body and are based on competitive principles.

These policies are intended to provide the framework for procurement of materials, supplies, equipment, and services at the lowest possible cost consistent with the quality needed for the proper operation of municipal services. Our goal is the promotion of the Town's best interest through intelligent action and fair dealing which will result in obtaining the optimum value for each dollar spent as well as strengthening the public confidence in the integrity of public purchasing.

II. Policy

The Town of Berryville adopted the VPPA and this Policy Manual on September 11, 2012 as its procurement policy. A copy of the VPPA is included in this policy manual as Attachment A.

III. Applicability

These policies and procedures apply to all contracts for the procurement of goods, services, insurance and construction entered into by the Town involving any expenditure of public funds except those specifically exempted herein.

IV. Procurement Authority and Responsibility

The Town Manager has the ultimate responsibility to ensure that the acquisition of goods and services does not violate or circumvent state law, regulations, town ordinances or the provisions of this manual.

V. Delegation

The Town Manager may delegate the procurement of any goods or services to the Treasurer, Purchasing Agent or other responsible officials.

VI. General Procurement Policies

Adequate Competition

A sufficient number of sources must be solicited for the procurement of goods or services consistent with the method of procurement used.

Bidder's List

The Purchasing Agent shall be responsible, with the assistance from the various Department Heads, to maintain a current file of sources of goods, services, construction, etc., to be known as the Bidder's List. Any vendor can be included on the Bidder's List upon their request.

Ethics

See § 2.2-4367 to § 2.2-4377 of the VPPA.

Solicitations

Amending a Solicitation

If it is necessary to amend a solicitation, prepare, post, and send an addendum to all potential bidders or offerors who received a copy of the solicitation or who attended a pre-bid or pre-proposal conference.

Canceling a Solicitation

An Invitation for Bids, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. When canceling a written solicitation all vendors who have been issued a solicitation must be notified, and the notice must be publicly posted.

Performance and Payment Bonds

Upon the award of any public construction contract exceeding \$100,000 awarded to any prime contractor, such contractor shall furnish the town with 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. The 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 furtherance of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

Each of the bonds shall be executed and made payable to the Town of Berryville by one or more surety companies selected by the contractor that are authorized to do business in Virginia and filed with the purchasing office that awarded the contract or a designated official thereof within 10 days after receipt of the purchase order or notice of award.

Nothing in this section shall preclude the town from requiring payment or performance bonds for construction contracts below \$100,000.

Alternative Forms of Security

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

Contract/Purchase Order Modification Restrictions

A contract or purchase order may not be modified or renewed unless provided for in the original contract or solicitation. No additional consideration or increase in contract price may be paid to the contractor because of renewal unless specifically authorized under the original contract.

- Purchases Up to the VPPA limit - Cumulative contract modifications to purchases made under small purchase procedures shall not exceed 25% of the original contract price without advance written approval of the Town Manager.
- Purchases over the VPPA limit - A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the original amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Town Manager.

Documentation of Files

A complete file should be maintained in one place for each purchase transaction, containing all the information necessary to understand the why, who, what, when, where and how of the transaction.

Nondiscrimination

In the solicitation, awarding or administration of contracts, the Town shall not discriminate because of the race, religion, color, sex, age, disability, or national origin of the bidder, offeror, or contractor (Code of Virginia, § 2.2-4310A).

Employment Discrimination Prohibited

Employment discrimination by contractor prohibited; required contract provisions. -- All public bodies shall include in every contract of more than \$10,000 the following provisions:

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, 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.

- b. 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.
- c. 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 section.

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

Preferences

Berryville Vendors and Products

Preference is given to goods produced in Berryville, goods or services or construction provided by Berryville persons, firms or corporations, in the event of a tie bid. In the event that this provision does not resolve the tie preference is given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations.

Recycled Paper and Paper Products Preference

In determining the award of any contract for paper and paper products the town shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than 10% greater than the bid price of the low responsive and responsible bidder.

Public Access to Procurement Records

- Except as provided in this section, 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 (§ 2.2-3700 et seq.)
- Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- 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 that the Town Manager 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.

- 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 Town Manager 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.
- Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, 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.

Publicly Posted Notices

All solicitations for goods and services over \$50,000 shall be posted in the Town Office.

Award Notices over \$50,000 must be posted in the Town Office for a ten (10) day period immediately following the actual time of award. The procurement records must be available for review by any bidder or offeror at the time a Notice of Intent To Award or an Award Notice is posted.

Responsible Bidder or Offeror

In determining a responsible bidder or offeror, a number of factors, including but not limited to the following, are considered. The vendor should:

- be a regular dealer, supplier, or when required in the solicitation an authorized dealer of the goods or services offered;
- have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
- have a satisfactory record of performance;
- have a satisfactory record of integrity; and
- have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract.

Responsive Bid

- To be considered for an award, a bid must comply in all material respects with the Invitation for Bids.
- Responsiveness relates to compliance with the provisions of the solicitation, including specifications and terms and conditions.

- Failure to comply with the requirements set forth in the Invitation for Bids may result in a bid being declared nonresponsive, e.g., failure to sign a bid, failure to return the required bid documents, substitution of vendor's terms, deletion of terms and conditions stated in the Invitation for Bids, failure to offer a product or service that meets the requirements of the Invitation for Bids, etc.
- A bidder who fails to provide prices for all categories of labor in the pricing schedule of a time and materials service contract is considered nonresponsive.
- This is true whether the price was left blank or the bidder entered a figure of \$0. Bidders who provide multiple prices for performing a service where a single price was solicited are also nonresponsive.

VII. Guidelines for Procurement

This section contains general guidelines for procuring goods and services.

Administrative Lead-Time

Administrative lead-time is that period of time from initiation of the requirement by the user to issuance of an award. For routine procurements where informal written solicitations are used, the minimum time required to prepare, solicit, evaluate, and make an award may take from three (3) days up to thirty (30) days. When competitive sealed bidding or competitive negotiation is used, the time required by the purchasing office may be longer.

Selection of Procurement Method

It is important to select the proper procurement method. The estimated or anticipated value of the contract must be determined first, unless the purchase is an emergency. The anticipated value of the contract includes the dollar value for the initial period of the contract, and includes all possible renewal periods. The expected trade-in value of equipment should not be considered when determining the anticipated value of a contract.

Preparing the Written Solicitation

Solicitations should convey to the reader, in a clear, concise and logical sequence, the information necessary to answer the basic questions of who, what, why, where, when and how.

Terms and Conditions

See section VIII of this manual.

Contract Period

- Term contracts normally cover a 12 month period or cite a specific time for completion for the project or service.
- A solicitation for a multi-year contract, or one that includes an option on the part of the town to renew the contract for an additional period, may be advantageous and should be considered; however, in determining the value of the contract and procurement method, all possible renewal periods must be included.

- Multi-year programs are subject to availability of funds, and each solicitation covering a multi-year period must contain an availability of funds clause.
- If price adjustments are to be permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract.
- The town should review all multi-year contracts at least annually to determine if the goods or services are still required, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory.
- Multi-year contracts including options to renew normally should not exceed 5 years.

Specifications

Solicitations of offers, whether by formal advertising or negotiations, shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be purchased. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description (see Use of Brand Names below) may be used as a means to define the performance or other salient requirements of a procurement.

Invitations for bids and requests for proposals shall clearly set forth all requirements which bidders must fulfill in order for bids and proposals to be properly evaluated. Factors to be used in evaluating bids or proposals shall be clearly stated in the solicitation to enable bidders to know how their bids or proposals will be evaluated. If a solicitation requires a listing of subcontractors or sub-item vendors, a bidder's failure to list such shall make that bid nonresponsive.

Use of Brand Names

Unless otherwise provided in the Invitation for Bid, the name of a certain brand does not restrict bidders to a specific brand, make or manufacturer's name, but conveys 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 acceptable.

Vendor Assistance in Specification Preparation

Advice or assistance may be received from a vendor in identifying the features and characteristics needed by the town; however, no person who, for compensation, prepares an Invitation to Bid or Request for Proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public.

Order Splitting Prohibition

The placement of multiple orders within other than a reasonable time period to one or more vendors for the same, like, or related goods or services to avoid using the appropriate method of procurement or to remain within delegated purchasing authority is prohibited. Order splitting results in higher

administrative cost to the town. Requirements should be combined when practical to obtain quantity discounts and other administrative efficiencies.

Freight

F.O.B. Destination is the basic policy of the Town of Berryville to solicit bids for goods F.O.B. (free on board) Destination, which means that freight charges are paid by the seller who owns and assumes all risk for the goods until they are accepted at the designated delivery point. The cost of shipping the goods may be included in the quoted price or by the bidder or offeror as a separate line item.

Insurance

Whenever work is to be performed on town owned or leased property or facilities, the contractor shall be required to have Workers' Compensation, Employer's Liability, Commercial General Liability and Automobile Liability, and in certain types of programs Professional Liability/Errors and Omissions insurance coverage.

VIII. General Terms and Conditions

These General Terms and Conditions are required for use in written solicitations issued by the Town for procurements. You should edit the wording to fit the type of solicitation (IFB or RFP) by either deleting or lining out the inappropriate words in all parenthesis.

APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

ANTI-DISCRIMINATION: By submitting their (bids/proposals), (bidders/offerors) certify to the Town of Berryville that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA).

Employment discrimination by contractor prohibited; required contract provisions. -- All public bodies shall include in every contract of more than \$10,000 the following provisions:

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, 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.

- b) 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.
- c) 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 section.

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

ETHICS IN PUBLIC CONTRACTING: By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this 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 was exchanged.

IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting their (bids/proposals), (bidders/offerors) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

DEBARMENT STATUS: By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Town of Berryville from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

MANDATORY USE OF TOWN TERMS AND CONDITIONS FOR IFBs AND RFPs (Insert wording below appropriate to the solicitation type as indicated):

1. (For Invitation For Bids): Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Town reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Town may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
2. (For Request For Proposals): Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Town reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

BILL PAYMENT POLICY

The Town Treasurer shall make payment in full (unless and alternate payment plan has been agreed upon) for all goods delivered or services rendered within thirty days of receipt of the bill.

No goods or services shall be deemed received until such goods are completely delivered and found acceptable by the department head and the receiving report (Form REC-1) is completed. For purposes of determining whether or not payment was made in accordance with this policy, payment in full shall be considered to be made on the date the check for payment was mailed or otherwise transmitted.

When a bill submitted to the Town of Berryville is incorrect or when there is a defect or impropriety in a bill submitted, the respective department head shall notify the creditor in writing prior to the date on which payment in full is due. The notice shall contain a description of the defect or impropriety and any other additional information to enable the creditor to correct the bill. Upon receiving a corrected bill, the Town of Berryville shall make payment in full on or before the thirtieth calendar day after receipt of the corrected bill.

To Subcontractors:

A contractor awarded a contract under this solicitation is hereby obligated:

To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Town for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

To notify the town and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

PRECEDENCE OF TERMS: In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

QUALIFICATIONS OF (BIDDERS/OFFERORS): The Town may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the Town all such information and data for this purpose as may be requested. The Town reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Town further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Town that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

TESTING AND INSPECTION: The Town reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Town.

CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:

The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

The Town may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Town a credit for any savings. Said compensation shall be determined by one of the following methods:

1. By mutual agreement between the parties in writing; or
2. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Town's right to audit the contractor's records and/or to determine the correct number of units independently; or
3. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Town with all vouchers and records of expenses incurred and savings realized. The Town shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Town within thirty (30) days from the date of receipt of the written order from the Town. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Town or with the performance of the contract generally.

DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Town, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town may have.

TAXES: Sales to the Town are normally exempt from State sales tax. State sales and use tax certificates of exemption will be issued upon request.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

USE OF BRAND NAMES: Unless otherwise provided in this solicitation, Unless otherwise provided in the Invitation for Bid, the name of a certain brand does not restrict bidders to a specific brand, make or manufacturer's name, but conveys 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 acceptable.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

TRANSPORTATION AND PACKAGING: By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used.

(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

INSURANCE: By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded as well as any other insurance requirements laid out in the request for bid or proposal. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Town of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Town of Berryville, Virginia must be named as an additional insured and so endorsed on the policy.

(Note to Purchaser: When the requirement is for parking facilities and garages for motor vehicle maintenance contracts, the forgoing sentence should be changed to read: These coverages should include Garage Owner's Liability. Contracts with movers or truck transporters should also require motor carrier's liability.)

4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

Profession/Service	Limits
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection, Abatement Contractor	\$1,000,000 per occurrence, \$3,000,000 aggregate
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

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.

NONDISCRIMINATION OF CONTRACTORS: A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless Town has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

IX. Small Purchase Policy

In this section *VPPA Limit* shall be defined as the threshold amount requiring competitive negotiation set in the VPPA.

The competitive pricing methods set forth below shall be followed for purchases not expected to exceed the VPPA Limit.

1. Single Quotation (Up to \$5,000)
 - Where the Town’s estimated cost of goods or nonprofessional services is \$5,000 or less, purchases may be made upon receipt of a minimum of one (1) written, telephone (oral) or electronic quotation.
 - Additional sources may also be solicited.

- A record of the quotation must be kept with the file.
- If a telephone (oral) quote is solicited, a record shall be kept of the name and address of the vendor(s) contacted, the item description or service offered, price quoted, delivery dates and F.O.B. point, names of persons giving and receiving the prices and the date the information was obtained. Notation on the requisition form is considered to be an adequate record.
- If more than one quote is solicited, the award will be made to the lowest responsive and responsible bidder.
- Employees should seek additional competition whenever there is reason to believe a quotation is not a fair and reasonable price.

Unsealed Bidding (Over \$5,000 to VPPA limit)

- Where the Town's estimated cost of goods or nonprofessional services is over \$5,000 to the small purchase limits set in the VPPA, solicit four (4) valid sources, if available.
- If fewer than the required number of sources are solicited, the reasons shall be documented.

Unsealed Proposals (Over \$5,000 to VPPA limit)

- The Town may obtain required goods or services using an informal Request for Proposal up to the small purchase limits set in the VPPA.
- A written determination for the use of competitive negotiation is not required for unsealed or informal RFPs.
- The solicitation should include a cover sheet, a general description of what is being sought, the factors and weights to be used in evaluation, the Town's General Terms and Conditions (either in full or by reference), and any special terms and conditions including unique capabilities or qualifications that will be required.
- Offers may be opened and evaluated upon receipt. All responses must be received at the designated location by the date and hour stated in the solicitation.
- In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers. Upon completion of the evaluation, negotiations shall be conducted with the offerors selected.

X. Large Purchases (Over VPPA limits)

In this section *VPPA Limit* shall be defined as the threshold amount requiring competitive negotiation set in the VPPA.

Competitive Sealed Bidding (IFB)

Competitive sealed bidding is the preferred method for acquiring goods, printing, capital outlay construction and non-professional services for public use when the estimated cost is over the VPPA limit.

- The goods or service to be procured when using this method must be capable of being described so that bids submitted by potential contractors can be evaluated against the description in the Invitation for Bids (IFB) and an award made to the lowest responsive and responsible bidder.
- When the terms and conditions of multiple awards are so provided in the Invitation for Bids, awards may be made to more than one bidder.
- Competitive sealed bidding includes the issuance of a written IFB containing the specifications or scope of work/purchase description and the contractual terms and conditions applicable to the procurement.
- The terms or conditions of the solicitation must include how the Town will publicly post the notice of the award or make the announcement of the decision to award the contract.
- IFBs must describe the requirements accurately and completely. Unnecessarily restrictive specifications or terms and conditions that unduly limit competition must be avoided.
- In addition to the public notice, bids are to be solicited directly from potential bidders. Any such direct solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.
- In the competitive sealed bid process, bids are publicly opened and read aloud. The bids are evaluated based upon the requirements set forth in the IFB (if multiple awards are so provided in the solicitation, awards may be made to the lowest responsive and responsible bidders).

Preparation and Issuance of IFBs

Format:

- Prepare the IFB using the above guidelines.
- Establish a due date and time that will allow sufficient time for potential bidders to seek clarification and for the issuance of an addendum, if necessary.
- The due date shall not be less than 10 days from the issue date of the IFB.

Scope:

- Specify in detail the materials, equipment, and supplies to be furnished or the scope of work to be performed by the contractor, including or incorporating by reference the specifications, drawings and contractual terms and conditions applicable to the procurement.

Conferences/Site visits:

- All prebid conferences and/or site visits shall be mentioned in both the IFB 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 and attend.
- 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 10 days after the issue date of the addendum.

Sources:

- Solicit at least six (6) valid sources, including a minority or women-owned businesses, if available.
- If fewer than the required number of sources are solicited, the reasons must be documented in writing and placed in the purchase file.

Sealed Bids

Receipt, Opening, Evaluation, and Award:

Receipt:

- Bids shall be received until the date and time specified in the IFB.
- Bids are then publicly opened and read aloud.
- Late bids shall not be considered.

Opening:

- After bid opening, each bid is evaluated to determine if it is responsive to the IFB.
- The responsive bids are then evaluated according to the criteria and/or evaluation procedure described in the IFB to determine which is the lowest bid.

Evaluation:

- The lowest responsive bidder is then evaluated to determine if the firm is responsible.

Award:

- The contract is awarded to the lowest responsive and responsible bidder.

Competitive Negotiation (RFP)

General:

- The Town shall use competitive negotiation for the procurement of all professional services estimated over the VPPA limit.
- Competitive negotiation may be the procurement method used for goods and nonprofessional services when it is not practicable or fiscally advantageous to use competitive sealed bidding.

Preparation and Issuance of a Request for Proposal (RFP):

- A written RFP is issued to describe in general terms that which is to be procured.
- The RFP must specify and list the specific requirements to be addressed by the offerors that will be used in evaluating the proposals and will contain other applicable contractual terms and conditions, including any unique capabilities or qualifications required of the contractor.
- When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
- The terms or conditions of the RFP must state the manner in which public notice of the award or the announcement of the decision to award shall be given by the public body.

Format:

- Establish a proposal submission due date and time which provide sufficient time for potential offerors to develop a proposal.
- The minimum time period is ten (10) days from issue date of the RFP.
- The time period used may be greater than the required ten (10) days based on the complexity of the requirement and whether or not a preproposal conference is required.

Sources:

- RFPs shall be sent to at least six (6) valid sources, including a minority or women-owned businesses, if available.
- If fewer than the required number of sources are solicited, the reasons must be stated in writing and placed in the purchase file.

Preproposal Conferences:

- All preproposal conferences or site visits must be mentioned in the RFP and any advertisement of it.
- If attendance at such a conference or site visit is a prerequisite for submitting a proposal, the public notice period must be at least ten (10) days after issuance to provide adequate opportunity for potential offerors to obtain a copy of the RFP and attend.

Sealed Proposals (RFPs)**Receipt and Evaluation****Opening:**

- Public openings of proposals are not required.
- If a public opening is held, the names of the individuals, or the names of firms submitting proposals in a timely manner, is the only information read aloud and made available to the offerors and general public.

Evaluation:

- The proposals are evaluated by the buyer, contracting officer, or an evaluation team.
- As an option, evaluators may request presentations or discussions with offerors, as necessary, to clarify material in the offerors proposals, to help determine those fully qualified and best suited.
- Proposals are then evaluated on the basis of the criteria set forth in the RFP, using the scoring weights previously determined.
- All RFP responses are to be evaluated.
- Proposals not meeting requirements should be scored lower.
- Only bids in response to an IFB may be determined to be nonresponsive.
- Offerors may be given an opportunity to correct a deficiency in their proposals, within an appropriate period of time, as determined by the purchasing office.
- Offerors who fail to submit required documentation or meet mandatory requirements, in such time, for evaluation purposes may be eliminated from further consideration.
- Two or more offerors determined to be fully qualified and best suited are then selected for negotiation.
- Price is considered, but need not be the sole determining factor.

During the evaluation phase it may be determined that only one offeror is fully qualified, or that one offeror is CLEARLY more highly qualified than the others under consideration. A written determination shall be prepared and retained in the contract file to document the meaningful and convincing facts supporting the decision for selecting only one offeror and negotiating with that offeror. The determination shall be signed by the Town Manager.

Negotiation and Award.

- Negotiations are conducted with each of the offerors so selected.
- Negotiation allows modification of proposals, including price.
- Offers and counter offers may be made as many times with each offeror as is necessary to secure a reasonable contract.
- After negotiations have been conducted with each of the selected offerors, the Town selects the offeror which, in its opinion, has made the best proposal.
- In all cases, written confirmation shall be obtained from the offeror on any modifications of the original proposal.
- Once an Intent to Award notice is posted, no further negotiation shall be conducted.

The Town may cancel a RFP, or reject proposals at any time prior to making an award.

The award documents shall incorporate, by reference, the terms and conditions of the RFP and the contractor's proposal, together with all written modifications thereof.

Sole Source Procurement

Definition:

A sole source procurement is authorized when there is only one source practicably available for the goods or services required. Competition is not available in a sole source situation; thus distinguishing it from a proprietary purchase where the product required is restricted to the manufacturer(s) stipulated, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a single vendor's capability to deliver in the least amount of time is not appropriate since availability alone is not a valid basis for determining a sole source procurement. For sole source requirements exceeding \$5,000, a written quotation must be obtained from the vendor.

Approval for Sole Source Procurements up to the VPPA limit:

- All sole source procurements for goods and services up to the VPPA limit must be approved in advance by the Town Manager or designee, which shall be the chief purchasing officer.
- The written determination documenting that there is only one source practicably available for that which is to be procured, must be included in the procurement file.
- In addition, a memorandum must be attached to the request which addresses the four points shown in the next section. The writing shall document the basis for the determination, which should include any market analysis conducted in order to ensure that the good or service required was practicably available from only one source.

Approval for Sole Source Procurements Over the VPPA limit:

All sole source procurements for goods and services over the small purchase limits set by the VPPA must be approved by the Town Manager prior to commencement of the actual procurement. A memorandum must accompany the request, which addresses the following four points:

1. Explain why this is the only product or service that can meet the needs of the town.
2. Explain why this vendor is the only practicably available source from which to obtain this product or service.
3. Explain why the price is considered reasonable.
4. Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayers.

Negotiating and Award:

A contract shall be negotiated and awarded without competitive sealed bidding or competitive negotiation. In making sole source procurement, it is the buyer's or contracting officer's responsibility to negotiate a contract that is in the best interest of the Town.

Price Reasonableness Determination:

The buyer or contracting officer should carefully research the good or service and determine what is a fair and reasonable price.

Posting Requirements.:

For sole source procurements over \$50,000 public award notices may be posted in the Town Office.

Award Document:

The Town must issue an award document (PO or contract) for sole source purchases. When a quote has been obtained from the vendor and no further negotiations are needed, a purchase order is acceptable.

Emergency Procurement

General:

- An emergency is an occurrence of a serious and urgent nature that demands immediate action.
- Emergency procedures may be used to purchase only that which is necessary to cover the requirements of the emergency.
- Subsequent requirements shall be obtained using normal purchasing procedures.
- The potential loss of funds at the end of a fiscal year is not considered an emergency.

Types of Emergency Procurements:

- The nature of the emergency will determine what pre-award action may be taken.
- For an emergency purchase required to protect personal safety or property, efforts should be directed to finding a source and directing the contractor to proceed; however, such procurement shall be made with such competition as is practicable under the circumstances.
- For other types of emergencies, competition should also be sought to the maximum extent practicable.

Award of Emergency Procurements:

- The Town must prepare a confirming contract or purchase order, as soon as practicable, after directing the contractor to proceed.
- Care should be taken to include in detail any agreements, including price, that were made orally with the contractor.

- Prepare a written determination for signature by the Town Manager or designated representative indicating the nature of the emergency, the reason for selection of the particular contractor and include such determination with the file.

XII. Contract Administration

General:

Contract administration begins after award of the contract. Its purpose is to assure that the contractor's and Town's total performance is in accordance with the terms and conditions of the contractual agreement. The integrity of the public purchasing system demands that goods or services be furnished, received, invoiced and paid as specified in the contract.

Contract Administrator:

- The administrator should be the end user of the contract or one who has a vested interest in the procurement who will be responsible for the proper adherence to all contract specifications by the contractor.
- Contract administration shall be delegated by the buyer designating a specific individual or position, highlighting important aspects of the contract, and distinguishing between the administrator's authority and that which must remain a function of the purchasing office.

Procurement Records:

- A complete file should be maintained in the Town Office for each purchase transaction, containing all the information necessary to understand the why, who, what, when, where and how of the transaction.
- Generally, records are open to the public in accordance with the Virginia Freedom of Information Act and should be made available for review after the award has been made.

Bill Payment Policy

The Town Treasurer shall make payment in full (unless an alternate payment plan has been agreed upon) for all goods delivered or services rendered within thirty days of receipt of the bill.

Department heads shall submit bills for payment by the fifth and twentieth of each month.

No goods or services shall be deemed received until such goods are completely delivered and found acceptable by the department head. For purposes of determining whether or not payment was made in accordance with this policy, payment in full shall be considered to be made on the date the check for payment was mailed or otherwise transmitted.

When a bill submitted to the Town of Berryville is incorrect or when there is a defect or impropriety in a bill submitted, the respective department head shall notify the creditor in writing prior to the date on

which payment in full is due. The notice shall contain a description of the defect or impropriety and any other additional information to enable the creditor to correct the bill. Upon receiving a corrected bill, the Town of Berryville shall make payment in full on or before the thirtieth calendar day after receipt of the corrected bill.

The Treasurer, Town Manager and a designated member of Town Council shall review bills submitted for payment before payment is made. Bill payments will be processed at least twice a month.

A register of all checks issued each month shall be presented to Town Council.

Contract Renewal and Extension

Renewal:

- A term contract may contain a renewal clause describing the conditions under which it may be renewed for a stipulated period of time.
- However, no contract may be renewed and no additional consideration may be paid unless specifically provided for in the original contract.
- Price increases should not be given automatically at renewal.
- It is the responsibility of the contractor to request a price increase, if desired, up to the amount authorized by the index referenced in the contract. The Town may then negotiate the amount of the increase up to the indexed amount.

Extension:

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. No additional consideration exceeding the contracted price may be paid to the contractor. Also, in exceptional or extenuating circumstances a contract may be extended by mutual consent for a limited period of time, not to exceed six (6) months. This action should be taken in writing prior to the expiration of the current contract.

Vendor Performance

Default. A contractor is considered in default if he or she fails to perform in accordance with the terms and conditions of the contract.

If it is determined that a contractor is in default, a Complaint to Vendor form (Form CA-1) should be issued and distributed followed by a "Notice to Cure" if unacceptable vendor response, resolution, or action is received. A cure letter may also be issued at the same time as the Complaint to Vendor form.

Vendor Performance Complaints. Complaints and/or discrepancies on vendor performance should be reported as they occur using the Complaint to Vendor Form (Form CA-1). Vendors are required to respond to the Town within ten days. Failure to do so may result in removal from the Vendors List.

Notice to Cure. A Cure letter is used when a contractor has failed to perform or deliver as substantiated by a Complaint to Vendor form. It provides the contractor a period of time to correct or

“cure” the deficiency and places the contractor on notice as to the consequences for failure to take the required corrective action. The notice may be given either orally or in writing advising the contractor that non delivery or non conformance is a breach of a contract and, if the deficiency is not corrected within a stated number of days, the Town will terminate the contract for default and hold the contractor liable for any excess costs.

Termination for Default and Repurchase Costs. Upon the expiration of the time period stated in the “Notice to Cure,” if a satisfactory resolution has not been reached, send the contractor a Termination for Default letter and take repurchase action. This letter states that the contract is being terminated for default and that when the Town repurchases the goods or services, any additional cost will be billed to the Vendor in default. If the repurchase results in increased costs to the Town, a letter shall be sent to the delinquent contractor demanding payment of the excess costs. Until the excess repayment costs have been received, the contractor shall be removed from the Vendors List. If repayment has not been made by the end of the specified period of time, subsequent collection action shall be taken in accordance with the Town’s collections procedures.

Debarment. In addition to the above default procedures, concurrent action to have the defaulted contractor debarred shall be initiated by sending a letter to the Town Manager recommending debarment and providing all the pertinent facts to support that recommendation. Debarment means action taken by the Town Manager to exclude individuals or firms from contracting with the Town. Debarment does not relieve the contractor of responsibility for existing obligations.

Appendix C: Purchasing Card Policies and Procedures –
as of December 2012



The Town Of Berryville

Purchasing Card Policies and Procedures

I. Purpose, General

The purpose of the purchasing card program is to provide the Town of Berryville with an efficient and reliable way to make purchases. The purchasing card should be used as an alternative to vendor direct billing.

II. Background

Purchasing cards can simplify and expedite procurement but use of these cards requires strict adherence to internal control procedures and a commitment to accompanying accounting procedures. In most cases, card use reduces staff procurement efforts, allows internet purchases; shortens delivery time and increases financial tracking and control efforts.

III. Participation

Unless otherwise specified, the authority to use the purchasing card (p-card) will be delegated to all departments, referred to as “department” hereafter.

The Town Manager may terminate, suspend or limit a department’s p-card program. The Town Manager is authorized to terminate, suspend or limit a particular individual card.

IV. Rebate

The rebate that is earned on qualifying purchases and paid by the issuing bank will be deposited in the Town’s General Fund for administrative and processing costs.

V. Roles

Program Administrator

The Treasurer manages the purchasing card program and is responsible for establishing and enforcing card related policies and procedures and serves as Program Administrator. The Treasurer may delegate purchasing card duties to Finance Department staff.

Department Head

The Department Head or designee is responsible for all aspects of the department’s purchasing card program. The Department Head monitors card activity and ensures that vendor receipts, invoices and delivery documentation are retained for each purchase, in accordance with established policies and procedures. The Department Head will serve as the primary contact for the department.

Cardholder

The Cardholder is an individual employee assigned a card with his or her name imprinted on it. The cardholder is responsible for using the card in accordance with this policy. The cardholder is responsible for card activity and retaining vendor receipts, invoices and delivery documentation. The cardholder is also responsible for submitting required documentation, in a timely manner, for coding and approval to the designated person in their department.

VI. Process Overview

Establishing an Individual Card Account

Departments request cards for an individual by submitting an application to the Treasurer. This card will be imprinted with cardholder name. The application indicates the department, card limit requested, full name of cardholder and contact information.

Obtaining Cards from Bank of America

The Treasurer receives/reviews the application and submits to BOA through WORKS. The bank establishes a new account and forwards the new card to the Administrator. The Administrator distributes the card to the Department Head and the cardholder activates the account.

Card Use

The department uses the card in accordance with this policy and the department's own internal control procedures.

Billing and Payment Process

The Department Head will have access to a master departmental summary of charges. This will serve as a statement to reconcile charges. Once reconciled and reviewed (see process below) the departmental summary will be forwarded to the Finance Department for payment through the regular scheduled bill cycle.

There is a 25 day grace period, from the statement date, to make payment in full. Payment in full **MUST** be made each month. This requires specific attention to timely submission of the monthly statement to accounts payable in order to make payments by the due date.

In order to meet the payment deadlines, it is advised that reconciliation be a continuous process throughout the month. This will expedite the process. The charges for the cardholder who serves as the Department Head must be reviewed by the Treasurer.

Reconciliation and Review

Purchasing card reconciliation is the process of verifying the accuracy of all posted card transactions (charges and credits). There are two (2) options for monthly reconciliation, reconciliation by the cardholder or reconciliation by the Department Head.

Reconciliation by cardholders – The cardholder is responsible to reconcile the bank record of transactions to the actual receipts to verify that all charges are proper and the correct amounts have been charged. The monthly statement must be reconciled and sent to the Department Head. It is essential that the following steps are taken when reconciling the monthly statement:

- Compare backup documents to the transactions listed on the statement;
- Ensure any exceptions are followed-up for corrections;
- Sign the monthly statement (or individual receipts) documenting your review and certification that all purchases listed are correct and made for official purposes which meet the appropriate business needs;

- Attach the receipts to the statement and forward all documents to the Department Head for review.

Reconciliation by Department Head – The Department Head is responsible to reconcile the bank record of transactions to the actual receipts, for all department cardholders, to verify that all charges are proper and the correct amounts have been charged. Receipts are submitted by the cardholder to the Department Head.

- Compare backup documents to the transactions listed on the department billing;
- Ensure any exceptions are followed-up for corrections;
- Sign the summary sheet documenting your review and certification that all purchases listed are correct and made for official purposes which meet the appropriate business needs;
- Review – Once all statements/receipts are received by the Department Head from the cardholders, the Department Head will prepare a payment summary which indicates the proper expenditure codes and payment amounts. The Department Head should also review individual statements/charges to ensure compliance to the policies and procedures. The Department Head will sign and date the payment summary and submit to the department head for approval.
- Once approved the entire package will be forwarded to the Finance Department for payment through the regular scheduled bill cycle.

Card Use by Reviewing Department Head – If the reviewer uses the card, the reconciliation must be reviewed by another staff member. The reviewer must sign and date the reconciliation.

Statement Due Dates

The billing cycle ends on the last business day of each month with the payment due around the 25th of each month. REMEMBER – transactions can be viewed online by the Department Head at any time. This will expedite the process rather than waiting for the end of the cycle. Statements will be due to the Finance Department on dates set by Finance.

VII. Card Uses

Subject to the limitations discussed in this policy, the p-card may be used for the following:

- Travel Expenses;
- All goods and services; and
- Telephone and Internet ordering.

Purchasing cards may NOT be used for the following:

- Cash Advances;
- Personal Purchases of any kind;
- Purchases by Non-Employees;
- Split Purchases – A split purchase is one in which the original purchase requirement for the same or related goods or services is broken into multiple smaller purchases which are made over a short period of time. In most cases a split purchase is created to circumvent the procurement policy and/or a card's single purchase or cycle spending limits; and
- Other purchases prohibited by town policy.

VIII. Card Limits

The Town Manager in consultation with the Treasurer and Bank of America representatives shall approve all card limits including single transaction limits, cycle limits and authorizations per day.

The Town Manager in consultation with the Treasurer and Bank of America representatives shall establish Merchant Category Codes to block purchases from certain categories of vendors to ensure that cards cannot be used for improper purposes.

IX. Program Training

Department Head Training

All Department Heads are required to attend Department Head training. The Finance Department in conjunction with Bank of America will provide this training to primary Department Heads.

Card User Training

Departments are required to provide training in conjunction with Bank of America to all cardholders and users prior to their first card use.

X. Card Characteristics

Card Plastic

Card plastics will include the following information: TOWN OF BERRYVILLE, VA – FOR OFFICIAL USE ONLY – TAX EXEMPT #XXXXXXXXXXXX. Card Imprint

Card names are assigned by the department. Each line has a maximum of 24 characters, including spaces. Each card name shall include:

- Line 1 – Individual’s legal name
- Line 2 – Department name

Signature on Card

Cards shall be signed by the individual whose name appears on the card.

Card Security

Except for cards in personal possession, cards should be kept in secure location while not in use. Access to the location should be limited to those individuals who are permitted to access the card.

XII. Other Program Requirements

Sales Tax Exemption

Most town purchases are exempt from Virginia state sales tax. When making a p-card purchase, card users should remind the vendor of our tax exempt status and examine the receipt to verify sales tax was not charged. By state statute, the town is not exempt from sales tax for meals, catered events, lodging

or other accommodations. The town is not exempt from sales tax imposed by other states on goods and services purchased outside of Virginia.

Employee Acknowledgement Disclosure Form

A Cardholder/User Agreement form must be signed before a new card is issued and at each instance that a card is re-issued to the same individual. This will include the reissue of expired cards. The form acknowledges the employee's responsibilities regarding card use and sets forth consequences for card misuse. The Treasurer shall maintain the signed forms at least 3 years following the employee's termination of employment.

Receipts

Vendor receipt, invoice or credit slip must be retained for each transaction. Receipts should show all details pertinent to the transaction, including date of purchase, vendor name and location, item(s) purchased with corresponding description(s) and price(s), and the total amount paid. These documents shall be attached with the appropriate monthly statement.

- Alternate Receipt –Department may use an alternate receipt, such as an internet screen print or faxed receipt. The receipt should contain the same level of detail required for an original receipt.
- Missing Receipt – If, for any reason, an original, alternate or photocopied receipt is unavailable, a Missing Receipt Affidavit providing the purchase details and reason why a receipt is not available must be included with the appropriate monthly statement. Documentation in lieu of missing receipts must be signed and dated by the Cardholder and the Department Director.

Document Retention

Program documents must be retained for a minimum of three (3) years.

Card Management Software

Bank of America Merrill Lynch provides WORKS p-card management software online. This software will allow a user to view transactions at any time, run reports, electronically allocate transactions, etc. Upon request, Cardholders will only be granted access to view information of their own card accounts and Department Heads will be given greater access to create reports and manage all department cardholders.

Problem Resolution

The Department Head should attempt to resolve disputes directly with the vendor and/or the bank. If unable to resolve directly within a reasonable time period, contact the Treasurer for assistance. Any adjustment to billing will be made on subsequent statements.

Dispute Procedures

Dispute procedures are defined by the town's purchasing card contract with Bank of America Merrill Lynch. The contract requires that disputed items be identified within 60 days of the billing close date for the cycle in which the disputed charge appears on the monthly statement. Disputed charges must be identified to BAML by completing the online dispute form in WORKS or by contacting BAML Customer Service and receiving the document in the mail. Although items identified outside the 60

day period may still be disputed, the town's legal standing in the matter is decreased. Dispute rights for department cards are significantly limited.

Lost or Stolen Cards

Lost or stolen cards shall be reported to Bank of America Merrill Lynch and the Department Head immediately. The bank provides a 24 hour toll free telephone number for this purpose. The number is included on the paperwork that accompanies each new card. The Department Head must also notify the Treasurer immediately. All card users should be aware of the procedure for reporting a lost or stolen card, including how to proceed if the Department Head is not available at the time the loss is discovered.

Reissue of a Lost or Stolen Card

To request a replacement of a lost or stolen card, forward a memo from the department director to the Treasurer. The memo should describe the circumstances surrounding the card loss and the steps taken to ensure against future losses. The Treasurer will evaluate each incident on an individual basis to determine whether or not to issue a replacement card.

Card Cancellation

If a department wishes to cancel a card, the Department Head should submit the original cardholder application, with the effective date and reason for cancellation completed, to the Treasurer. The Department Head must destroy any cancelled card(s). If there is an urgent need to cancel a card, contact the Treasurer for immediate assistance. Remember that lost or stolen cards may be reported directly to the bank through a 24 hour toll free number.

Card Changes

If the department wishes to change any aspect of a card, including address and card limits, the Department Head should submit card changes to the Treasurer.

Violations of Policy

The purchasing card is an opportunity for town staff to maximize efficiency in the procurement of goods and service; however, this concession can be terminated for violation of the policies and procedures outlined in the document. It is the responsibility of the Department Head to maintain a violation log. If a user violates the policies and procedures, potential repercussions include, but are not limited to:

- Warning letter sent by the Department Head;
- Suspension of card privileges; and/or
- Employee termination.

Examples of violations include, but are not limited to:

- Personal purchases;
- Purchase of restricted commodities;
- Split purchasing;
- Failure to obtain and forward supporting documentation for all card transactions;
- Lack of timely and proper reconciliation of monthly statements; and/or
- Use of the card by anyone or any department other than the authorized user.

Fraud and Misuse

Deterrence

The department is responsible to actively protect each of its purchasing cards from fraud and misuse.

The following guidelines should be followed:

- Limit Card Access – Maintain cards in a secure environment.
- Protect Card Information – Information regarding cards should be protected. This is to include card account number, name and expiration date. File reports that contain card numbers in locked file cabinets. When discarding reports or other paperwork containing card information, shred documents. Assure security of card materials that are maintained electronically. Do not send emails which contain card numbers and/or expiration dates.
- Establish Reasonable Card Limits – Establish reasonable spending and transaction limits. This will limit risk in the event the card or card number is lost or stolen.
- Maintain Adequate Separation of Duties – Divide the card custodian and the accounting/reconciliation duties among employees. Conduct proper upper management review of transactions and supporting receipts and associated documentation.

Occurrence of Fraud or Misuse

If fraud or misuse is suspected, the Department Head shall contact the Town Manager immediately for further guidance.

Compliance Reviews

The card program is subject to review by the Town Manager and both internal and external auditors.

Appendix D: Fuel Card Policies and Procedures – as of January 2013



The Town Of Berryville

Fuel Card Policies and Procedures

Fuel Card Policies Overview

1. The Town of Berryville uses Voyager fuel credit cards for vehicle fuel purchases.
2. The Town of Berryville is liable for all authorized charges made on the Card.
3. Fuel for vehicles is to be obtained from any Voyager accepted commercial fuel station. A directory of Voyager locations can be found at www.usbank.com/voyagerfleet/search.jsp.
4. Fuel cards will only allow fuel purchases. The use of this card for any other purpose than fuel and oil for Town of Berryville vehicles is prohibited.
5. Fuel cards are assigned to each vehicle.
6. Each fuel card must remain in the assigned vehicle.
7. Any vehicle containing the card shall be locked up and secured from unauthorized use at all times.
8. The Fleet Manager has the responsibility of insuring each vehicle has a fuel card.
9. If a fuel card is not in the vehicle report immediately to the supervisor.
10. The odometer reading must be keyed correctly at the pump. Odometer readings are used to monitor the vehicle's preventative maintenance schedule and provide verification for Finance to pay the bill.
11. All purchases using the Voyager card are assigned and tracked to a specific vehicle.
12. An exception report is sent to the Department Head for purchases other than fuel or oil for review. Voyager purchases that do not appear to be consistent with established policies will be investigated by the Department Head.

Fuel Card Use Overview

1. Swipe card at pump and enter information when prompted.
2. When asked for the odometer reading, enter the current odometer reading from the vehicle.
3. If information is cut off of the receipt, write it on the receipt from the pump screen.
4. If receipt is not given at pump, go inside and have one printed.
5. Return receipts to the Department Head.

I. Purpose, General

The purpose of the fuel card program is to provide the Town of Berryville with an efficient and reliable way to make fuel purchases. All purchases using the Voyager card are assigned and tracked to a specific vehicle. The fuel card should be used at the pump of participating vendors. A directory of Voyager locations can be found at www.usbank.com/voyagerfleet/search.jsp.

II. Participation

Unless otherwise specified, the authority to use the fuel card will be delegated to all departments, referred to as “department” hereafter.

The Town Manager may terminate, suspend or limit a department’s fuel card program. The Town Manager is authorized to terminate, suspend or limit a particular individual card.

III. Roles

Program Administrator

The Treasurer manages the fuel card program and is responsible for establishing and enforcing card related policies and procedures and serves as Program Administrator. The Treasurer may delegate purchasing card duties to Finance Department staff.

Department Head

The Department Head or designee is responsible for all aspects of the department’s fuel card program. The Department Head monitors card activity and ensures that vendor receipts, invoices and delivery documentation are retained for each purchase, in accordance with established policies and procedures. The Department Head will serve as the primary contact for the department.

Drivers

The Driver is an individual employee assigned a vehicle equipped with a Voyager Fuel card. The driver is responsible for card activity; retaining and submitting receipts and safeguarding the card.

IV. Safeguarding the Card

Each card is assigned to and shall be stored in a specific vehicle. Any vehicle containing the card shall be locked up and secured from unauthorized use at all times.

V. Card Uses

Subject to the limitations discussed in this policy, the fuel card may be used for fuel and oil only. An exception report is sent to the Department Head for purchases other than fuel or oil for review. Voyager purchases that do not appear to be consistent with established policies will be investigated by the Department Head.

VI. Other Program Requirements

Employee Agreement Form

An Employee Agreement form must be signed before a driver may utilize fuel cards. Drivers must agree to re-sign the Agreement when necessary. The form acknowledges the driver's responsibilities regarding card use and sets forth consequences for card misuse. The Treasurer shall maintain the signed forms at least 3 years following the employee's termination of employment.

Accuracy

The odometer reading must be keyed correctly at the pump. Odometer readings are used to monitor the vehicle's preventative maintenance schedule and provide verification for the Finance Department to pay the bill. The odometer reading requirement does not apply to Department "gas can" cards.

Receipts

Vendor receipts must be retained for each transaction. Receipts should show all details pertinent to the transaction.

- Alternate Receipt –Department may use an alternate receipt, such as an internet screen print or faxed receipt. The receipt should contain the same level of detail required for an original receipt.
- Missing Receipt – If, for any reason, an original, alternate or photocopied receipt is unavailable, a Missing Receipt Affidavit providing the purchase details and reason why a receipt is not available must be included with the appropriate monthly statement. Documentation in lieu of missing receipts must be signed and dated by the Driver and the Department Head.

Document Retention

Program documents must be retained for a minimum of three (3) years.

Problem Resolution

The Department Head should attempt to resolve disputes directly with the vendor and/or the bank. If unable to resolve directly within a reasonable time period, contact the Treasurer for assistance. Any adjustment to billing will be made on subsequent statements.

Lost or Stolen Cards

Lost or stolen cards shall be reported to the Department Head immediately. The Department Head must also notify the Treasurer immediately.

Reissue of a Lost or Stolen Card

To request a replacement of a lost or stolen card, forward a memo from the Department Head to the Treasurer. The memo should describe the circumstances surrounding the card loss and the steps taken to ensure against future losses. The Treasurer will evaluate each incident on an individual basis to determine whether or not to issue a replacement card.

Violations of Policy

The fuel card is an opportunity for town staff to maximize efficiency in the procurement of fuel; however, this concession can be terminated for violation of the policies and procedures outlined in the document. It is the responsibility of the Department Head to maintain a violation log. If a user violates the policies and procedures, potential repercussions include, but are not limited to:

- Warning letter sent by the Department Head;
- Suspension of card privileges; and/or
- Employee termination.

Fraud and Misuse

Deterrence

The department is responsible to actively protect each of its fuel cards from fraud and misuse. The following guidelines should be followed:

- Limit Card Access – Maintain cards in a secure environment.
- Protect Card Information – Information regarding cards should be protected. This is to include card account number, name and expiration date. File reports that contain card numbers in locked file cabinets. When discarding reports or other paperwork containing card information, shred documents. Assure security of card materials that are maintained electronically. Do not send emails which contain card numbers and/or expiration dates.
- Safeguard Driver PIN numbers.

Occurrence of Fraud or Misuse

If fraud or misuse is suspected, the Department Head shall contact the Town Manager immediately for further guidance.

Compliance Reviews

The card program is subject to review by the Town Manager and both internal and external auditors.

Appendix E: Town Code, Sec. 2-6 – as of July 2006

Sec. 2-6. - Signing of checks on town funds.

Checks for duly authorized disbursements of town funds shall be signed by either the town treasurer or town manager and, except for payroll checks, cosigned by either the mayor or recorder.

(Code 1971, § 2-4; Ord. of 7-11-06(1))

Work Plan Appendix B



The Town Of Berryville

Procurement Policy Manual

On _____, the Town Council of the Town of Berryville adopted the Virginia Public Procurement Act of the Code of Virginia and this manual as its procurement policy.

I. Purpose, General

The policies contained herein have been developed pursuant to the Virginia Public Procurement Act of the Code of Virginia (“VPPA”). The VPPA has certain mandatory provisions and allows for the use of certain optional policies provided they are adopted in writing by the governing body and are based on competitive principles.

These policies are intended to provide the framework for procurement of materials, supplies, equipment, and services at the lowest possible cost consistent with the quality needed for the proper operation of municipal services. Our goal is the promotion of the Town's best interest through intelligent action and fair dealing which will result in obtaining the optimum value for each dollar spent as well as strengthening the public confidence in the integrity of public purchasing.

II. Policy

The Town of Berryville adopted the VPPA and this Policy Manual on _____ as its procurement policy. A copy of the VPPA is included in this policy manual as Attachment A.

III. Applicability

These policies and procedures apply to all contracts for the procurement of goods, services, insurance and construction entered into by the Town involving any expenditure of public funds except those specifically exempted herein.

IV. Procurement Authority and Responsibility

The Town Manager has the ultimate responsibility to ensure that the acquisition of goods and services does not violate or circumvent state law, regulations, town ordinances or the provisions of this manual.

V. Delegation

The Town Manager may delegate the procurement of any goods or services to the Treasurer, Purchasing Agent or other responsible officials.

VI. General Procurement Policies

Adequate Competition

A sufficient number of sources must be solicited for the procurement of goods or services consistent with the method of procurement used.

Bidder's List

The Purchasing Agent shall be responsible, with the assistance from the various Department Heads, to maintain a current file of sources of goods, services, construction, etc., to be known as the Bidder's List. Any vendor can be included on the Bidder's List upon their request.

Ethics

See § 2.2-4367 to § 2.2-4377 of the VPPA.

Solicitations

Amending a Solicitation

If it is necessary to amend a solicitation, prepare, post, and send an addendum to all potential bidders or offerors who received a copy of the solicitation or who attended a pre-bid or pre-proposal conference.

Canceling a Solicitation

An Invitation for Bids, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. When canceling a written solicitation all vendors who have been issued a solicitation must be notified, and the notice must be publicly posted.

Performance and Payment Bonds

Upon the award of any public construction contract exceeding \$100,000 awarded to any prime contractor, such contractor shall furnish the town with 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. The 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 furtherance of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

Each of the bonds shall be executed and made payable to the Town of Berryville by one or more surety companies selected by the contractor that are authorized to do business in Virginia and filed with the purchasing office that awarded the contract or a designated official thereof within 10 days after receipt of the purchase order or notice of award.

Nothing in this section shall preclude the town from requiring payment or performance bonds for construction contracts below \$100,000.

Alternative Forms of Security

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

Contracts/Purchase Orders and Modification Restrictions

The Department Head's signature will be required on Purchase Order Request forms. A contract or purchase order may not be modified or renewed unless provided for in the original contract or solicitation. No additional consideration or increase in contract price may be paid to the contractor because of renewal unless specifically authorized under the original contract.

- Purchases Up to the VPPA limit - Cumulative contract modifications to purchases made under small purchase procedures shall not exceed 25% of the original contract price without advance written approval of the Town Manager.
- Purchases over the VPPA limit - A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the original amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Town Manager.

Documentation of Files

A complete file should be maintained in one place for each purchase transaction, containing all the information necessary to understand the why, who, what, when, where and how of the transaction.

Nondiscrimination

In the solicitation, awarding or administration of contracts, the Town shall not discriminate because of the race, religion, color, sex, age, disability, or national origin of the bidder, offeror, or contractor (Code of Virginia, § 2.2-4310A).

Employment Discrimination Prohibited

Employment discrimination by contractor prohibited; required contract provisions. -- All public bodies shall include in every contract of more than \$10,000 the following provisions:

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, 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.

- b. 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.
- c. 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 section.

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

Preferences

Berryville Vendors and Products

Preference is given to goods produced in Berryville, goods or services or construction provided by Berryville persons, firms or corporations, in the event of a tie bid. In the event that this provision does not resolve the tie preference is given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations.

Recycled Paper and Paper Products Preference

In determining the award of any contract for paper and paper products the town shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than 10% greater than the bid price of the low responsive and responsible bidder.

Public Access to Procurement Records

- Except as provided in this section, 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 (§ 2.2-3700 et seq.)
- Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- 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 that the Town Manager 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.

- 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 Town Manager 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.
- Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
- Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, 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.

Publicly Posted Notices

All solicitations for goods and services over \$50,000 shall be posted ~~in the Town Office~~ **on the Town website, www.berryvilleva.gov**.

Award Notices over \$50,000 must be posted ~~in the Town Office~~ **on the Town website, www.berryvilleva.gov**, for a ten (10) day period immediately following the actual time of award. The procurement records must be available for review by any bidder or offeror at the time a Notice of Intent To Award or an Award Notice is posted.

Responsible Bidder or Offeror

In determining a responsible bidder or offeror, a number of factors, including but not limited to the following, are considered. The vendor should:

- be a regular dealer, supplier, or when required in the solicitation an authorized dealer of the goods or services offered;
- have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
- have a satisfactory record of performance;
- have a satisfactory record of integrity; and
- have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract.

Responsive Bid

- To be considered for an award, a bid must comply in all material respects with the Invitation for Bids.

- Responsiveness relates to compliance with the provisions of the solicitation, including specifications and terms and conditions.
- Failure to comply with the requirements set forth in the Invitation for Bids may result in a bid being declared nonresponsive, e.g., failure to sign a bid, failure to return the required bid documents, substitution of vendor's terms, deletion of terms and conditions stated in the Invitation for Bids, failure to offer a product or service that meets the requirements of the Invitation for Bids, etc.
- A bidder who fails to provide prices for all categories of labor in the pricing schedule of a time and materials service contract is considered nonresponsive.
- This is true whether the price was left blank or the bidder entered a figure of \$0. Bidders who provide multiple prices for performing a service where a single price was solicited are also nonresponsive.

VII. Guidelines for Procurement

This section contains general guidelines for procuring goods and services.

Administrative Lead-Time

Administrative lead-time is that period of time from initiation of the requirement by the user to issuance of an award. For routine procurements where informal written solicitations are used, the minimum time required to prepare, solicit, evaluate, and make an award may take from three (3) days up to thirty (30) days. When competitive sealed bidding or competitive negotiation is used, the time required by the purchasing office may be longer.

Selection of Procurement Method

It is important to select the proper procurement method. The estimated or anticipated value of the contract must be determined first, unless the purchase is an emergency. The anticipated value of the contract includes the dollar value for the initial period of the contract, and includes all possible renewal periods. The expected trade-in value of equipment should not be considered when determining the anticipated value of a contract.

Preparing the Written Solicitation

Solicitations should convey to the reader, in a clear, concise and logical sequence, the information necessary to answer the basic questions of who, what, why, where, when and how.

Terms and Conditions

See section VIII of this manual.

Contract Period

- Term contracts normally cover a 12 month period or cite a specific time for completion for the project or service.
- A solicitation for a multi-year contract, or one that includes an option on the part of the town to renew the contract for an additional period, may be advantageous and should be considered;

however, in determining the value of the contract and procurement method, all possible renewal periods must be included.

- Multi-year programs are subject to availability of funds, and each solicitation covering a multi-year period must contain an availability of funds clause.
- If price adjustments are to be permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract.
- The town should review all multi-year contracts at least annually to determine if the goods or services are still required, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory.
- Multi-year contracts including options to renew normally should not exceed 5 years.

Specifications

Solicitations of offers, whether by formal advertising or negotiations, shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be purchased. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description (see Use of Brand Names below) may be used as a means to define the performance or other salient requirements of a procurement.

Invitations for bids and requests for proposals shall clearly set forth all requirements which bidders must fulfill in order for bids and proposals to be properly evaluated. Factors to be used in evaluating bids or proposals shall be clearly stated in the solicitation to enable bidders to know how their bids or proposals will be evaluated. If a solicitation requires a listing of subcontractors or sub-item vendors, a bidder's failure to list such shall make that bid nonresponsive.

Use of Brand Names

Unless otherwise provided in the Invitation for Bid, the name of a certain brand does not restrict bidders to a specific brand, make or manufacturer's name, but conveys 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 acceptable.

Vendor Assistance in Specification Preparation

Advice or assistance may be received from a vendor in identifying the features and characteristics needed by the town; however, no person who, for compensation, prepares an Invitation to Bid or Request for Proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public.

Order Splitting Prohibition

The placement of multiple orders within other than a reasonable time period to one or more vendors for the same, like, or related goods or services to avoid using the appropriate method of procurement or to remain within delegated purchasing authority is prohibited. Order splitting results in higher administrative cost to the town. Requirements should be combined when practical to obtain quantity discounts and other administrative efficiencies.

Freight

F.O.B. Destination is the basic policy of the Town of Berryville to solicit bids for goods F.O.B. (free on board) Destination, which means that freight charges are paid by the seller who owns and assumes all risk for the goods until they are accepted at the designated delivery point. The cost of shipping the goods may be included in the quoted price or by the bidder or offeror as a separate line item.

Insurance

Whenever work is to be performed on town owned or leased property or facilities, the contractor shall be required to have Workers' Compensation, Employer's Liability, Commercial General Liability and Automobile Liability, and in certain types of programs Professional Liability/Errors and Omissions insurance coverage **as specified by Virginia Municipal League recommendations.**

VIII. General Terms and Conditions

These General Terms and Conditions are required for use in written solicitations issued by the Town for procurements. You should edit the wording to fit the type of solicitation (IFB or RFP) by either deleting or lining out the inappropriate words in all parenthesis.

APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

ANTI-DISCRIMINATION: By submitting their (bids/proposals), (bidders/offerors) certify to the Town of Berryville that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA).

Employment discrimination by contractor prohibited; required contract provisions. -- All public bodies shall include in every contract of more than \$10,000 the following provisions:

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, 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.
- b) 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.
- c) 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 section.

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

ETHICS IN PUBLIC CONTRACTING: By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this 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 was exchanged.

IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting their (bids/proposals), (bidders/offerors) certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

DEBARMENT STATUS: By submitting their (bids/proposals), (bidders/offerors) certify that they are not currently debarred by the Town of Berryville from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

MANDATORY USE OF TOWN TERMS AND CONDITIONS FOR IFBs AND RFPs (Insert wording below appropriate to the solicitation type as indicated):

1. (For Invitation For Bids): Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Town reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Town may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

2. (For Request For Proposals): Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Town reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

BILL PAYMENT POLICY

The Town Treasurer shall make payment in full (unless and alternate payment plan has been agreed upon) for all goods delivered or services rendered within thirty days of receipt of the bill.

No goods or services shall be deemed received until such goods are completely delivered and found acceptable by the department head and the receiving report (Form REC-1) is completed. For purposes of determining whether or not payment was made in accordance with this policy, payment in full shall be considered to be made on the date the check for payment was mailed or otherwise transmitted.

When a bill submitted to the Town of Berryville is incorrect or when there is a defect or impropriety in a bill submitted, the respective department head shall notify the creditor in writing prior to the date on which payment in full is due. The notice shall contain a description of the defect or impropriety and any other additional information to enable the creditor to correct the bill. Upon receiving a corrected bill, the Town of Berryville shall make payment in full on or before the thirtieth calendar day after receipt of the corrected bill.

To Subcontractors:

A contractor awarded a contract under this solicitation is hereby obligated:

To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Town for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

To notify the town and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

PRECEDENCE OF TERMS: In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

QUALIFICATIONS OF (BIDDERS/OFFERORS): The Town may make such reasonable investigations as deemed proper and necessary to determine the ability of the (bidder/offeror) to perform the services/furnish the goods and the (bidder/offeror) shall furnish to the Town all such information and data for this purpose as may be requested. The Town reserves the right to inspect (bidder's/offeror's) physical facilities prior to award to satisfy questions regarding the (bidder's/offeror's) capabilities. The Town further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (bidder/offeror) fails to satisfy the Town that such (bidder/offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

TESTING AND INSPECTION: The Town reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Town.

CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:

The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

The Town may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Town a credit for any savings. Said compensation shall be determined by one of the following methods:

1. By mutual agreement between the parties in writing; or
2. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Town's right to audit the contractor's records and/or to determine the correct number of units independently; or
3. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Town with all vouchers and records of expenses incurred and savings realized. The Town shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Town within thirty (30) days from the date of receipt of the written order from the Town. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Town or with the performance of the contract generally.

DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Town, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town may have.

TAXES: Sales to the Town are normally exempt from State sales tax. State sales and use tax certificates of exemption will be issued upon request.
(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

USE OF BRAND NAMES: Unless otherwise provided in this solicitation, Unless otherwise provided in the Invitation for Bid, the name of a certain brand does not restrict bidders to a specific brand, make or manufacturer's name, but conveys 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 acceptable.
(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

TRANSPORTATION AND PACKAGING: By submitting their (bids/proposals), all (bidders/offerors) certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used.
(NOT NORMALLY REQUIRED FOR SERVICE CONTRACTS)

INSURANCE: By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded as well as any other insurance requirements laid out in the request for bid or proposal. **The Town requires minimum insurance amounts as recommended by the Virginia Municipal League.** For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Town of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Town of Berryville, Virginia must be named as an additional insured and so endorsed on the policy.

(Note to Purchaser: When the requirement is for parking facilities and garages for motor vehicle maintenance contracts, the forgoing sentence should be changed to read: These coverages

should include Garage Owner’s Liability. Contracts with movers or truck transporters should also require motor carrier’s liability.)

4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

NOTE: In addition, various Professional Liability/Errors and Omissions coverages are required when soliciting those services as follows:

Profession/Service	Limits
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection, Abatement Contractor	\$1,000,000 per occurrence, \$3,000,000 aggregate
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

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.

NONDISCRIMINATION OF CONTRACTORS: A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless Town has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

IX. Small Purchase Policy

In this section *VPPA Limit* shall be defined as the threshold amount requiring competitive negotiation set in the VPPA.

The competitive pricing methods set forth below shall be followed for purchases not expected to exceed the VPPA Limit.

1. Single Quotation (Up to \$5,000)

- Where the Town's estimated cost of goods or nonprofessional services is \$5,000 or less, purchases may be made upon receipt of a minimum of one (1) written, telephone (oral) or electronic quotation.
- Additional sources may also be solicited.
- A record of the quotation must be kept with the file.
- If a telephone (oral) quote is solicited, a record shall be kept of the name and address of the vendor(s) contacted, the item description or service offered, price quoted, delivery dates and F.O.B. point, names of persons giving and receiving the prices and the date the information was obtained. Notation on the requisition form is considered to be an adequate record.
- If more than one quote is solicited, the award will be made to the lowest responsive and responsible bidder.
- Employees should seek additional competition whenever there is reason to believe a quotation is not a fair and reasonable price.

Unsealed Bidding (Over \$5,000 to VPPA limit)

- Where the Town's estimated cost of goods or nonprofessional services is over \$5,000 to the small purchase limits set in the VPPA, solicit four (4) valid sources, if available.
- **Quotes shall be verified on the Price Quote Record form to be completed and signed by the Department Head and attached to a Request for Payment form.**
- If fewer than the required number of sources are solicited, the reasons shall be documented.

Unsealed Proposals (Over \$5,000 to VPPA limit)

- The Town may obtain required goods or services using an informal Request for Proposal up to the small purchase limits set in the VPPA.
- A written determination for the use of competitive negotiation is not required for unsealed or informal RFPs.
- The solicitation should include a cover sheet, a general description of what is being sought, the factors and weights to be used in evaluation, the Town's General Terms and Conditions (either in full or by reference), and any special terms and conditions including unique capabilities or qualifications that will be required.
- Offers may be opened and evaluated upon receipt. All responses must be received at the designated location by the date and hour stated in the solicitation.
- In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers. Upon completion of the evaluation, negotiations shall be conducted with the offerors selected.

X. Large Purchases (Over VPPA limits)

In this section *VPPA Limit* shall be defined as the threshold amount requiring competitive negotiation set in the VPPA.

Cooperative Procurement

Cooperative procurement is available to the Town if a good or service has been procured by another public body with the stated intention that the procurement is to be shared cooperatively with other public bodies. The Cooperative Procurement form must be completed by the Department Head and signed by both the Department Head and the Town Manager verifying the cooperative procurement. The form must be attached to the Request for Purchase Order or the Request for Payment form.

Competitive Sealed Bidding (IFB)

Competitive sealed bidding is the preferred method for acquiring goods, printing, capital outlay construction and non-professional services for public use when the estimated cost is over the VPPA limit.

- The goods or service to be procured when using this method must be capable of being described so that bids submitted by potential contractors can be evaluated against the description in the Invitation for Bids (IFB) and an award made to the lowest responsive and responsible bidder.
- When the terms and conditions of multiple awards are so provided in the Invitation for Bids, awards may be made to more than one bidder.
- Competitive sealed bidding includes the issuance of a written IFB containing the specifications or scope of work/purchase description and the contractual terms and conditions applicable to the procurement.
- The terms or conditions of the solicitation must include how the Town will publicly post the notice of the award or make the announcement of the decision to award the contract.
- IFBs must describe the requirements accurately and completely. Unnecessarily restrictive specifications or terms and conditions that unduly limit competition must be avoided.
- In addition to the public notice, bids are to be solicited directly from potential bidders. Any such direct solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.
- In the competitive sealed bid process, bids are publicly opened and read aloud. The bids are evaluated based upon the requirements set forth in the IFB (if multiple awards are so provided in the solicitation, awards may be made to the lowest responsive and responsible bidders).

Preparation and Issuance of IFBs

Format:

- Prepare the IFB using the above guidelines.
- Establish a due date and time that will allow sufficient time for potential bidders to seek clarification and for the issuance of an addendum, if necessary.

- The due date shall not be less than 10 days from the issue date of the IFB.

Scope:

- Specify in detail the materials, equipment, and supplies to be furnished or the scope of work to be performed by the contractor, including or incorporating by reference the specifications, drawings and contractual terms and conditions applicable to the procurement.

Conferences/Site visits:

- All prebid conferences and/or site visits shall be mentioned in both the IFB 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 and attend.
- 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 10 days after the issue date of the addendum.

Sources:

- Solicit at least six (6) valid sources, including a minority or women-owned businesses, if available.
- If fewer than the required number of sources are solicited, the reasons must be documented in writing and placed in the purchase file.

Sealed Bids

Receipt, Opening, Evaluation, and Award:

Receipt:

- Bids shall be received until the date and time specified in the IFB.
- Bids are then publicly opened and read aloud.
- Late bids shall not be considered.

Opening:

- After bid opening, each bid is evaluated to determine if it is responsive to the IFB.
- The responsive bids are then evaluated according to the criteria and/or evaluation procedure described in the IFB to determine which is the lowest bid.

Evaluation:

- The lowest responsive bidder is then evaluated to determine if the firm is responsible.

Award:

- The contract is awarded to the lowest responsive and responsible bidder.

Competitive Negotiation (RFP)

General:

- The Town shall use competitive negotiation for the procurement of all professional services estimated over the VPPA limit.
- Competitive negotiation may be the procurement method used for goods and nonprofessional services when it is not practicable or fiscally advantageous to use competitive sealed bidding.

Preparation and Issuance of a Request for Proposal (RFP):

- A written RFP is issued to describe in general terms that which is to be procured.
- The RFP must specify and list the specific requirements to be addressed by the offerors that will be used in evaluating the proposals and will contain other applicable contractual terms and conditions, including any unique capabilities or qualifications required of the contractor.
- When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.
- The terms or conditions of the RFP must state the manner in which public notice of the award or the announcement of the decision to award shall be given by the public body.

Format:

- Establish a proposal submission due date and time which provide sufficient time for potential offerors to develop a proposal.
- The minimum time period is ten (10) days from issue date of the RFP.
- The time period used may be greater than the required ten (10) days based on the complexity of the requirement and whether or not a preproposal conference is required.

Sources:

- RFPs shall be sent to at least six (6) valid sources, including a minority or women-owned businesses, if available.
- If fewer than the required number of sources are solicited, the reasons must be stated in writing and placed in the purchase file.

Proposal Conferences:

- All preproposal conferences or site visits must be mentioned in the RFP and any advertisement of it.
- If attendance at such a conference or site visit is a prerequisite for submitting a proposal, the public notice period must be at least ten (10) days after issuance to provide adequate opportunity for potential offerors to obtain a copy of the RFP and attend.

Sealed Proposals (RFPs)

Receipt and Evaluation

Opening:

- Public openings of proposals are not required.
- If a public opening is held, the names of the individuals, or the names of firms submitting proposals in a timely manner, is the only information read aloud and made available to the offerors and general public.

Evaluation:

- The proposals are evaluated by the buyer, contracting officer, or an evaluation team.
- As an option, evaluators may request presentations or discussions with offerors, as necessary, to clarify material in the offerors proposals, to help determine those fully qualified and best suited.
- Proposals are then evaluated on the basis of the criteria set forth in the RFP, using the scoring weights previously determined.
- All RFP responses are to be evaluated.
- Proposals not meeting requirements should be scored lower.
- Only bids in response to an IFB may be determined to be nonresponsive.
- Offerors may be given an opportunity to correct a deficiency in their proposals, within an appropriate period of time, as determined by the purchasing office.
- Offerors who fail to submit required documentation or meet mandatory requirements, in such time, for evaluation purposes may be eliminated from further consideration.
- Two or more offerors determined to be fully qualified and best suited are then selected for negotiation.
- Price is considered, but need not be the sole determining factor.

During the evaluation phase it may be determined that only one offeror is fully qualified, or that one offeror is CLEARLY more highly qualified than the others under consideration. A written determination shall be prepared and retained in the contract file to document the meaningful and convincing facts supporting the decision for selecting only one offeror and negotiating with that offeror. The determination shall be signed by the Town Manager.

Negotiation and Award.

- Negotiations are conducted with each of the offerors so selected.
- Negotiation allows modification of proposals, including price.
- Offers and counter offers may be made as many times with each offeror as is necessary to secure a reasonable contract.
- After negotiations have been conducted with each of the selected offerors, the Town selects the offeror which, in its opinion, has made the best proposal.
- In all cases, written confirmation shall be obtained from the offeror on any modifications of the original proposal.
- Once an Intent to Award notice is posted, no further negotiation shall be conducted.

The Town may cancel a RFP, or reject proposals at any time prior to making an award.

The award documents shall incorporate, by reference, the terms and conditions of the RFP and the contractor's proposal, together with all written modifications thereof.

Sole Source Procurement

Definition:

A sole source procurement is authorized when there is only one source practicably available for the goods or services required. Competition is not available in a sole source situation; thus distinguishing it from a proprietary purchase where the product required is restricted to the manufacturer(s) stipulated, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a single vendor's capability to deliver in the least amount of time is not appropriate since availability alone is not a valid basis for determining a sole source procurement. For sole source requirements exceeding \$5,000, a written quotation must be obtained from the vendor.

Approval for Sole Source Procurements up to the VPPA limit:

- All sole source procurements for goods and services up to the VPPA limit must be approved in advance by the Town Manager or designee, which shall be the chief purchasing officer. **The Sole Source Procurement form must be completed by Department Head and signed by both the Department Head and the Town Manager. The form attached to the Request for Payment form or Purchase Order Request form.**
- The written determination documenting that there is only one source practicably available for that which is to be procured, must be included in the procurement file.
- In addition, a memorandum must be attached to the request which addresses the four points shown in the next section. The writing shall document the basis for the determination, which should include any market analysis conducted in order to ensure that the good or service required was practicably available from only one source.

Approval for Sole Source Procurements Over the VPPA limit:

- All sole source procurements for goods and services over the small purchase limits set by the VPPA must be approved by the Town Manager prior to commencement of the actual procurement. **The Sole Source Procurement form must be completed by Department Head and signed by both the Department Head and the Town Manager. The form attached to the Request for Payment form or Purchase Order Request form.** A memorandum must accompany the request, which addresses the following four points:
 1. Explain why this is the only product or service that can meet the needs of of the town.
 2. Explain why this vendor is the only practicably available source from which to obtain this product or service.
 3. Explain why the price is considered reasonable.

4. Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayers.

Negotiating and Award:

A contract shall be negotiated and awarded without competitive sealed bidding or competitive negotiation. In making sole source procurement, it is the buyer's or contracting officer's responsibility to negotiate a contract that is in the best interest of the Town.

Price Reasonableness Determination:

The buyer or contracting officer should carefully research the good or service and determine what is a fair and reasonable price.

Posting Requirements.:

For sole source procurements over \$50,000 public award notices may be posted in the Town Office.

Award Document:

The Town must issue an award document (PO or contract) for sole source purchases. When a quote has been obtained from the vendor and no further negotiations are needed, a purchase order is acceptable.

Emergency Procurement

General:

- An emergency is an occurrence of a serious and urgent nature that demands immediate action.
- Emergency procedures may be used to purchase only that which is necessary to cover the requirements of the emergency.
- Subsequent requirements shall be obtained using normal purchasing procedures.
- The potential loss of funds at the end of a fiscal year is not considered an emergency.

Types of Emergency Procurements:

- The nature of the emergency will determine what pre-award action may be taken.
- For an emergency purchase required to protect personal safety or property, efforts should be directed to finding a source and directing the contractor to proceed; however, such procurement shall be made with such competition as is practicable under the circumstances.
- For other types of emergencies, competition should also be sought to the maximum extent practicable.

Award of Emergency Procurements:

- The Town must prepare a confirming contract or purchase order, as soon as practicable, after directing the contractor to proceed.
- Care should be taken to include in detail any agreements, including price, that were made orally with the contractor.
- Prepare a written determination for signature by the Town Manager or designated representative indicating the nature of the emergency, the reason for selection of the particular contractor and include such determination with the file.
- **The Emergency Procurement Justification form must be completed by the Department Head and signed by both the Department Head and the Town Manager. The form must be attached to the Request for Payment form.**

XII. Contract Administration

General:

Contract administration begins after award of the contract. Its purpose is to assure that the contractor's and Town's total performance is in accordance with the terms and conditions of the contractual agreement. The integrity of the public purchasing system demands that goods or services be furnished, received, invoiced and paid as specified in the contract.

Contract Administrator:

- The administrator should be the end user of the contract or one who has a vested interest in the procurement who will be responsible for the proper adherence to all contract specifications by the contractor.
- Contract administration shall be delegated by the buyer designating a specific individual or position, highlighting important aspects of the contract, and distinguishing between the administrator's authority and that which must remain a function of the purchasing office.

Procurement Records:

- A complete file should be maintained in the Town Office for each purchase transaction, containing all the information necessary to understand the why, who, what, when, where and how of the transaction.
- Generally, records are open to the public in accordance with the Virginia Freedom of Information Act and should be made available for review after the award has been made.

Bill Payment Policy

The Department Head's signature will be required on the Request for Payment forms before processing. The Town Treasurer shall make payment in full (unless an alternate payment plan has been agreed upon) for all goods delivered or services rendered within thirty days of receipt of the bill.

Department heads shall submit bills for payment by the fifth and twentieth of each month.

No goods or services shall be deemed received until such goods are completely delivered and found acceptable by the department head. For purposes of determining whether or not payment was made in accordance with this policy, payment in full shall be considered to be made on the date the check for payment was mailed or otherwise transmitted.

When a bill submitted to the Town of Berryville is incorrect or when there is a defect or impropriety in a bill submitted, the respective department head shall notify the creditor in writing prior to the date on which payment in full is due. The notice shall contain a description of the defect or impropriety and any other additional information to enable the creditor to correct the bill. Upon receiving a corrected bill, the Town of Berryville shall make payment in full on or before the thirtieth calendar day after receipt of the corrected bill.

The Treasurer, Town Manager and a designated member of Town Council shall review bills submitted for payment before payment is made. Bill payments will be processed at least twice a month.

A register of all checks issued each month shall be presented to Town Council.

Contract Renewal and Extension

Renewal:

- A term contract may contain a renewal clause describing the conditions under which it may be renewed for a stipulated period of time.
- However, no contract may be renewed and no additional consideration may be paid unless specifically provided for in the original contract.
- Price increases should not be given automatically at renewal.
- It is the responsibility of the contractor to request a price increase, if desired, up to the amount authorized by the index referenced in the contract. The Town may then negotiate the amount of the increase up to the indexed amount.

Extension:

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. No additional consideration exceeding the contracted price may be paid to the contractor. Also, in exceptional or extenuating circumstances a contract may be extended by mutual consent for a limited period of time, not to exceed six (6) months. This action should be taken in writing prior to the expiration of the current contract.

Vendor Performance

Default. A contractor is considered in default if he or she fails to perform in accordance with the terms and conditions of the contract.

If it is determined that a contractor is in default, a Complaint to Vendor form (Form CA-1) should be issued and distributed followed by a “Notice to Cure” if unacceptable vendor response, resolution, or action is received. A cure letter may also be issued at the same time as the Complaint to Vendor form.

Vendor Performance Complaints. Complaints and/or discrepancies on vendor performance should be reported as they occur using the Complaint to Vendor Form (Form CA-1). Vendors are required to respond to the Town within ten days. Failure to do so may result in removal from the Vendors List.

Notice to Cure. A Cure letter is used when a contractor has failed to perform or deliver as substantiated by a Complaint to Vendor form. It provides the contractor a period of time to correct or “cure” the deficiency and places the contractor on notice as to the consequences for failure to take the required corrective action. The notice may be given either orally or in writing advising the contractor that non delivery or non-conformance is a breach of a contract and, if the deficiency is not corrected within a stated number of days, the Town will terminate the contract for default and hold the contractor liable for any excess costs.

Termination for Default and Re-procurement Costs. Upon the expiration of the time period stated in the “Notice to Cure,” if a satisfactory resolution has not been reached, send the contractor a Termination for Default letter and take repurchase action. This letter states that the contract is being terminated for default and that when the Town repurchases the goods or services, any additional cost will be billed to the Vendor in default. If the repurchase results in increased costs to the Town, a letter shall be sent to the delinquent contractor demanding payment of the excess costs. Until the excess repayment costs have been received, the contractor shall be removed from the Vendors List. If repayment has not been made by the end of the specified period of time, subsequent collection action shall be taken in accordance with the Town’s collections procedures.

Debarment. In addition to the above default procedures, concurrent action to have the defaulted contractor debarred shall be initiated by sending a letter to the Town Manager recommending debarment and providing all the pertinent facts to support that recommendation. Debarment means action taken by the Town Manager to exclude individuals or firms from contracting with the Town. Debarment does not relieve the contractor of responsibility for existing obligations.

XIII. Employee Responsibility

Employees shall follow the Town Procurement Policy as written. Violation of the Policy will subject an employee to disciplinary action up to and including termination, depending upon the severity and number of said violations.

Attachment A - Virginia Public Procurement Act

**Title 2.2
Administration of Government**

--

**Subtitle II.
Administration of State Government**

--

**Part B
Transaction of Public Business**

--

**CHAPTER 43
Virginia Public Procurement Act**

**Article 1.
General Provisions**

§ 2.2-4300. Short title; purpose; declaration of intent.

A. This chapter may be cited as the Virginia Public Procurement Act.

B. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. This chapter shall 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.

C. To the end that public bodies in the Commonwealth obtain 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 public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies 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 purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. Public bodies 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.

§ 2.2-4301. Definitions.

As used in this chapter:

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

“*Affiliate*” means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition “voting security” means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

“*Best value*” as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body’s needs.

“*Business*” means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

“*Competitive negotiation*” is the method of contractor selection set forth in § 2.2-4302.2.

“*Competitive sealed bidding*” is the method of contractor selection set forth in § 2.2-4302.1.

“*Construction*” means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

“*Construction management contract*” means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

“*Design-build contract*” means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

“*Employment services organization*” means an organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

“*Goods*” means all material, equipment, supplies, printing, and automated data processing hardware and software.

“*Informality*” means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to 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.

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

“Job order contracting” means a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The contractor may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of the public body procuring the construction services. A minimum amount of work may be specified in the contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-4303 or 2.2-4303.2.

“Multiphase professional services contract” means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

“Nonprofessional services” means any services not specifically identified as professional services in the definition of professional services.

“Potential bidder or offeror,” for the purposes of §§ 2.2-4360 and 2.2-4364, means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

“Professional services” means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. “Professional services” shall also include the services of an economist procured by the State Corporation Commission.

“Public body” means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter. “Public body” shall include (i) any independent agency of the Commonwealth, and (ii) any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.

“Public contract” means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

“Responsible bidder” or *“offeror”* means a person 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, and who has been prequalified, if required.

“Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

“*Reverse auctioning*” means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders’ prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

“*Services*” means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

§ 2.2-4302. Implementation.

This chapter may be implemented by ordinances, resolutions or regulations consistent with this chapter and with the provisions of other applicable law promulgated by any public body empowered by law to undertake the activities described in this chapter. Any such public body may act by and through its duly designated or authorized officers or employees.

§ 2.2-4302.1. Process for competitive sealed bidding.

The process for competitive sealed bidding shall include the following:



1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. 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 10 days prior to the date set for receipt of bids by posting on the Department of General Services’ central electronic procurement website or other appropriate websites. In addition, public bodies may publish in a newspaper of general circulation. Posting on the Department of General Services’ central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services’ central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth’s procurement opportunities. 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, which are helpful in determining acceptability; and

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

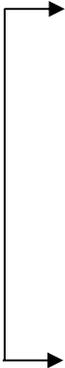
For the purposes of subdivision 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.

§ 2.2-4302.2. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which 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, specifications or qualifications that will be required. 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 Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this chapter shall condition a successful offeror's eligibility on having a specified experience modification factor;

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper 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. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. 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; and



3. For goods, nonprofessional services, and insurance, selection shall 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 Proposal, including price if so stated in the Request for Proposal. In the case of a proposal for information technology, as defined in § 2.2-2006, a public body shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. 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 public body shall 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 so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body 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; or



4. For professional services, the public body shall engage in individual discussions with two 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 shall be permissible. The offerors shall 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 shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body 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 § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132, until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.



Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the public body, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall 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.

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

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

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

B. 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 public body shall (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 public body require awarding the contract.



For the purposes of subdivision A 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.

Article 2.
Contract Formation and Administration

§ 2.2-4303. Methods of procurement.

A. 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 as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services set forth in § 2.2-4302.2. The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 2.2-4306;

2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property;

3. By any governing body of a locality with a population in excess of 100,000, provided that the locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis and shall otherwise be in compliance with the provisions of this section, § 2.2-4308, and other applicable law governing design-build or construction management contracts for public bodies other than the Commonwealth. The procedures of the local governing body shall be consistent with the two-step competitive negotiation process established in § 2.2-4302.2; or

4. As otherwise provided in § 2.2-4308.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

F. 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. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for:

- 
1. Goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$100,000; and
 2. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000.

However, such small purchase procedures shall provide for competition wherever practicable.

Such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$60,000.

Where small purchase procedures are adopted for construction, the procedures shall not waive compliance with the Uniform State Building Code.

For state public bodies, purchases under this subsection that are expected to exceed \$30,000 shall require the (a) written informal solicitation of a minimum of four bidders or offerors and (b) posting of a public notice on the Department of General Services' central electronic procurement website or other appropriate websites. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

H. Upon a determination made in advance by a public body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. Purchase of information technology and telecommunications goods and nonprofessional services from a public auction sale shall be permitted by any authority, department, agency, or institution of the Commonwealth if approved by the Chief Information Officer of the Commonwealth. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

I. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

§ 2.2-4303.1. Architectural and professional engineering term contracting; limitations.

A. A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by a public body, 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 four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

B. The sum of all projects performed in a one-year contract term shall not exceed \$500,000, except that for:

1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract term shall not exceed \$1 million;

2. Any locality with a population in excess of 78,000, or any authority, sanitation district, metropolitan planning organization, transportation district commission, or planning district commission, or any city within Planning District 8, the sum of all projects performed in a one-year contract term shall not exceed \$6 million and those awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects shall not exceed \$1.5 million;

3. Architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term shall not exceed \$2 million. Such contract may be renewable for two additional one-year terms at the option of the Director; and

4. Environmental location, design, and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year contract term shall not exceed \$5 million.

C. 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 public body 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.

D. The fee for any single project shall not exceed \$100,000; however, for architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed \$500,000, except that for:

1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be determined by the Director of the Department of General Services or as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.); and

2. Any locality with a population in excess of 78,000, or any authority, transportation district commission, or sanitation district, or any city within Planning District 8, the project fee shall not exceed \$2.5 million.

The limitations imposed upon single-project fees pursuant to this subsection shall not apply to environmental, location, design, and inspection work regarding highways and bridges by the Commissioner of Highways or architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation.

E. For the purposes of subsection B, any unused amounts from one contract term shall not be carried forward to any additional term, except as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (Effective until October 1, 2016 § 23-38.88 et seq.) (Effective October 1, 2016 - § 23.1-1000 et seq.).

§ 2.2-4303.2. Job order contracting; limitations.

A. A job order contract may be awarded by a public body 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 section, whichever occurs first. Contractors may be selected through either competitive sealed bidding or competitive negotiation.

B. Such contracts may be renewable for two additional one-year terms at the option of the public body. 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 \$5 million. Individual job orders shall not exceed \$500,000.

C. For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

D. Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection B is prohibited.

E. No public body shall 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 § 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. F. Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass.

§ 2.2-4304. Joint and cooperative procurement.



A. Any public body may participate in, sponsor, conduct, or administer a joint procurement agreement on behalf of or in conjunction 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.

B. In addition, a public body 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 to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies, except for:

1. Contracts for architectural or engineering services; or



2. Construction, except for the installation of artificial turf and track surfaces, including all associated and necessary construction, which shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303.



In instances where any authority, department, agency, or institution of the Commonwealth desires to purchase information technology and telecommunications goods and services from another public body's contract and the procurement was conducted on behalf of other public bodies, such purchase shall be permitted if approved by the Chief Information Officer of the Commonwealth. Any public body that enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions A 9 and A 10 of § 2.2-4343 shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

C. Subject to the provisions of §§ 2.2-1110, 2.2-1111, 2.2-1120 and 2.2-2012, any authority, department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or administer a joint procurement arrangement in conjunction with public bodies, private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services, and construction.

A public body may purchase from any authority, department, agency or institution of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in this chapter and the administrative policies and procedures established to implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and Supply.

Pursuant to § 2.2-2012, such approval is not required if the procurement arrangement is for telecommunications and information technology goods and services of every description. In instances where the procurement arrangement is for telecommunications and information technology goods and services, such arrangement shall be permitted if approved by the Chief Information Officer of the Commonwealth. However, such acquisitions shall be procured competitively.

Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

D. As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

1. Any authority, department, agency, or institution of the Commonwealth may purchase goods and nonprofessional services, other than telecommunications and information technology, from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the director of the Division of Purchases and Supply of the Department of General Services;

2. Any authority, department, agency, or institution of the Commonwealth may purchase telecommunications and information technology goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the Chief Information Officer of the Commonwealth; and

3. Any county, city, town, or school board may purchase goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

§ 2.2-4305. Competitive procurement by localities on state-aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building by any local governing body or subdivision thereof 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 under subsection D of § 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

§ 2.2-4306. Design-build or construction management contracts for Commonwealth authorized.

A. Notwithstanding any other provisions of law, the Commonwealth may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section and § 2.2-1502. Procedures to implement this section and any changes to such procedures shall be adopted by the Secretary of Administration after a public hearing and reviewed by the House Committee on Appropriations and the Senate Committee on Finance.

B. Procurement of construction by the design-build method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.

C. Design-build contracts may be used by the Commonwealth only for those types of construction projects designated in the procedures adopted by the Secretary of Administration to implement this section.

§ 2.2-4307. Fixed-price or not-to-exceed-price design-build and construction management contracts for juvenile correctional facilities authorized.

Notwithstanding the provisions of § 2.2-4306, but subject to the procedures adopted by the Secretary of Administration to implement the provisions of that section, the Commonwealth may enter into contracts for juvenile correctional facilities on a fixed-price or not-to-exceed-price design-build basis or construction management basis, including related leases, lease/purchase contracts, agreements relating to the sale of securities to finance such facilities, and similar financing agreements.

§ 2.2-4308. Design-build or construction management contracts for public bodies other than the Commonwealth; eligibility requirements; award of contract; records to be kept.

A. While the competitive sealed bid process remains the preferred method of construction procurement for public bodies in the Commonwealth, any public body other than the Commonwealth may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the public body complies with the requirements of this section and has implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing design-build or construction management contracts.

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

Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the public body shall:

1. Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation and award of design-build and construction management contracts. Such procedures shall be consistent with those described in this chapter 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 public body determines appropriate for that particular construction project. Such procedures for:

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 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.

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 public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

B. The contract shall be awarded to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the Request for Proposal.

§ 2.2-4308.1. Purchase of owner-controlled insurance in construction projects.

A. Notwithstanding any other provision of law to the contrary, a public body may purchase at its expense an owner-controlled insurance program in connection with any public construction contract where the amount of the contract or combination of contracts is more than \$100 million, provided that no single contract valued at less than \$50 million shall be combined pursuant to this section. The public body shall provide notice if it intends to use an owner-controlled insurance program, including the specific coverages of such program, in any request for proposal, invitation to bid, or other applicable procurement documents.

B. A public body shall not require a provider of architecture or professional engineering services to participate in the owner-controlled insurance program, except to the extent that the public body may elect to secure excess coverage. No contractor or subcontractor shall be required to provide insurance coverage for a construction project if that specified coverage is included in an owner-controlled insurance program in which the contractor or subcontractor is enrolled.

C. For the purposes of this section, “owner-controlled insurance program” means a consolidated insurance program or series of insurance policies issued to a public body that may provide for some or all of the following types of insurance coverage for any contractor or subcontractor working on or at a public construction contract or combination of such contracts: general liability, property damage, workers’ compensation, employer’s liability, pollution or environmental liability, excess or umbrella liability, builder’s risk, and excess or contingent professional liability.

§ 2.2-4308.2. Registration and use of federal employment eligibility verification program required; debarment.

A. For purposes of this section, “E-Verify program” means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

B. Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract.

C. Any such employer who fails to comply with the provisions of subsection B shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program.

§ 2.2-4309. Modification of the contract.

A. A public 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 of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Governor or his designee, in the case of state agencies, or the governing body, in the case of political subdivisions. 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. Any public body 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. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications.

D. The provisions of this section shall not limit the amount a party to a public contract may claim or recover against a public body pursuant to § 2.2-4363 or any other applicable statute or regulation. Modifications made by a political subdivision that fail to comply with this section are voidable at the discretion of the governing body, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in § 2.2-4363.

§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned, and service disabled veteran-owned business and employment services organization.

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, 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, each public body shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity, which list shall include all companies and organizations certified by the Department.

B. All public bodies shall establish programs consistent with this chapter 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 shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment services organization procurement to the Department of Small Business and Supplier Diversity in a form specified by the Department of



Small Business and Supplier Diversity. Contracts and subcontracts awarded to employment services organizations shall be credited toward a contractor's small business, women-owned, and minority-owned business contracting and subcontracting goals. The Department of Small Business and Supplier Diversity shall make information on service disabled veteran-owned procurement available to the Department of Veterans Services upon request.

C. Whenever there exists (i) a rational basis for small business or employment services organization enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women-owned and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law.

D. In awarding a contract for services to a small, women-owned, or minority-owned business that is certified in accordance with § 2.2-1606, or to a business identified by a public body as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program as provided in subsection C, the public body shall 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.”

E. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

F. As used in this section:



"Employment services organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

“Minority individual” means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. “African American” means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
2. “Asian American” means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

3. “Hispanic American” means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
4. “Native American” means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

“Minority-owned business” means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

“Service disabled veteran” means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

“Service disabled veteran business” means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

“Small business” means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

“State agency” means any authority, board, department, instrumentality, institution, agency, or other unit of state government. “State agency” shall not include any county, city, or town.

“Women-owned business” means a business that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

§ 2.2-4310.1. Awards as a result of any authorized enhancement or remedial measure; requirements.

A. Any enhancement or remedial measure authorized by the Governor pursuant to subsection C of § 2.2-4310 for state public bodies shall include a provision that the procurement shall be conducted in accordance with such enhancement or remedial measure for businesses certified by the Department of Small Business and Supplier Diversity. If such enhancement or remedial measure provides for an award priority for such businesses, then the contract shall be awarded in accordance with such priority if such priority business participated in the solicitation and requirements are met. If an award is not made based on the foregoing, then the contract shall be awarded in accordance with the next award priority and so on until a contract is awarded based on the established award priority.

B. If an award is not made pursuant to subsection A, the procurement award may be made without regard to such enhancement or remedial measure.

§ 2.2-4310.2. State agency’s goals for participation by small businesses; requirements.

A. Any state agency's goals under § 2.2-4310 of the Code of Virginia for participation by small businesses shall include within the goals a minimum of three percent participation by service disabled veteran businesses as defined in §§ 2.2-2001 and 2.2-4310 of the Code of Virginia when contracting for information technology goods and services.

B. As used in this act, "information technology" and "state agency" mean the same as those terms are defined in § 2.2-2006 of the Code of Virginia.

§ 2.2-4310.3. Fiscal data pertaining to certain enhancement or remedial measures.

The Department of General Services shall make available a dashboard of purchase order reports from the Commonwealth's statewide electronic procurement system known eVA. The dashboard shall include aggregated data showing (i) current fiscal year purchase orders, (ii) purchase orders from the previous fiscal year, and (iii) other relevant data derived from any enhancement or remedial measure implemented by the Governor pursuant to subsection C of § 2.2-4310 of the Code of Virginia.

§ 2.2-4311. Employment discrimination by contractor prohibited; required contract provisions.

All public bodies shall include in every contract of more than \$10,000 the following provisions:

1. 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, 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.

b. 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.

c. 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 section.

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

§ 2.2-4311.1. Compliance with federal, state, and local laws and federal immigration law; required contract provisions.

All public bodies shall provide in every written contract that the contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

§ 2.2-4311.2. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth.

A. All public bodies shall include in every written contract a provision that a contractor 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 the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

B. Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

C. Any bidder or offeror described in subsection B that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.

D. Any business entity described in subsection A that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

§ 2.2-4312. Drug-free workplace to be maintained by contractor; required contract provisions.

All public bodies shall include in every contract over \$10,000 the following provisions:

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 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.

§ 2.2-4313. Petition for recycled goods and products; periodic review of procurement standards.

A. 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 Department of General Services or other appropriate agency of the Commonwealth to include the recycled goods or products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation that establishes that the goods or products (i) contain recycled content and (ii) can meet the performance standards set forth in the applicable specifications. If the Department of General Services or other agency of the Commonwealth that receives the petition 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 the goods or products into its procurement process.

B. The Department of General Services and all agencies of the Commonwealth shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of goods and products with recycled content and shall, in developing new procedures and specifications, encourage the use of goods and products with recycled content.

§ 2.2-4314. Petition for procurement of less toxic goods and products; periodic review of procurement standards.

A. As used in this section:

“Goods and products” means goods and products that are used or consumed by an agency of the Commonwealth in the performance of its statutory functions. The term shall include, but not be limited to (i) cleaning materials, (ii) paints and coatings, (iii) solvents, (iv) adhesives, (v) inks, and (vi) pesticides and herbicides. The term shall not include: (i) fuels, (ii) food and beverages, (iii) furniture and fixtures, (iv) tobacco products, and (v) packaging and containers.

“Less toxic goods and products” means goods and products that (i) are functionally equivalent to and (ii) contain, emit, produce, or generate, less toxic or hazardous substances, or other toxic or hazardous substances that pose less of a hazard to public health and safety, or both, than goods and products procured by the Department of General Services or other agency of the Commonwealth.

“Toxic or hazardous substance” means (i) a chemical identified on the Toxic Chemical List established pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq. (P.L. 99-499) or (ii) a chemical listed pursuant to §§ 101 (14) or 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (P.L. 92-500).

B. Any person who manufactures, sells, or supplies goods or products may petition the Department of General Services or other appropriate agency of the Commonwealth for the inclusion of the less toxic goods and products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation that establishes that the goods or products meet the performance standards set forth in the applicable specifications. If the Department of General Services or other agency of the Commonwealth that receives the petition determines that the documentation establishes that the less toxic goods or products meet the performance standards set forth in the applicable specifications, it shall incorporate such goods or products into its procurement process.

C. The Department of General Services and all agencies of the Commonwealth shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of less toxic goods and products. However, nothing in this section shall require the Department or other agencies to purchase, test or evaluate any particular goods or products. Nor shall this section require the Department to purchase goods or products other than those that would be purchased under regular procurement procedures.

§ 2.2-4315. Use of brand names.

Unless otherwise provided in the Invitation to Bid, 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 public body 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.

§ 2.2-4316. Comments concerning specifications.

Every public body awarding public contracts shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

§ 2.2-4317. Prequalification generally; prequalification for construction.

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. Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body. The process shall be consistent with the provisions of this section. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

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 subsection D of § 2.2-4342.

In all instances in which the public body requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least 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 public body 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 a public body denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 2.2-4357.

C. A public body may deny prequalification to any contractor only if the public body finds 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 in the amount and type required by the public body 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 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 a public body without good cause. If the public body has not contracted with a contractor in any prior construction contracts, the public body 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. A public body may not utilize 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 years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of this chapter, (ii) the *Virginia Governmental Frauds Act* (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 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 public body in a timely manner any information requested by the public body relevant to subdivisions 1 through 6 of this subsection.

D. If a public body has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria. However, nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.

E. A state public body shall deny prequalification to any contractor who fails to register and participate in the E-Verify program as required by § 2.2-4308.2.

F. The provisions of subsections B, C, and D shall not apply to prequalification for contracts let under § 33.2-209, 33.2-214, or 33.2-221.

§ 2.2-4318. Negotiation with lowest responsible bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein.

§ 2.2-4319. Cancellation, rejection of bids; waiver of informalities.

A. An Invitation to Bid, a Request for Proposal, 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. A public body shall not cancel or reject an Invitation to Bid, a Request for Proposal, 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. A public body may waive informalities in bids.

§ 2.2-4320. Exclusion of insurance bids prohibited.

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to a public body in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude a public body from debaring a prospective insurer pursuant to § 2.2-4321.

§ 2.2-4321. Debarment.

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing for state agencies and institutions by the agency designated by the Governor and for political subdivisions by their governing bodies. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for a public body.

§ 2.2-4321.1. Prohibited contracts; exceptions; determination by Department of Taxation; appeal; remedies.

A. No state agency shall contract for goods or services with a nongovernmental source if the source, or any affiliate of the source, is subject to the provisions of (i) § 58.1-612 and fails or refuses to collect and remit the tax on its sales delivered by any means to locations within the Commonwealth or (ii) Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 and fails or refuses to remit any tax due thereunder. The provisions of clause (ii) shall not apply to any person that has (a) entered into a payment agreement with the Department of Taxation to pay the tax and is not delinquent under the terms of the agreement or (b) appealed the assessment of the tax in accordance with law and such appeal is pending.

B. A state agency may contract for goods or services with a source prohibited under subsection A in the event of an emergency or where the nongovernmental source is the sole source of such goods or services.

C. The determination of whether a source is a prohibited source shall be made by the Department of Taxation after providing the prohibited source with notice and an opportunity to respond to the proposed determination. The Department of Taxation shall notify the Department of General Services of its determination.

D. The Department of General Services shall post public notice of all prohibited sources on its public internet procurement website and on other appropriate websites.

E. The remedies provided in Article 5 (§ 2.2-4357 et seq.) of this chapter shall not apply to any determination made pursuant to this section and the sole remedy for any adverse determination shall be as provided in subsection F.

F. Any source aggrieved by a determination of the Department of Taxation made under this section may apply to the Tax Commissioner for correction of the determination. The Tax Commissioner shall respond within 30 days of receipt of the application for corrective action. Within 10 days after receipt of the Tax Commissioner's response, the aggrieved source may appeal to the Circuit Court for the City of Richmond. If it is determined that the determination of the Department of Taxation was arbitrary, capricious, or not in accordance with law, the sole relief shall be restoration of the source's eligibility to contract with state agencies. No claim for damages or attorney's fees shall be awarded.

G. Any action of the Department of Taxation, the Department of General Services, or of any state agency under this section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

H. For the purposes of this section, "state agency" means any authority, board, department, instrumentality, institution, agency or other unit of state government. State agency shall not include any public institution of higher education or any county, city or town or any local or regional governmental authority.

§ 2.2-4321.2. Public works contract requirements.

A. As used in this section:

"Public works" means the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used, or leased by a state agency.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

B. Except as provided in subsection F or as required by federal law, each state agency, when engaged in procuring products or services or letting contracts for construction, manufacture, maintenance, or operation of public works paid for in whole or in part by state funds, or when overseeing or administering such procurement, construction, manufacture, maintenance, or operation, shall ensure that neither the state agency nor any construction manager acting on behalf of the state agency shall, in its bid specifications, project agreements, or other controlling documents:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related public works projects; or

2. Otherwise discriminate against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related public works projects. Nothing in this subsection shall prohibit contractors or subcontractors from voluntarily entering into agreements described in subdivision 1.

C. A state agency issuing grants, providing financial assistance, or entering into cooperative agreements for the construction, manufacture, maintenance, or operation of public works shall ensure that neither the bid specifications, project agreements, nor other controlling documents therefor awarded by recipients of grants or financial assistance or by parties to cooperative agreements, nor those of any construction manager acting on behalf of such recipients, shall:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related projects; or

2. Otherwise discriminate against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related projects.

D. If an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of any of them performs in a manner contrary to the provisions of subsection B or C, the state agency awarding the contract, grant, or assistance shall be entitled to injunctive relief to prevent any violation of this section.

E. Any interested party, which shall include a bidder, offeror, contractor, subcontractor, or operator, shall have standing to challenge any bid specification, project agreement, neutrality agreement, controlling document, grant, or cooperative agreement that violates the provisions of this section. Furthermore, such interested party shall be entitled to injunctive relief to prevent any violation of this section.

F. The provisions of this section shall not:

1. Apply to any public-private agreement for any construction or infrastructure project in which the private body, as a condition of its investment or partnership with the state agency, requires that the private body have the right to control its labor relations policy and perform all work associated with such investment or partnership in compliance with all collective bargaining agreements to which the private party is a signatory and is thus legally bound with its own employees and the employees of its contractors and subcontractors in any manner permitted by the National Labor Relations Act, 29 U.S.C. § 151 et seq., or the Railway Labor Act, 45 U.S.C. § 151 et seq.;

2. Prohibit an employer or any other person covered by the National Labor Relations Act or the Railway Labor Act from entering into agreements or engaging in any other activity protected by law; or

3. Be interpreted to interfere with the labor relations of persons covered by the National Labor Relations Act or the Railway Labor Act.

§ 2.2-4322. Acceptance of bids submitted to the Department of Transportation.

In a procurement by the Department of Transportation by competitive sealed bidding for highway construction and maintenance contracts, the Department may accept bids in response to an Invitation to Bid at the Department's central office or at district offices or other satellite locations designated in the Invitation to Bid, in accordance with specifications adopted by the Department. An Invitation to Bid may authorize agents of the Department to accept from bidders on a voluntary basis a supplemental submission referencing the total bid amount on a form prescribed by the Department. Information contained in any supplemental submission may be made available to the public by the Department after the time for receiving bids has expired and before the public opening and announcement of all sealed bids.

§ 2.2-4323. Purchase programs for recycled goods; agency responsibilities.

A. All state agencies shall implement a purchase program for recycled goods and shall coordinate their efforts so as to achieve the goals and objectives established in subsection C as well as those set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8, 2.2-4313, 2.2-4324, and 2.2-4326.

B. The Department of Environmental Quality shall advise the Department of General Services concerning the designation of recycled goods. In cooperation with the Department of General Services, the Department of Environmental Quality shall increase the awareness of state agencies as to the benefits of using such products.

C. The Department of General Services shall:

1. Ensure that the Commonwealth's procurement guidelines for state agencies promote the use of recycled goods.
2. Promote the Commonwealth's interest in the use of recycled products to vendors.
3. Make agencies aware of the availability of recycled goods, including those that use post-consumer and other recovered materials processed by Virginia-based companies.

D. All state agencies shall, to the greatest extent possible, adhere to the procurement program guidelines for recycled products to be established by the Department of General Services.



§ 2.2-4323.1. (Effective July 1, 2017) Purchase of flags of the United States and the Commonwealth by public bodies.

Notwithstanding any provision of law to the contrary, whenever a state or local public body or school division purchases a flag of the United States or a flag of the Commonwealth for public use, such flag shall be made in the United States from articles, materials, or supplies that are grown, produced, and manufactured in the United States, if available.

§ 2.2-4324. Preference for Virginia products with recycled content and for Virginia firms.

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

D. For the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

§ 2.2-4325. Preference for Virginia coal used in state facilities.

In determining the award of any contract for coal to be purchased for use in state facilities with state funds, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

§ 2.2-4326. Preference for recycled paper and paper products used by state agencies.

A. In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than ten percent greater than the bid price of the low responsive and responsible bidder offering a product that does not qualify under subsection B.

B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

§ 2.2-4327. Preference for community reinvestment activities in contracts for investment of funds.

Notwithstanding any other provision of law, any county, town, or city that is authorized to and has established affordable housing programs may provide by resolution that in determining the award of any contract for time deposits or investment of its funds, the treasurer or director of finance of such county, town, or city may consider, in addition to the typical criteria, the investment activities of qualifying institutions that enhance the supply of, or accessibility to, affordable housing within the jurisdiction, including the accessibility of such housing to employees of the county, town, or city or employees of the local school board. No more than 50 percent of the funds of the county, town, or city, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment activities as a factor in the award of a contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.) and all local terms and conditions for security, liquidity and rate of return. For the purposes of this section, affordable housing means the same as that term is defined in § 15.2-2201.

§ 2.2-4328. Preference for local products and firms; applicability.

A. The governing body of a county, city or town may, in the case of a tie bid, give preference to goods, services and construction produced in such locality or provided by persons, firms or corporations having principal places of business in the locality, if such a choice is available; otherwise the tie shall be decided by lot, unless § 2.2-4324 applies.

B. The provisions of this section shall apply only to bids submitted pursuant to a written Invitation to Bid.

§ 2.2-4329. Expired.

§ 2.2-4329.1. Energy forward pricing mechanisms.

A. As used in this section, unless the context requires a different meaning: “Energy” means natural gas, heating oil, propane, diesel fuel, unleaded fuel, and any other energy source except electricity.

“Forward pricing mechanism” means either: (i) a contract or financial instrument that obligates a public body to buy or sell a specified quantity of energy at a future date at a set price or (ii) an option to buy or sell the contract or financial instrument.

B. Notwithstanding any other law to the contrary but subject to available appropriation, a public body may use forward pricing mechanisms for budget risk reduction.

C. Forward pricing mechanism transactions shall be made only under the following conditions:

1. The quantity of energy affected by the forward pricing mechanism shall not exceed the estimated energy use for the public body for the same period, which shall not exceed 48 months from the trade date of the transaction; and

2. A separate account shall be established for operational energy for each public body using a forward pricing mechanism.

D. Before exercising the authority under this section, the public body shall develop written policies and procedures governing the use of forward pricing mechanisms and disclosure of the same to the public.

E. Before exercising authority under subsection B, the public body shall establish an oversight process that provides for review of the public body's use of forward pricing mechanisms. The oversight process shall include internal or external audit reviews; annual reports to, and review by, an internal investment committee; and internal management control.

§ 2.2-4330. Withdrawal of bid due to error.

A. A bidder for a public construction contract, 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. One of the following procedures for withdrawal of a bid shall be selected by the public body and stated in the advertisement for bids:

1. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

2. Where the public body opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the public body or designated official his original work papers, documents and materials used in the preparation of the bid at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail. The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed.

Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of § 2.2-4342.

C. A public body may establish procedures for the withdrawal of bids for other than construction contracts.

D. No bid shall 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.

E. If a bid is withdrawn in accordance with 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. The public body shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the public body denies the withdrawal of a bid under the provisions of this section, it shall state in such notice 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. At the same time that the notice is provided, the public body shall return all work papers and copies thereof that have been submitted by the bidder.

§ 2.2-4331. Contract pricing arrangements.

A. Except as prohibited in this section, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.

B. Except in case of emergency affecting the public health, safety, or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

C. The following contract pricing arrangements shall not be prohibited by this section:

1. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims; or

2. A cost plus a percentage of the private investment made by a private entity as a basis for the procurement of commercial or financial consulting services related to a qualifying transportation facility under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or a qualifying project under the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where the commercial or financial consulting services are sought to solicit or to solicit and evaluate proposals for the qualifying transportation facility or the qualifying project. As used in this section, "private entity" and "qualifying transportation facility" mean the same as those terms are defined in § 33.2-1800 and "qualifying project" means the same as that term is defined in § 56-575.1.

§ 2.2-4332. Workers' compensation requirements for construction contractors and subcontractors.

A. No contractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth or any of its political subdivisions unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides prior to the award of contract, on a form furnished by the department, agency, or institution of the Commonwealth or political subdivision thereof, evidence of such coverage.

B. The Department of General Services shall provide the form to such departments, agencies, institutions, and political subdivisions. Failure of a department, agency, institution or political subdivision to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

§ 2.2-4333. 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.

§ 2.2-4334. Deposit of certain retained funds on certain contracts with local governments; penalty for failure to timely complete.

A. Any county, city, town or agency thereof or other political subdivision of the Commonwealth 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, shall include in the Bid Proposal an option for the contractor to use an escrow account procedure for utilization of the political subdivision's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the Bid Proposal and Contract shall be executed and submitted to the political subdivision within fifteen calendar days after notification. If the escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

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 and all regulations adopted by the political subdivision entering into the contract 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 a county, city, town or agency thereof or other political subdivision of the Commonwealth, 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.

§ 2.2-4335. Public construction contract provisions barring damages for unreasonable delays declared void.

A. Any provision contained in any public construction contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract that:

1. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
2. Requires notice of any delay by the party claiming the delay;
3. Provides for liquidated damages for delay; or
4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against a public body for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the public body and shall pay it for a percentage of all costs incurred by the public body in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the public body shall be equal to the percentage of the contractor's total delay claim for which the public body's denial is determined through litigation or arbitration to have been made in bad faith.

§ 2.2-4336. Bid bonds.

A. Except in cases of emergency, all bids or proposals for non-transportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 that are in excess of \$250,000 and 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, as 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 of the amount bid.

B. For non-transportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317.

C. 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 (ii) the face amount of the bid bond.

D. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for non-transportation-related projects or \$250,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

§ 2.2-4337. Performance and payment bonds.

A. Except as provided in subsection H, upon the award of any (i) public construction contract exceeding \$500,000 awarded to any prime contractor; (ii) construction contract exceeding \$500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by a public body; (iii) construction contract exceeding \$500,000 in which the performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding \$350,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds:

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

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. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2, such bond shall be in a form and amount satisfactory to the public body.

2. A payment bond in the sum of the contract amount. The 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 furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body.

“Labor or materials” shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. For non-transportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317.

C. 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.

D. If the public body is the Commonwealth, or any agency or institution thereof, the bonds shall be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds required for the contracts of other public bodies shall be payable to such public body.

E. Each of the bonds shall be filed with the public body that awarded the contract, or a designated office or official thereof.

F. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below \$500,000 for non-transportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

G. Nothing in this section shall preclude the 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 that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

H. The performance and payment bond requirements of subsection A for transportation-related projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by a public body if the bidder provides evidence, satisfactory to the public body, that a surety company has declined an application from the contractor for a performance or payment bond.

§ 2.2-4338. Alternative forms of security.

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

B. If approved by the Attorney General in the case of state agencies, or the attorney for the political subdivision in the case of political subdivisions, 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 public body equivalent to a corporate surety's bond.

C. The provisions of this section shall not apply to the Department of Transportation.

§ 2.2-4339. Bonds on other than construction contracts.

A public body may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

§ 2.2-4340. Action on performance bond.

No action against the surety on a performance bond shall be brought unless within five years after completion of the work on the project to the satisfaction of the Department of Transportation, in cases where the public body is the Department of Transportation, or, in all other cases, within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

§ 2.2-4341. Actions on payment bonds; waiver of right to sue.

A. Any claimant who has a direct contractual relationship with the contractor and 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 90 days after the day on which the 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 the action.

B. Any claimant who has a direct contractual relationship with any subcontractor 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 90 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. 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 action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. 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.

§ 2.2-4342. Public inspection of certain records.

A. Except as provided in this section, 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 (§ 2.2-3700 et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for a public body 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 that the public body 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 subsection B of § 2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, 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.

Article 3.
Exemptions and Limitations

§ 2.2-4343. Exemption from operation of chapter for certain transactions.

A. The provisions of this chapter shall not apply to:

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, actuarial services, and disability determination services. Selection of these services shall be governed by the standard set forth in § 51.1-124.30.

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. (Effective until October 1, 2016) The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant to § 23-44.1, 23-50.10:01, 23-76.1, or 23-122.1. However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by §§ 23-44.1, 23-50.10:01, 23-76.1, and 23-122.1.

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

5. (Effective October 1, 2016) The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant to § 23.1-2210, 23.1-2306, 23.1-2604, or 23.1-2803. However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by §§ 23.1-2210, 23.1-2306, 23.1-2604, and 23.1-2803.

6. (Effective until October 1, 2016) The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23-38.80.

6. (Effective October 1, 2016) The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23.1-706.

7. Public institutions of higher education for the purchase of items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § 2.2-2012 apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377.

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting that 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.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § 2.2-4303, and §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services through competitive negotiation set forth in §§ 2.2-4303.1 and 2.2-4303.2 shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

13. A public body that is also a utility operator may purchase services through or participate in contracts awarded by one or more utility operators that are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of services under this subdivision may deviate from the procurement procedures set forth in this chapter upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is awarded based on competitive principles.

14. Procurement of any construction or planning and design services for construction by a Virginia nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit corporation or organization is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether those federal procedures are in conformance with the provisions of this chapter.

15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

16. The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.).

17. The Department of Corrections in the selection of pre-release and post-incarceration services.

18. The University of Virginia Medical Center to the extent provided by subdivision B 3 of § 23-77.4.

19. The purchase of goods and services by a local governing body or any authority, board, department, instrumentality, institution, agency or other unit of state government when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or by a chief administrative officer of a county, city or town pursuant to § 15.2-965.1.

20. The contract by community services boards or behavioral health authorities with an administrator or management body pursuant to a joint agreement authorized by § 37.2-512 or 37.2-615.

21. [Expired].

22. The purchase of Virginia-grown food products for use by a public body where the annual cost of the product is not expected to exceed \$100,000.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

§ 2.2-4343.1. Permitted contracts with certain religious organizations; purpose; limitations.

A. It is the intent of the General Assembly, in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, to authorize public bodies 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.

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

B. 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.

C. Public bodies, 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 F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. Public bodies shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the public body does not discriminate against faith-based organizations.

E. A faith-based organization contracting with a public body (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 recipient’s religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender 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 public body. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

G. 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. (§ 2000 e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body 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 public body 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 public body shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization a notice in bold face type that states: “Neither the public body’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.”

§ 2.2-4344. Exemptions from competition for certain transactions.

A. Any public body may enter into contracts without competition for:

1. The purchase of goods or services that are produced or performed by:

a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or

b. Employment services organizations that offer transitional or supported employment services serving individuals with disabilities.

2. The purchase of legal services, provided that the pertinent provisions of Chapter 5 (§ 2.2-500 et seq.) remain applicable, or expert witnesses or other services associated with litigation or regulatory proceedings.

B. An industrial development authority or regional industrial facility authority may enter into contracts without competition with respect to any item of cost of “authority facilities” or “facilities” as defined in § 15.2-4902 or “facility” as defined in § 15.2-6400.

C. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § 15.2-5158. However, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

D. The State Inspector General may enter into contracts without competition to obtain the services of licensed health care professionals or other experts to assist in carrying out the duties of the Office of the State Inspector General.

§ 2.2-4345. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § 32.1-325, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

2. The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ 30-146 and 30-148, to publish the Code of Virginia or the Virginia Administrative Code.

4. (Effective until July 1, 2018) The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.

4. (Effective July 1, 2018) The Virginia Alcoholic Beverage Control Authority for the purchase of alcoholic beverages.

5. The Department for Aging and Rehabilitative Services, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.

6. The Department of Health for (a) child restraint devices, pursuant to § 46.2-1097; (b) health care services with Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

11. Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52 (§ 15.2-5200 et seq.) of Title 15.2 in the exercise of any power conferred under their respective authorizing legislation, provided that these entities shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

13. Public bodies for insurance or electric utility services if purchased through an association of which it 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 public body 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. The writing shall document the basis for this determination.

14. Public bodies administering public assistance and social services programs as defined in § 63.2-100, community services boards as defined in § 37.2-100, or any public body purchasing services under the Children’s Services Act (§ 2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 2.2-4303.

15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter 471, as amended, of the Acts of Assembly of 1964.

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government 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 under of subsection D of § 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

§ 2.2-4346. Other exemptions for certain transactions.

The following public bodies may enter into contracts as provided in this section.

A. Contracts for certain essential election materials and services are exempted from the requirements of Articles 1 (§ 2.2-4300 et seq.), 2 (§ 2.2-4303 et seq.), and 5 (§ 2.2-4357 et seq.) of this chapter pursuant to § 24.2-602.

B. Any local school board may authorize any of its public schools or its school division to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this chapter; competitive sealed bidding is not necessarily required for such contracts. The Superintendent of Public Instruction may provide assistance to public school systems regarding this chapter and other related laws.

C. The Virginia Racing Commission may designate an entity to administer and promote the Virginia Breeders Fund created pursuant to § 59.1-372 without competitive procurement.

Article 4.
Prompt Payment

§ 2.2-4347. Definitions.

As used in this article, unless the context requires a different meaning:

“*Contractor*” means the entity that has a direct contract with any “state agency” as defined herein, or any agency of local government as discussed in § 2.2-4352.

“*Debtor*” means any individual, business, or group having a delinquent debt or account with any state agency 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) thirty days after receipt of a proper invoice by the state agency or its agent or forty-five days after receipt by the local government or its agent responsible under the contract for approval of such invoices for the amount of payment due, or (b) thirty days after receipt of the goods or services by the state agency or forty-five days after receipt by the local government, whichever is later.

“*State agency*” means any authority, board, department, instrumentality, institution, agency or other unit of state government. The term shall not include any county, city or town or any local or regional governmental authority.

“*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.

§ 2.2-4348. Exemptions.

The provisions of this article shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

§ 2.2-4349. Retainage to remain valid.

Notwithstanding the provisions of this article, the provisions of § 2.2-4333 relating to retainage shall remain valid.

§ 2.2-4350. Prompt payment of bills by state agencies.

A. Every state agency that acquires goods or services, or conducts any other type of contractual business with nongovernmental, privately owned enterprises shall promptly pay for the completely delivered goods or services by the required payment date. Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

§ 2.2-4350.1. Prohibition on payment without an appropriation; prohibition on IOUs.

A. As used in this section, “IOU” means a document issued by a governmental entity or representative (i) that acknowledges a debt but that does not specify all repayment terms, such as the repayment date, and (ii) when moneys are not available to pay a current debt.

B. 1. Notwithstanding any other provision of law, unless the General Assembly has appropriated funds to pay for a good or service or to make payment on a debt, no state department, agency, or other state entity nor any state official, officer, employee, or agent shall (i) attempt to pay for the good or service or attempt to make payment on the debt; (ii) issue any document or paper that guarantees payment, or purports to pay, for the good or service or guarantees payment, or purports to make payment, on the debt; or (iii) in any other way attempt to pay, guarantee payment, or purport to pay for the same.

2. The prohibition on payment under subdivision 1 shall not apply (i) to payments required by federal law or (ii) if funds are lawfully available.

C. In addition, in no case shall any (i) state department, agency, or other state entity or (ii) state official, officer, or employee in performing the duties of his position furnish an IOU in exchange for any good or service, as a means to pay for any good or service, or in lieu of a payment on a debt.

§ 2.2-4351. Defect or impropriety in the invoice or goods and/or services received.

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the state agency shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods or services.

§ 2.2-4352. Prompt payment of bills by localities.

Every agency of local government that acquires goods or services, or conducts any other type of contractual business with a nongovernmental, privately owned enterprise, shall promptly pay for the completed delivered goods or services by the required payment date. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of the goods or services; or (ii) if a date is not established by contract, not more than forty-five days after goods or services are received or not more than forty-five days after the invoice is rendered, whichever is later.

Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery.

Within twenty days after the receipt of the invoice or goods or services, the agency shall notify the supplier of any defect or impropriety that would prevent payment by the payment date.

Unless otherwise provided under the terms of the contract for the provision of goods or services, every agency that fails to pay by the payment date shall pay any finance charges assessed by the supplier that shall not exceed one percent per month.

The provisions of this section shall not apply to the late payment provisions in any public utility tariffs or public utility negotiated contracts.

§ 2.2-4353. Date of postmark deemed to be date payment is made.

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of this chapter.

§ 2.2-4354. Payment clauses to be included in contracts.

Any contract awarded by any state agency, or any contract awarded by any agency of local government in accordance with § 2.2-4352, shall include:

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the state agency or local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. 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.

3. 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 state agency or agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. 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.”

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.

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 state agency or agency of local government. 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.

§ 2.2-4355. Interest penalty; exceptions.

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by a state agency to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged a state agency pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between a state agency and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 2.2-4333 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq.), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

§ 2.2-4356. Comptroller to file annual report.

The Comptroller shall file an annual report with the Governor, the Senate Committee on Finance, the House Committees on Finance and Appropriations on November 1 for the preceding fiscal year including (i) the number and dollar amounts of late payments by departments, institutions and agencies, (ii) the total amount of interest paid and (iii) specific steps being taken to reduce the incidence of late payments.

Article 5.
Remedies

§ 2.2-4357. 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 business days after receipt of the notice.

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

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall 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 days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

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.

§ 2.2-4358. Appeal of denial of withdrawal of bid.

A. A decision denying withdrawal of bid under the provisions of § 2.2-4330 shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 2.2-4330, prior to appealing, shall deliver to the public body a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

§ 2.2-4359. Determination of nonresponsibility.

A. Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids in accordance with element 4 of the process for competitive sealed bidding set forth in § 2.2-4302.1. At the same time, the public body shall determine whether the apparent low bidder is responsible. If the public body so determines, then it may proceed with an award in accordance with element 5 of the process for competitive sealed bidding set forth in § 2.2-4302.1. If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the public body shall (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 business days after receipt of the notice.

2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received the rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364. The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 2.2-4364 or §2.2-4365, it is determined that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 2.2-4364 or both.

If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 2.2-4360.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 2.2-4360.

D. Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

§ 2.2-4360. Protest of award or decision to award.

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 2.2-4303. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 2.2-4342, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 2.2-4342, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where a public body, an official designated by that public body, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 6 (§ 2.2-4367 et seq.) of this chapter, the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder.

§ 2.2-4361. Effect of appeal upon contract.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed.

§ 2.2-4362. Stay of award during protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 2.2-4360, or the filing of a timely legal action as provided in § 2.2-4364, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

§ 2.2-4363. Contractual disputes.

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 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. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the public body. If the public body has established administrative procedures meeting the standards of § 2.2-4365, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor.

C. If, however, the public body fails to include in its contracts a procedure for consideration of contractual claims, the following procedure shall apply:

1. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.

2. No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the public body's chief administrative officer or his designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the public body fails to render a decision within 90 days of submission of the claim. Failure of the public body to render a decision within 90 days

shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the public body's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.

D. A contractor may not invoke administrative procedures meeting the standards of § 2.2-4365, if available, or institute legal action as provided in § 2.2-4364, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract or, if no time is specified, then within the time provided by subsection C. A failure of the public body to render a final decision within the time provided in subsection C shall be deemed a final decision denying the claim by the public body.

E. The decision of the public body shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the public body by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

§ 2.2-4364. Legal actions.

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § 2.2-4301, is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § 2.2-4358 may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 2.2-4303, whose protest of an award or decision to award under § 2.2-4360 is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to this chapter or § 33.2-1103, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 2.2-4365, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.

G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor.

§ 2.2-4365. Administrative appeals procedure.

A. A public body may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.

B. Any party to the administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

§ 2.2-4366. Alternative dispute resolution.

Public bodies may enter into agreements to submit disputes arising from contracts entered into pursuant to this chapter to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures entered into by the Commonwealth, or any department, institution, division, commission, board or bureau thereof, shall be nonbinding and subject to § 2.2-514, as applicable. Alternative dispute resolution procedures entered into by school boards shall be nonbinding.

Article 6.
Ethics in Public Contracting

§ 2.2-4367. Purpose.

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

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

§ 2.2-4368. Definitions.

As used in this article:

“*Immediate family*” means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

“*Official responsibility*” means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

“*Pecuniary interest arising from the procurement*” means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

“*Procurement transaction*” means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

“*Public employee*” means any person employed by a public body, including elected officials or appointed members of governing bodies.

§ 2.2-4369. Proscribed participation by public employees in procurement transactions.

Except as may be specifically allowed by subdivisions A 2, 3 and 4 of § 2.2-3112, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;

2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;

3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

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

§ 2.2-4370. Disclosure of subsequent employment.

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor.

§ 2.2-4371. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited.

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

B. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

§ 2.2-4372. Kickbacks.

A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

UNOFFICIAL COPY – VIRGINIA PUBLIC PROCUREMENT ACT

B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

§ 2.2-4373. Participation in bid preparation; limitation on submitting bid for same procurement.

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

§ 2.2-4374. Purchase of building materials, etc., from architect or engineer prohibited.

A. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in § 2.2-3101.

B. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in § 2.2-3101.

C. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

§ 2.2-4375. Certification of compliance required; penalty for false statements.

A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.

B. Any public employee required to submit a certification as provided in subsection A who knowingly makes a false statement in the certification shall be punished as provided in § 2.2-4377.

§ 2.2-4376. Misrepresentations prohibited.

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

§ 2.2-4376.1. Contributions and gifts; prohibition during procurement process.

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

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

§ 2.2-4377. Penalty for violation.

Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

Town of Berryville

101 Chalmers Court, Suite A
 Berryville, VA 22611
 Phone (540) 955-1099 Fax (540) 955-4524

PURCHASE ORDER REQUEST

P.O. NUMBER: 2018-

TO:

Vendor Number:

Vendor Name:

Requesting Department: **FINANCE (1)**

 Requesting Signature

DATE	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS

QTY	ACCT NO.	DESCRIPTION	UNIT PRICE	TOTAL
			SUBTOTAL	
			SHIPPING & HANDLING	
			OTHER	
			TOTAL	

1. Please make a copy for your files.
2. Please specify if this is a new vendor
3. Please add your own P.O. Number

Town of Berryville

101 Chalmers Court, Suite A
 Berryville, VA 22611
 Phone (540) 955-1099 Fax (540) 955-4524

REQUEST FOR PAYMENT

TO:

Vendor Number:

Vendor Name:

Requesting Department: **FINANCE (1)**

 Requesting Signature

DATE	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS

QTY	ACCT NO.	DESCRIPTION	UNIT PRICE	TOTAL
			SUBTOTAL	
			SHIPPING & HANDLING	
			OTHER	
			TOTAL	

1. Please make a copy for your files.
2. Please specify if this is a new vendor

Instructions - Price Quote Record for NonProfessional Services

- 1- CAUTION: Care should be exercised when obtaining pricing information by telephone to purchase nonprofessional services. The job description should describe and define the task(s) which the contractor will be required to perform and itemize what the contractor is expected to accomplish. REMINDER: You are buying the contractor's time and effort, not a specific product.
- 2- BE PREPARED: Develop a firm understanding of the exact service to be purchased as this understanding will be communicated to the bidder(s).
- 3- READ AND EDIT: Read the Job Description and ensure that you fully understand the desired services.
- 4- MODIFICATIONS: All bidders must be given the chance to bid on the identical scope of work. If the original job description is modified during the bid process, then each bidder previously contacted must be contacted again and allowed to bid on the revised requirement.
- 5- FINAL JOB DESCRIPTION: The final product of the discussions with users and bidders becomes the basis for performance by the contractor, measurement of that performance by the agency, and the means by which the user's need is ultimately satisfied.
- 6- TERMS AND CONDITIONS: In soliciting telephone bids, be sure bidders are made aware of any general and special terms and conditions which will apply to the procurement.
- 7- PRICING FACTORS: Major elements of the price of service(s) provided may need to be itemized e.g., materials, labor rates, travel, etc. If multiple pricing factors are involved e.g., labor rates, discounts off price lists, unit prices, and/or lump sums, be sure to have a clear and understandable bid evaluation procedure established.

Town of Berryville

101 Chalmers Court, Suite A
 Berryville, VA 22611
 Phone (540) 955-1099 Fax (540) 955-4524

BOA P-CARD EXPENSE REPORT

ATTACH RECEIPTS

(On reverse with Cardholder Signature)

TO: Vendor Number: Vendor Name:	SHIP TO: Purchasing Department: FINANCE & ADMIN (1)
--	--

DATE	CARDHOLDER	Card No	Receipt #	AMOUNT

QTY	ACCT NO.	DESCRIPTION	UNIT PRICE	TOTAL
			SUBTOTAL	
			SHIPPING & HANDLING	
			OTHER	
			TOTAL	

1. Please make a copy for your files.
2. Please specify if this is a new vendor
3. Please add your own P.O. Number

ATTACH RECEIPTS HERE

P-Card Purchase Verification

I certify that the charge(s) incurred on the attached receipt(s) were made by me and are consistent with my organizational responsibilities.

Cardholder Signature

Town of Berryville
101 Chalmers Court, Suite A, Berryville, VA 22611 540-955-1099

Sole Source Procurement Request

Date: _____

Title: _____

Issuing Department: _____

Name and Address Of Sole Source:

_____ Date: _____

_____ By: _____

_____ Name: _____

FEI/FIN # _____ Title: _____

Email: _____ Telephone: _____

All sole source procurements for goods and services up to the current VPPA small purchase limit must be approved in advance by the Town Manager or designee, which shall be the chief purchasing officer. A signature below approves such procurement.

Signature

Date

Title

All sole source procurements for goods and services over the current VPPA small purchase limit must be approved by the Town Manager prior to commencement of the actual procurement. As signature below approves such procurement.

Signature – Town Manager

Date

A memorandum must be attached to the request which addresses the four points shown below. The writing shall document the basis for the determination, which should include any market analysis conducted in order to ensure that the good or service required was practicably available from only one source.

1. Explain why this is the only product or service that can meet the needs of the town.
2. Explain why this vendor is the only practicably available source from which to obtain this product or service.
3. Explain why the price is considered reasonable.
4. Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayers.

Emergency Procurement Justification

Purpose

Based upon the following determination, the proposed procurement action in excess of the VPPA small purchase limit is being procured in accordance with the Town of Berryville Procurement Policy.

An emergency procurement may be made when an emergency condition arises and the need cannot be met through normal procurement methods .

Instructions

- Step 1-** The department head must complete and forward the Justification for Emergency Procurement form to the procurement department.
- Step 2** This form must include the written documentation of the basics for the emergency and the reason no other vendor is suitable.
- Step 3** The Town Manager or designated representative must review and approve the documentation.

Date of Emergency _____

RPO Number _____ Vendor name _____

Items and/or services department head proposes to procure as an emergency:

The basis for the emergency and the reason no other vendor is suitable is:

Department Head's signature

Date

Town Manager signature

Date

Emergency Procurement

General:

- An emergency is an occurrence of a serious and urgent nature that demands immediate action.
- Emergency procedures may be used to purchase only that which is necessary to cover the requirements of the emergency.
- Subsequent requirements shall be obtained using normal purchasing procedures.
- The potential loss of funds at the end of a fiscal year is not considered an emergency.

Types of Emergency Procurement:

- The nature of the emergency will determine what pre-award action may be taken.
- For an emergency purchase required to protect personal safety or property, efforts should be directed to finding a source and directing the contractor to proceed; however, such procurement shall be made with such competition as is practicable under the circumstances.
- For other types of emergencies, competition should also be sought to the maximum extent practicable.

Award of Emergency Procurement

- The Town must prepare a confirming contract or purchase order, as soon as practicable, after directing the contractor to proceed.
- Care should be taken to include in detail any agreements, including price, that were made orally with the contractor.
- Prepare a written determination for signature by the Town Manager or designated representative indicating the nature of the emergency, the reason for selection of the particular contractor and include such determination with the file.

Cooperative Procurement Approval Request Form

Governmental Entity Establishing the Cooperative Agreement:
Name of Cooperative Agreement:
Contact at Sponsoring Governmental Entity: Phone: Fax: Email Address:
Attach a copy of the solicitation including all addenda and the contract award including all modifications. Solicitation attached: <input type="checkbox"/> Yes <input type="checkbox"/> No
Other Requirements for Use of Agreement (e.g. any organizational membership, etc.)
Attach printout for requested products or services, with contract pricing
Attach printout contract terms and conditions
Benefit Justification: Explain why the use of this cooperative contract is the best option for the Town, including why the prices offered in the contract are considered fair and reasonable.

Requestor Signature

Town Manager Signature



Town of Berryville
Vendor Registration

Please fill out the information below and the attached W-9 form to be registered as a vendor with the Town of Berryville.

Your company's legal name: _____

Business Type: _____

What kind of products/services does your company offer?

Company Website: _____

Company Address : _____

City _____

State _____ ZIP Code _____

Name of person representing the company: _____

Phone : _____ Fax: _____

Email : _____

Request for Taxpayer Identification Number and Certification

**Give Form to the
requester. Do not
send to the IRS.**

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>
	5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)																																																			
<p>Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.</p> <p>Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.</p>																																																			
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="10" style="text-align: center;">Social security number</td> </tr> <tr> <td style="width: 30px; height: 20px;"></td> </tr> <tr> <td colspan="10" style="text-align: center;">or</td> </tr> <tr> <td colspan="10" style="text-align: center;">Employer identification number</td> </tr> <tr> <td style="width: 30px; height: 20px;"></td> </tr> </table>	Social security number																				or										Employer identification number																			
Social security number																																																			
or																																																			
Employer identification number																																																			

Part II Certification	
<p>Under penalties of perjury, I certify that:</p> <ol style="list-style-type: none"> 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and 3. I am a U.S. citizen or other U.S. person (defined below); and 4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct. <p>Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.</p>	

Sign Here	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.



The Town Of Berryville

Purchasing Card Policies and Procedures

Revised 2017

I. Purpose, General

The purpose of the purchasing card program is to provide the Town of Berryville with an efficient and reliable way to make purchases. The purchasing card should be used as an alternative to vendor direct billing.

II. Background

Purchasing cards can simplify and expedite procurement but use of these cards requires strict adherence to internal control procedures and a commitment to accompanying accounting procedures. In most cases, card use reduces staff procurement efforts, allows internet purchases; shortens delivery time and increases financial tracking and control efforts.

III. Participation

Unless otherwise specified, the authority to use the purchasing card (p-card) will be delegated to all departments, referred to as “department” hereafter.

The Town Manager may terminate, suspend or limit a department’s p-card program. The Town Manager is authorized to terminate, suspend or limit a particular individual card.

IV. Rebate

The rebate that is earned on qualifying purchases and paid by the issuing bank will be deposited in the Town’s General Fund for administrative and processing costs.

V. Roles

Program Administrator

The Treasurer manages the purchasing card program and is responsible for establishing and enforcing card related policies and procedures and serves as Program Administrator. The Treasurer may delegate purchasing card duties to Finance Department staff.

Department Head

The Department Head or designee is responsible for all aspects of the department’s purchasing card program. The Department Head monitors card activity and ensures that vendor receipts, invoices and delivery documentation are retained for each purchase, in accordance with established policies and procedures. The Department Head **will sign the P-card Expense Report Form submitted by department personnel and will** serve as the primary contact for the department.

Cardholder

The Cardholder is an individual employee assigned a card with his or her name imprinted on it. The cardholder is responsible for using the card in accordance with this policy. The cardholder is responsible for card activity and retaining vendor receipts, invoices and delivery documentation. The cardholder is also responsible for **signing and** submitting ~~required documentation~~ **the P-card Expense**

Report Form, in a timely manner, for coding and approval to the **Department Head**. ~~designated person in their department.~~

VI. Process Overview

Establishing an Individual Card Account

Departments request cards for an individual by submitting an application to the Treasurer. This card will be imprinted with cardholder name. The application indicates the department, card limit requested, full name of cardholder and contact information.

Obtaining Cards from Bank of America

The Treasurer receives/reviews the application and submits to BOA through WORKS. The bank establishes a new account and forwards the new card to the Administrator. The Administrator distributes the card to the Department Head and the cardholder activates the account.

Card Use

The department uses the card in accordance with this policy and the department's own internal control procedures.

Billing and Payment Process

The Department Head will have access to a master departmental summary of charges. This will serve as a statement to reconcile charges. Once reconciled and reviewed (see process below) the departmental summary will be forwarded to the Finance Department for payment through the regular scheduled bill cycle.

There is a 25 day grace period, from the statement date, to make payment in full. Payment in full **MUST** be made each month. This requires specific attention to timely submission of the monthly statement to accounts payable in order to make payments by the due date.

In order to meet the payment deadlines, it is advised that reconciliation be a continuous process throughout the month. This will expedite the process. The charges for the cardholder who serves as the Department Head must be reviewed by the Treasurer.

Reconciliation and Review

Purchasing card reconciliation is the process of verifying the accuracy of all posted card transactions (charges and credits). ~~There are two (2) options for m~~Monthly reconciliation, ~~reconciliation by the cardholder or reconciliation~~ **is performed** by the Department Head.

~~Reconciliation by cardholders—The cardholder is responsible to reconcile the bank record of transactions to the actual receipts to verify that all charges are proper and the correct amounts have been charged. The monthly statement must be reconciled and sent to the Department Head. It is essential that the following steps are taken when reconciling the monthly statement:~~

- ~~• Compare backup documents to the transactions listed on the statement;~~
- ~~• Ensure any exceptions are followed up for corrections;~~

- ~~Sign the monthly statement (or individual receipts) documenting your review and certification that all purchases listed are correct and made for official purposes which meet the appropriate business needs;~~
- ~~Attach the receipts to the statement and forward all documents to the Department Head for review.~~

Reconciliation by Department Head – The Department Head is responsible to reconcile the bank record of transactions to the actual receipts, for all department cardholders, to verify that all charges are proper and the correct amounts have been charged. ~~Receipts are submitted by the cardholder to the Department Head.~~ **A signed P-card Expense Report form and the receipts are submitted by the cardholder to the Department Head. The Department Head verifies the charges, signs the P-card Expense Report form and forwards it to the Finance Department.**

- ~~Compare backup documents to the transactions listed on the department billing;~~
- ~~Ensure any exceptions are followed up for corrections;~~
- ~~Sign the summary sheet documenting your review and certification that all purchases listed are correct and made for official purposes which meet the appropriate business needs;~~
- ~~Review – Once all statements/receipts are received by the Department Head from the cardholders, the Department Head will prepare a payment summary which indicates the proper expenditure codes and payment amounts. The Department Head should also review individual statements/charges to ensure compliance to the policies and procedures. The Department Head will sign and date the payment summary and submit to the department head for approval.~~
- ~~Once approved the entire package will be forwarded to the Finance Department for payment through the regular scheduled bill cycle.~~

Card Use by Reviewing Department Head – If the reviewer uses the card, **the P-Card Expense Report must be reviewed by the Treasurer. If the Treasurer uses the card, the P-Card Expense report reconciliation must be reviewed by the Town Manager.** The reviewer must sign and date the reconciliation.

Statement Due Dates

The billing cycle ends on the last business day of each month with the payment due around the 25th of each month. REMEMBER – transactions can be viewed online by the Department Head at any time. This will expedite the process rather than waiting for the end of the cycle. Statements will be due to the Finance Department on dates set by Finance.

VII. Card Uses

Subject to the limitations discussed in this policy, the p-card may be used for the following:

- Travel Expenses;
- All goods and services; and
- Telephone and Internet ordering.

Purchasing cards may NOT be used for the following:

- Cash Advances;
- Personal Purchases of any kind;

- Purchases by Non-Employees;
- Split Purchases – A split purchase is one in which the original purchase requirement for the same or related goods or services is broken into multiple smaller purchases which are made over a short period of time. In most cases a split purchase is created to circumvent the procurement policy and/or a card’s single purchase or cycle spending limits; and
- Other purchases prohibited by town policy.

VIII. Card Limits

The Town Manager in consultation with the Treasurer and Bank of America representatives shall approve all card limits including single transaction limits, cycle limits and authorizations per day.

The Town Manager in consultation with the Treasurer and Bank of America representatives shall establish Merchant Category Codes to block purchases from certain categories of vendors to ensure that cards cannot be used for improper purposes.

IX. Program Training

Department Head Training

All Department Heads are required to attend Department Head training. The Finance Department in conjunction with Bank of America will provide this training to primary Department Heads.

Card User Training

Departments are required to provide training in conjunction with Bank of America to all cardholders and users prior to their first card use.

X. Card Characteristics

Card Plastic

Card plastics will include the following information: TOWN OF BERRYVILLE, VA – FOR OFFICIAL USE ONLY – TAX EXEMPT #XXXXXXXXXXXX. Card Imprint

Card names are assigned by the department. Each line has a maximum of 24 characters, including spaces. Each card name shall include:

- Line 1 – Individual’s legal name
- Line 2 – Department name

Signature on Card

Cards shall be signed by the individual whose name appears on the card.

Card Security

Except for cards in personal possession, cards should be kept in secure location while not in use. Access to the location should be limited to those individuals who are permitted to access the card.

XII. Other Program Requirements

Sales Tax Exemption

Most town purchases are exempt from Virginia state sales tax. When making a p-card purchase, card users should remind the vendor of our tax exempt status and examine the receipt to verify sales tax was not charged. By state statute, the town is not exempt from sales tax for meals, catered events, lodging or other accommodations. The town is not exempt from sales tax imposed by other states on goods and services purchased outside of Virginia.

Employee Acknowledgement Disclosure Form

A Cardholder/User Agreement form must be signed before a new card is issued and at each instance that a card is re-issued to the same individual. This will include the reissue of expired cards. The form acknowledges the employee’s responsibilities regarding card use and sets forth consequences for card misuse. The Treasurer shall maintain the signed forms at least 3 years following the employee’s termination of employment.

Receipts

Vendor receipt, invoice or credit slip must be retained for each transaction. Receipts should show all details pertinent to the transaction, including date of purchase, vendor name and location, item(s) purchased with corresponding description(s) and price(s), and the total amount paid. These documents shall be attached with the appropriate monthly statement.

- Alternate Receipt –Department may use an alternate receipt, such as an internet screen print or faxed receipt. The receipt should contain the same level of detail required for an original receipt.
- Missing Receipt – If, for any reason, an original, alternate or photocopied receipt is unavailable, a Missing Receipt Affidavit providing the purchase details and reason why a receipt is not available must be included with the appropriate monthly statement. Documentation in lieu of missing receipts must be signed and dated by the Cardholder and the Department Director.

Document Retention

Program documents must be retained for a minimum of three (3) years.

Card Management Software

Bank of America Merrill Lynch provides WORKS p-card management software online. This software will allow a user to view transactions at any time, run reports, electronically allocate transactions, etc. Upon request, Cardholders will only be granted access to view information of their own card accounts and Department Heads will be given greater access to create reports and manage all department cardholders.

Problem Resolution

The Department Head should attempt to resolve disputes directly with the vendor and/or the bank. If unable to resolve directly within a reasonable time period, contact the Treasurer for assistance. Any adjustment to billing will be made on subsequent statements.

Dispute Procedures

Dispute procedures are defined by the town's purchasing card contract with Bank of America Merrill Lynch. The contract requires that disputed items be identified within 60 days of the billing close date for the cycle in which the disputed charge appears on the monthly statement. Disputed charges must be identified to BAML by completing the online dispute form in WORKS or by contacting BAML Customer Service and receiving the document in the mail. Although items identified outside the 60 day period may still be disputed, the town's legal standing in the matter is decreased. Dispute rights for department cards are significantly limited.

Lost or Stolen Cards

Lost or stolen cards shall be reported to Bank of America Merrill Lynch and the Department Head immediately. The bank provides a 24 hour toll free telephone number for this purpose. The number is included on the paperwork that accompanies each new card. The Department Head must also notify the Treasurer immediately. All card users should be aware of the procedure for reporting a lost or stolen card, including how to proceed if the Department Head is not available at the time the loss is discovered.

Reissue of a Lost or Stolen Card

To request a replacement of a lost or stolen card, forward a memo from the department director to the Treasurer. The memo should describe the circumstances surrounding the card loss and the steps taken to ensure against future losses. The Treasurer will evaluate each incident on an individual basis to determine whether or not to issue a replacement card.

Card Cancellation

If a department wishes to cancel a card, the Department Head should submit the original cardholder application, with the effective date and reason for cancellation completed, to the Treasurer. The Department Head must destroy any cancelled card(s). If there is an urgent need to cancel a card, contact the Treasurer for immediate assistance. Remember that lost or stolen cards may be reported directly to the bank through a 24 hour toll free number.

Card Changes

If the department wishes to change any aspect of a card, including address and card limits, the Department Head should submit card changes to the Treasurer.

Violations of Policy

The purchasing card is an opportunity for town staff to maximize efficiency in the procurement of goods and service; however, this concession can be terminated for violation of the policies and procedures outlined in the document. It is the responsibility of the Department Head to maintain a violation log. If a user violates the policies and procedures, potential repercussions include, but are not limited to:

- Warning letter sent by the Department Head;
- Suspension of card privileges; and/or
- Employee termination.

Examples of violations include, but are not limited to:

- Personal purchases;
- Purchase of restricted commodities;
- Split purchasing;
- Failure to obtain and forward supporting documentation for all card transactions;
- Lack of timely and proper reconciliation of monthly statements; and/or
- Use of the card by anyone or any department other than the authorized user.

Fraud and Misuse

Deterrence

The department is responsible to actively protect each of its purchasing cards from fraud and misuse.

The following guidelines should be followed:

- Limit Card Access – Maintain cards in a secure environment.
- Protect Card Information – Information regarding cards should be protected. This is to include card account number, name and expiration date. File reports that contain card numbers in locked file cabinets. When discarding reports or other paperwork containing card information, shred documents. Assure security of card materials that are maintained electronically. Do not send emails which contain card numbers and/or expiration dates.
- Establish Reasonable Card Limits – Establish reasonable spending and transaction limits. This will limit risk in the event the card or card number is lost or stolen.
- Maintain Adequate Separation of Duties – Divide the card custodian and the accounting/reconciliation duties among employees. Conduct proper upper management review of transactions and supporting receipts and associated documentation.

Occurrence of Fraud or Misuse

If fraud or misuse is suspected, the Department Head shall contact the Town Manager immediately for further guidance.

Compliance Reviews

The card program is subject to review by the Town Manager and both internal and external auditors.

Work Plan Appendix C

Job Description

Job Title: Assistant Town Manager for Administration / Treasurer

Department: Administration

Supervisor: Town Manager

FLSA Status: Exempt

Prepared By: KRD

Prepared Date: 6-29-17

Approved By: KRD

Approved Date:

Summary

This Department Head position plans and directs the activities of the Administrative Department, supervises Administrative Department personnel, and performs related work as required. Serves as Town Treasurer. Performs or supervises performance of all accounting functions, including maintenance of fiscal records, preparation of financial statements and a variety of fiscal and statistical reports; assists the Town Manager with preparation of the CIP and annual budgets; acts as purchasing agent; Assists Town Manager as needed.

In absence of the Town Manager and the Assistant Town Manager for Community Development & Operations, position coordinates administration of town operations.

Position is appointed by Town Council for an indefinite term and serves at the pleasure of Town Council.

Essential Duties and Responsibilities include the following. Other duties may be assigned by Supervisor.

Administers and directs the activities of the Administrative Development Department within approved budgetary limits and town purchasing policy requirements, supervises Administrative Department personnel, and performs related work.

Serves as Town Treasurer and performs tasks as prescribed in the Code of Virginia and the Berryville Code. Receives all taxes, license taxes, assessments and other monies, revenues and funds belonging to the town and deposits same as directed by the Town Manager or Town Council. Maintains fund accounts and monitors and maintains fund investments. Pays all approved bills and accounts related to the town. Prepares monthly trial balance, revenue and expense reports and cash fund analysis for Town Council. Co-signs accounts payable and payroll checks. Attends Town Council meetings as required by the Town Manager or the Town Council.

Compiles financial records for the annual audit and shall assist the auditor as requested.

Coordinates daily town administration in the Town Manager's and the Assistant Town Manager for Community Development & Operation's absence.

Serves as Town Purchasing Agent as set forth in Town purchasing policies

Reviews and approves all purchase orders to determine availability of funds and conformity with Town and state purchasing policies

Prepares purchase order requested for all administrative functions

Reviews all bills presented for payment and prepares list for council approval.

Provides backup to Finance Clerk for payroll and accounts payable functions

Maintains and safeguards town financial files.

Prepares requests for bids or proposals as needed. Reviews and approves all bid documents for the town.

Performs responsible, highly technical work in the administration of town ordinances and regulations.

Authors ordinances and regulations and amendments to the above referenced regulations.

Advises the Town Manager and Town Officials on financial matters and keeps the Town Manager and keeps the Town Manager and Town Officials apprised of the financial condition of the Town.

Assists Town Manager in Capital Improvements Program budgeting process.

Assists Town Manager in annual budget preparation. Prepares budget calendar, compiles all departmental budget expenses requests, assists in revenue estimates, supplies year to date information, prepares salary requests and benefit estimates, prepares CIP information. Revises budget drafts as necessary and finalizes budget in accordance with the determinations of Town Council. Prepares budget synopsis for publication of same. Distributes approved budget.

Interacts daily with the public and with vendors.

Initiates administrative and legal actions regarding violations of tax and fee related ordinances and regulations.

Attends meetings, most of which are after regular working hours, and acts as staff advisor to the Town Council.

Assists with or writes and administers certain grant applications. Serves as assistant

grants coordinator for state/federal funding programs.

Addresses citizen complaints and concerns in a timely professional manner.

Prepares annual departmental budget.

Organizes, maintains and safeguards departmental files.

Assists with human resources functions

Creates and maintains the fixed asset inventory

Coordinates special projects as assigned by Town Manager.

Maximizes office productivity through proficient use of appropriate software applications.

Researches and develops resources that create timely and efficient workflow.

Plans office layout, develops office budget, and initiates cost reduction programs.

Reviews clerical and personnel records to ensure completeness, accuracy, and timeliness.

Prepares activities reports for guidance of management.

Coordinates activities of various clerical departments or workers within department.

Supervisory Responsibilities

Supervises all Administrative Department personnel. Carries out supervisory responsibilities in accordance with the organization's policies and applicable laws. Responsibilities include interviewing, hiring, and training employees; planning, assigning, and directing work; appraising performance; rewarding and disciplining employees in accordance with the Town's policies and directives of the Town Manager; and addressing complaints and resolving problems.

Position, as a member of top management team, assists Town Manager in supervising operations of all departments as necessary. In absence of Town Manager and the Assistant Town Manager for Community Development & Operations, position assumes supervision over Town personnel.

Competencies

To perform the job successfully, an individual should demonstrate the following competencies:

Analytical - Synthesizes complex or diverse information; collects and researches data; uses intuition and experience to complement data; designs work flows and procedures.

Continuous Learning - Assesses own strengths and weaknesses; seeks feedback to improve performance; pursues training and development opportunities; strives to continuously build knowledge and skills; shares expertise with others.

Job Knowledge - Competent in required job skills and knowledge; exhibits ability to learn and apply new skills; keeps abreast of current developments; requires minimal supervision; displays understanding of how job relates to others; uses resources effectively.

Use of Technology - Demonstrates required skills; adapts to new technologies; troubleshoots technological problems; uses technology to increase productivity; keeps technical skills up to date.

Design - Generates creative solutions; translates concepts and information into images; demonstrates attention to detail.

Problem Solving - Identifies and resolves problems in a timely manner; gathers and analyzes information skillfully; develops alternative solutions; works well in group problem solving situations; uses reason even when dealing with emotional topics.

Project Management - Develops project plans; coordinates projects; communicates changes and progress; completes projects on time and budget; manages project team activities.

Customer Service - Manages difficult or emotional customer situations; responds promptly to customer needs; solicits customer feedback to improve service ; responds to requests for service and assistance; meets commitments.

Communications - Expresses ideas and thoughts verbally; expresses ideas and thoughts in written form; exhibits good listening and comprehension; keeps others adequately informed; selects and uses appropriate communication methods.

Cooperation - Establishes and maintains effective relations; exhibits tact and consideration; offers assistance and support to co-workers; works cooperatively in group situations; works actively to resolve conflicts.

Managing Customer Focus - Promotes customer focus; establishes customer service standards; provides training in customer service delivery; monitors customer satisfaction; develops new approaches to meeting customer needs.

Oral Communication - Speaks clearly and persuasively in positive or negative situations; listens and gets clarification; responds well to questions; demonstrates group presentation skills; participates in meetings.

Teamwork - Balances team and individual responsibilities; exhibits objectivity and openness to others' views; gives and welcomes feedback; contributes to building a positive team spirit; puts success of team above own interests; able to build morale and group commitments to goals and objectives; supports everyone's efforts to succeed.

Written Communication - Writes clearly and informatively; edits work for spelling and grammar; varies writing style to meet needs; presents numerical data effectively; able to read and interpret written information.

Qualifications To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Education and/or Experience

Bachelor's degree in accounting or related field from an accredited college or university; or equivalent with experience in accounting. A minimum of five years of related experience and an Associate's degree may be accepted in lieu of a Bachelor's degree. A minimum of 10 years of related experience and some course work in accounting may be accepted in lieu of a Bachelor's degree .

Must have extensive knowledge of the principles and practices of public accounting. Must have extensive experience with and knowledge of the Virginia Public Procurement Act. Must have experience in office procedures and organizational techniques. Must have extensive knowledge of bookkeeping methods and terminology and of accounting principles and practices. Must have extensive experience with computer accounting applications. Must be able to maintain financial accounts and prepare financial statements and reports.

Language Skills

Ability to read, analyze, and interpret the most complex documents. Ability to respond effectively to the most sensitive inquiries or complaints. Ability to write speeches and articles using original or innovative techniques or style. Ability to make effective and persuasive speeches and presentations on controversial or complex topics to top management, public groups, and/or elected officials.

Mathematical Skills

Ability to work with mathematical concepts such as probability and statistical inference. Ability to apply concepts such as fractions, percentages, ratios, and proportions to practical situations. Must have extensive knowledge of public accounting principles.

Reasoning Ability

Ability to define problems, collect data, establish facts, and draw valid conclusions. Ability to interpret an extensive variety of technical instructions in mathematical or diagram form and deal with several abstract and concrete variables.

Computer Skills

To perform this job successfully, an individual should have knowledge of Accounting software; Database software; Internet Software; Human Resource systems; Payroll systems; Spreadsheet software and Word Processing software.

Physical Demands The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this Job, the employee is regularly required to use hands to finger, handle , or feel and talk or hear. The employee is frequently required to walk, sit; and reach with hands and arms. The employee is occasionally required to stand. The employee must frequently lift and/or move up to 10 pounds and occasionally lift and/or move up to 25 pounds. Specific vision abilities required by this job include close vision, color vision and ability to adjust focus.

Work Environment The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The noise level in the work environment is usually moderate.

Background Investigation

The nature of this position requires examination and review of criminal history and credit history.

Drug and Alcohol Testing

Position is subject to testing as provided under the Town of Berryville Drug and Alcohol Testing Policy.

This job description is not intended to be all inclusive and the employee will also perform other reasonably related duties as assigned by immediate supervisor and other management as required.

The Town of Berryville reserves the right to revise or change job duties and responsibilities as the need arises. This job description does not constitute a written or implied contract of employment.

Job Description

Job Title: Finance Clerk

Department: Administration

Supervisor: Assistant Town Manager/Treasurer

FLSA Status: Non exempt

Prepared By: Desiree Moreland

Prepared Date: 6-29-17

Approved By: KRD

Approved Date:

Summary

Provides business office clerical assistance by performing the following duties.

Essential Duties and Responsibilities include the following. Other duties may be assigned by the Assistant Town Manager/Treasurer or the Town Manager.

Greets and assists public and conducts office operations in a polite and friendly manner while providing backup to front desk and reception duties

Regularly closes and locks the Government Center building

Provides backup to the Front Desk Clerk: Answers phones and directs calls to the appropriate party

Provides backup to the Front Desk Clerk: Processes incoming payments

Delivers deposits to the bank on a daily basis

Operates computer terminal to input and retrieve data

Prepares, issues, and sends out receipts, bills, invoices, statements, and checks

Responsible for accounts payable functions

Processes purchase orders / enters invoices / processes checks

Provides backup to the Front Desk Clerk including backup for monthly meals, lodging, and cigarette tax reports and maintains tax records

Operates office machines such as adding, copy and fax machines

Provides backup to the Town Clerk: Assists Town Clerk with business license functions

Prepares POs from requests for all departments

Reviews and inputs invoices and Requests for Payment

Generates A/P checks

Reconciles monthly P-cards

Enters monthly P-card transactions into CD batch

Bills reimbursable expenses

Prepares monthly, semi-monthly and bi-weekly payrolls

Maintains employee personnel files

Maintains employee leave balances

Prepares bi-weekly, monthly, quarterly and annual reports

Processes annual W2 and 1099 forms

Set up new employees

Performs other tasks as required

Supervisory Responsibilities

This job has no supervisory responsibilities.

Competencies

To perform the job successfully, an individual should demonstrate the following competencies:

Continuous Learning - Assesses own strengths and weaknesses; seeks feedback to improve performance; shares expertise with others.

Job Knowledge - Competent in required job skills and knowledge; exhibits ability to learn and apply new skills.

Use of Technology - Demonstrates required skills; adapts to new technologies; troubleshoots technological problems; uses technology to increase productivity; keeps technical skills up to date.

Problem Solving - Identifies and resolves problems in a timely manner; works well in group problem solving situations; uses reason even when dealing with emotional topics.

Customer Service - Manages difficult or emotional customer situations; responds promptly to customer needs; solicits customer feedback to improve service ; responds to requests for service and assistance; meets commitments.

Communications - Expresses ideas and thoughts verbally; expresses ideas and thoughts in written form; exhibits good listening and comprehension; keeps others

adequately informed; selects and uses appropriate communication methods.

Cooperation - Establishes and maintains effective relations; exhibits tact and consideration; offers assistance and support to co-workers; works cooperatively in group situations; works actively to resolve conflicts.

Managing Customer Focus - Promotes customer focus; monitors customer satisfaction; develops new approaches to meeting customer needs.

Oral Communication - Speaks clearly and persuasively in positive or negative situations; listens and gets clarification; responds well to questions.

Teamwork - Gives and welcomes feedback.

Written Communication - Able to read and interpret written information.

Conflict Resolution - Encourages open communications; confronts difficult situations; keeps emotions under control; uses negotiation skills to resolve conflicts.

Ethics - Treats people with respect; keeps commitments; inspires the trust of others; works with integrity and principles; upholds organizational values.

Organizational Support - Follows policies and procedures; completes administrative tasks correctly and on time; supports organization's goals and values.

Adaptability - Adapts to changes in the work environment.

Personal Appearance - Dresses appropriately for position; keeps self well groomed.

Attendance/Punctuality - Is consistently at work and on time; ensures work responsibilities are covered when absent.

Dependability - Follows instructions, responds to management direction.

Planning/Organizing - Uses time efficiently.

Quality - Demonstrates accuracy and thoroughness.

Quantity - Completes work in timely manner.

Qualifications To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Education and/or Experience

High school diploma or general education degree (GED); and one to three months related experience and/or training; or equivalent combination of education and experience.

Language Skills

Ability to read and comprehend simple instructions, short correspondence, and memos. Ability to write simple correspondence. Ability to effectively present information in one-on-one and small group situations to customers, clients, and other employees of the organization.

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs. Ability to make correct change and count cash.

Reasoning Ability

Ability to apply common sense understanding to carry out detailed but uninvolved written or oral instructions. Ability to deal with problems involving a few concrete variables in standardized situations.

Computer Skills

To perform this job successfully, an individual should have knowledge of Accounting software; Spreadsheet software and Word Processing software.

Certificates, Licenses, Registrations

Must obtain and maintain Virginia Notary Public Commission.

Physical Demands The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this Job, the employee is frequently required to stand; sit; use hands to finger, handle, or feel; reach with hands and arms and talk or hear. The employee is occasionally required to walk. The employee must regularly lift and/or move up to 10 pounds and occasionally lift and/or move up to 25 pounds. Specific vision abilities required by this job include close vision, color vision and ability to adjust focus.

Work Environment The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The noise level in the work environment is usually moderate.

BACKGROUND INVESTIGATION

The nature of this position requires examination and review of criminal history and credit history.

DRUG AND ALCOHOL TESTING

Position is subject to testing as provided under the Town of Berryville Drug and Alcohol Testing Policy.

This job description is not intended to be all inclusive and the employee will also perform other reasonably related duties as assigned by immediate supervisor and other management as required.

The Town of Berryville reserves the right to revise or change job duties and responsibilities as the need arises. This job description does not constitute a written or implied contract of employment.

Job Description

Job Title: Front Desk Clerk
Department: Administration
Supervisor: Assistant Town Manager/Treasurer
FLSA Status: Non exempt
Prepared By: Desiree Moreland
Prepared Date: 6-29-17
Approved By: KRD
Approved Date:

Summary

Provides business office clerical assistance by performing the following duties.

Essential Duties and Responsibilities include the following. Other duties may be assigned by the Assistant Town Manager/Treasurer or the Town Manager.

Greets and assists public and conducts office operations in a polite and friendly manner

Answers phones and directs calls to the appropriate party

Processes incoming payments

Processes parking violations ticket on a weekly basis

Balances cash drawer

Operates computer terminal to input and retrieve data

Responsible for the following accounts payable functions: maintains vendor files

Prepares monthly meals, lodging, and cigarette tax reports and maintains tax records

Operates office machines such as adding, copy and fax machines

Opens and routes incoming mail, answers correspondence, and prepares outgoing mail

Maintains weekly yard waste pick up list and weekly appliance (bulk) pick up list

Retrieves voice mail messages each morning and throughout the day

Maintains Town scrap book

Performs other tasks as required

Supervisory Responsibilities

This job has no supervisory responsibilities.

Competencies

To perform the job successfully, an individual should demonstrate the following competencies:

Continuous Learning - Assesses own strengths and weaknesses; seeks feedback to improve performance; shares expertise with others.

Job Knowledge - Competent in required job skills and knowledge; exhibits ability to learn and apply new skills.

Use of Technology - Demonstrates required skills; adapts to new technologies; troubleshoots technological problems; uses technology to increase productivity; keeps technical skills up to date.

Problem Solving - Identifies and resolves problems in a timely manner; works well in group problem solving situations; uses reason even when dealing with emotional topics.

Customer Service - Manages difficult or emotional customer situations; responds promptly to customer needs; solicits customer feedback to improve service ; responds to requests for service and assistance; meets commitments.

Communications - Expresses ideas and thoughts verbally; expresses ideas and thoughts in written form; exhibits good listening and comprehension; keeps others adequately informed; selects and uses appropriate communication methods.

Cooperation - Establishes and maintains effective relations; exhibits tact and consideration; offers assistance and support to co-workers; works cooperatively in group situations; works actively to resolve conflicts.

Managing Customer Focus - Promotes customer focus; monitors customer satisfaction; develops new approaches to meeting customer needs.

Oral Communication - Speaks clearly and persuasively in positive or negative situations; listens and gets clarification; responds well to questions.

Teamwork - Gives and welcomes feedback.

Written Communication - Able to read and interpret written information.

Conflict Resolution - Encourages open communications; confronts difficult situations; keeps emotions under control; uses negotiation skills to resolve conflicts.

Ethics - Treats people with respect; keeps commitments; inspires the trust of others; works with integrity and principles; upholds organizational values.

Organizational Support - Follows policies and procedures; completes administrative tasks correctly and on time; supports organization's goals and values.

Adaptability - Adapts to changes in the work environment.

Personal Appearance - Dresses appropriately for position; keeps self well groomed.

Attendance/Punctuality - Is consistently at work and on time; ensures work responsibilities are covered when absent.

Dependability - Follows instructions, responds to management direction.

Planning/Organizing - Uses time efficiently.

Quality - Demonstrates accuracy and thoroughness.

Quantity - Completes work in timely manner.

Qualifications To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Education and/or Experience

High school diploma or general education degree (GED); and one to three months related experience and/or training; or equivalent combination of education and experience.

Language Skills

Ability to read and comprehend simple instructions, short correspondence, and memos. Ability to write simple correspondence. Ability to effectively present information in one-on-one and small group situations to customers, clients, and other employees of the organization.

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs. Ability to make correct change and count cash.

Reasoning Ability

Ability to apply common sense understanding to carry out detailed but uninvolved written or oral instructions. Ability to deal with problems involving a few concrete variables in standardized situations.

Computer Skills

To perform this job successfully, an individual should have knowledge of Accounting software; Spreadsheet software and Word Processing software.

Certificates, Licenses, Registrations

Must obtain and maintain Virginia Notary Public Commission.

Physical Demands The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this Job, the employee is frequently required to stand; sit; use hands to finger, handle, or feel; reach with hands and arms and talk or hear. The employee is occasionally required to walk. The employee must regularly lift and/or move up to 10 pounds and occasionally lift and/or move up to 25 pounds. Specific vision abilities required by this job include close vision, color vision and ability to adjust focus.

Work Environment The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The noise level in the work environment is usually moderate.

BACKGROUND INVESTIGATION

The nature of this position requires examination and review of criminal history and credit history.

DRUG AND ALCOHOL TESTING

Position is subject to testing as provided under the Town of Berryville Drug and Alcohol Testing Policy.

This job description is not intended to be all inclusive and the employee will also perform other reasonably related duties as assigned by immediate supervisor and other management as required.

The Town of Berryville reserves the right to revise or change job duties and responsibilities as the need arises. This job description does not constitute a written or implied contract of employment.

Job Description

Job Title: Town Clerk

Department: Administration

Supervisor: Assistant Town Manager for Administration/Treasurer

FLSA Status: Nonexempt

Prepared By: KRD

Prepared Date: 6-29-17

Approved By: KRD

Approved Date:

Summary

Assists municipal government with clerical and administrative support by performing the following duties.

Essential Duties and Responsibilities include the following. Other duties may be assigned by the Assistant Town Manager/Treasurer or the Town Manager.

Prepares agenda packets for town council.

Records and prepares minutes of council meetings.

Administers business license tax functions

Provides backup oversight of Town website content and maintenance

Responsible for office supply inventory and ordering

Fills in for business office staff as needed.

Answers official correspondence.

Prepares reports on civic needs.

Serves as FOIA Officer for all Town operations except the Police Dept.

Maintains the official copy of the Town Code and manages updates being codified

Serves as the designated records officer and manages records retention schedules

Provides administrative support for the Departments of Public Utilities and Public Works as needed

Maintains general Town Office and Town Council files

Supervisory Responsibilities

This job has no supervisory responsibilities.

Competencies

To perform the job successfully, an individual should demonstrate the following competencies:

Analytical - Synthesizes complex or diverse information; uses intuition and experience to complement data.

Continuous Learning - Assesses own strengths and weaknesses; seeks feedback to improve performance; pursues training and development opportunities; strives to continuously build knowledge and skills; shares expertise with others.

Job Knowledge - Competent in required job skills and knowledge; exhibits ability to learn and apply new skills; keeps abreast of current developments; requires minimal supervision; displays understanding of how job relates to others; uses resources effectively.

Use of Technology - Demonstrates required skills; adapts to new technologies; troubleshoots technological problems; uses technology to increase productivity; keeps technical skills up to date.

Problem Solving - Identifies and resolves problems in a timely manner; gathers and analyzes information skillfully; develops alternative solutions; works well in group problem solving situations; uses reason even when dealing with emotional topics.

Customer Service - Manages difficult or emotional customer situations; responds promptly to customer needs; solicits customer feedback to improve service ; responds to requests for service and assistance.

Communications - Expresses ideas and thoughts verbally; expresses ideas and thoughts in written form; exhibits good listening and comprehension; keeps others adequately informed; selects and uses appropriate communication methods.

Cooperation - Establishes and maintains effective relations; exhibits tact and consideration; offers assistance and support to co-workers; works cooperatively in group situations; works actively to resolve conflicts.

Managing Customer Focus - Promotes customer focus; monitors customer satisfaction; develops new approaches to meeting customer needs.

Oral Communication - Speaks clearly and persuasively in positive or negative situations; listens and gets clarification; responds well to questions; demonstrates group presentation skills; participates in meetings.

Teamwork - Balances team and individual responsibilities; exhibits objectivity and openness to others' views; gives and welcomes feedback; contributes to building a positive team spirit; puts success of team above own interests; able to build morale and group commitments to goals and objectives; supports everyone's efforts to succeed.

Written Communication - Writes clearly and informatively; edits work for spelling and grammar; varies writing style to meet needs; presents numerical data effectively; able to read and interpret written information.

Leadership - Exhibits confidence in self and others; inspires and motivates others to perform well; effectively influences actions and opinions of others; accepts feedback from others; gives appropriate recognition to others.

Quality Management - Looks for ways to improve and promote quality; demonstrates accuracy and thoroughness.

Visionary Leadership - Displays passion and optimism; inspires respect and trust; mobilizes others to fulfill the vision; provides vision and inspiration to peers and subordinates.

Conflict Resolution - Encourages open communications; confronts difficult situations; maintains objectivity; keeps emotions under control; uses negotiation skills to resolve conflicts.

Cost Consciousness - Works within approved budget; conserves organizational resources.

Ethics - Treats people with respect; keeps commitments; inspires the trust of others; works with integrity and principles; upholds organizational values.

Organizational Support - Follows policies and procedures; completes administrative tasks correctly and on time; supports organization's goals and values; benefits organization through outside activities; supports affirmative action and respects diversity.

Strategic Thinking - Develops strategies to achieve organizational goals; understands organization's strengths & weaknesses.

Adaptability - Adapts to changes in the work environment; manages competing demands; changes approach or method to best fit the situation; able to deal with frequent change, delays, or unexpected events.

Personal Appearance - Dresses appropriately for position; keeps self well groomed.

Attendance/Punctuality - Is consistently at work and on time; ensures work responsibilities are covered when absent; arrives at meetings and appointments on time.

Dependability - Follows instructions, responds to management direction; takes responsibility for own actions; keeps commitments; commits to long hours of work when necessary to reach goals.; completes tasks on time or notifies appropriate person with an

alternate plan.

Initiative - Volunteers readily; undertakes self-development activities; seeks increased responsibilities; takes independent actions and calculated risks; looks for and takes advantage of opportunities; asks for and offers help when needed.

Innovation - Displays original thinking and creativity; meets challenges with resourcefulness; generates suggestions for improving work; develops innovative approaches and ideas; presents ideas and information in a manner that gets others' attention.

Judgement - Displays willingness to make decisions; exhibits sound and accurate judgment; supports and explains reasoning for decisions; includes appropriate people in decision-making process; makes timely decisions.

Planning/Organizing - Prioritizes and plans work activities; uses time efficiently; plans for additional resources; sets goals and objectives; organizes or schedules other people and their tasks; develops realistic action plans.

Quality - Demonstrates accuracy and thoroughness; looks for ways to improve and promote quality; applies feedback to improve performance; monitors own work to ensure quality.

Quantity - Completes work in timely manner; strives to increase productivity.

Safety and Security - Observes safety and security procedures; determines appropriate action beyond guidelines; reports potentially unsafe conditions ; uses equipment and materials properly.

Qualifications To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Education and/or Experience

High school diploma or general education degree (GED); experience as a secretary/receptionist or advanced courses in secretarial science and computer application required. Knowledge of basic accounting practices and terminology helpful. If hire does not have such knowledge, must have ability to learn such practices and terminology.

Language Skills

Ability to read and interpret documents such as safety rules, operating and maintenance instructions, and procedure manuals. Ability to write routine reports and correspondence. Ability to speak effectively before groups of citizens or employees of organization.

Must be able to write clear and concise minutes of meetings attended. Must demonstrate ability to use correct business English and spelling.

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs.

Reasoning Ability

Ability to apply common sense understanding to carry out detailed but involved written and oral instructions. Ability to deal with problems involving a few concrete variables in standardized situations.

Computer Skills

To perform this job successfully, an individual should have knowledge of Accounting software; Contact Management systems; Database software; Internet software; Spreadsheet software and Word Processing software.

Certificates, Licenses, Registrations

Must obtain and maintain Virginia Notary Public Commission.

Physical Demands The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this Job, the employee is regularly required to reach with hands and arms and talk or hear. The employee is frequently required to stand; sit and use hands to finger, handle, or feel. The employee is occasionally required to walk; climb or balance; stoop, kneel, crouch, or crawl and taste or smell. The employee must occasionally lift and/or move up to 25 pounds. Specific vision abilities required by this job include close vision, color vision and ability to adjust focus.

Work Environment The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The noise level in the work environment is usually moderate.

BACKGROUND INVESTIGATION

The nature of this position requires examination and review of criminal history and credit history.

DRUG AND ALCOHOL TESTING

Position is subject to testing as provided under the Town of Berryville Drug and Alcohol Testing Policy.

This job description is not intended to be all inclusive and the employee will also perform other reasonably related duties as assigned by immediate supervisor and other management as required.

The Town of Berryville reserves the right to revise or change job duties and responsibilities as the need arises. This job description does not constitute a written or implied contract of employment.

Job Description

Job Title: Administrative Assistant, Police

Department: Police

Supervisor: Police Chief

FLSA Status: Non exempt

Prepared By: KRD

Prepared Date: 6-29-17

Approved By: KRD

Approved Date:

Summary

Relieves police officers of clerical duties in police department by performing the following duties. This is a non-sworn, civilian position.

Essential Duties and Responsibilities include the following. Other duties may be assigned by the Chief of Police or the Town Manager.

Schedules appointments, gives information to callers, composes and types correspondence, routes incoming mail, and performs other administrative and clerical duties.

Answers phones, takes messages, and directs calls to the appropriate party.

Greets public and conducts office operations in a professional and polite manner.

Coordinates departmental mailings and publication of legal notices.

Assists in grant writing and is responsible for making quarterly or other required reports in accordance with awarded grants.

Assists Chief of Police in preparation of annual departmental budget request.

Processes all parking tickets and maintains accurate and up to date records of same. Maintains records of parking violations, delinquent tickets and the collection and direction of summonses.

Conducts records checks for governmental agencies and assists Chief with FOIA requests.

Tabulates statistics, prepares and submits monthly Incident Based Reporting to the State Police.

Tabulates statistics, prepares and submits monthly department activity report to the Chief.

Assists Chief or Sergeant with scheduling of duty hours.

Assists with scheduling of officer training.

Maintains adequate technical and administrative supplies.

Files Police Department records and documents and maintains said files and work area in a neat organized manner. Responsible for all data entry regarding arrests, incident reports, traffic reports, traffic accidents, traffic citations, court dispositions, business emergency information, warrants, miscellaneous names, field identification of suspicious persons, and the like. Files all documents relating to the the Police Department including incident reports. Releases documentation of all criminal history, traffic accidents and other related materials to appropriate agencies as set forth by departmental policies. Enters all court dispositions to appropriate criminal history file (hard copy).

Maintains confidentiality of privileged information as one who works with such information on a regular basis.

Acts as police department computer system manager and thereby serves as the contact person for any and all technical support. Responsible for maintaining the integrity of the computer system as well as the confidentiality of criminal records. Trains departmental staff on computer system.

Attends meetings as required.

Assists Chief with departmental payroll and authorizes payroll to the Assistant Town Manager for Administration / Treasurer in the absence of the Police Chief.

Assists Chief with departmental purchase orders and approves purchase orders for submission to the Assistant Town Manager for Administration / Treasurer in the absence of the Chief.

Regularly assumes Front Desk and Reception duties of Front Desk Clerk, and fills in for Business Office staff as needed.

Regularly closes and locks the Government Center building.

Oversees the content and maintenance of the Town website.

Performs other tasks as required.

Supervisory Responsibilities

This job has no supervisory responsibilities.

Competencies

To perform the job successfully, an individual should demonstrate the following

competencies:

Job Knowledge - Competent in required job skills and knowledge; exhibits ability to learn and apply new skills.

Use of Technology - Demonstrates required skills; adapts to new technologies; keeps technical skills up to date.

Customer Service - Manages difficult or emotional customer situations; responds promptly to customer needs; meets commitments.

Communications - Expresses ideas and thoughts verbally; expresses ideas and thoughts in written form; exhibits good listening and comprehension.

Cooperation - Establishes and maintains effective relations; offers assistance and support to co-workers.

Oral Communication - Speaks clearly and persuasively in positive or negative situations; listens and gets clarification.

Written Communication - Writes clearly and informatively; edits work for spelling and grammar.

Conflict Resolution - Confronts difficult situations; keeps emotions under control; uses interpersonal skills to resolve conflicts.

Ethics - Maintains confidentiality, treats people with respect; keeps commitments.

Organizational Support - Follows policies and procedures; completes administrative tasks correctly and on time.

Adaptability - Adapts to changes in the work environment; able to deal with frequent change, delays, or unexpected events.

Personal Appearance - Dresses appropriately for position; keeps self well groomed.

Attendance/Punctuality - Is consistently at work and on time; ensures work responsibilities are covered when absent.

Dependability - Follows instructions, responds to management direction; takes responsibility for own actions; keeps commitments.

Planning/Organizing - Prioritizes and plans work activities; uses time efficiently.

Quality - Demonstrates accuracy and thoroughness; monitors own work to ensure quality.

Quantity - Completes work in timely manner.

Safety and Security - Observes safety and security procedures.

Qualifications To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Education and/or Experience

High school diploma or general education degree (GED); minimum of two years experience as a secretary/receptionist or advanced courses in secretarial science and computer applications required. Considerable experience with word processing and other computer packages required.

Knowledge of police practices and terminology helpful. If hire does not have such knowledge, must have the ability and willingness to learn such practices and terminology.

Language Skills

Ability to read and interpret documents such as safety rules, operating and maintenance instructions, and procedure manuals. Ability to write routine reports and correspondence. Ability to speak effectively before groups of citizens or employees of organization.

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs.

Reasoning Ability

Ability to apply common sense understanding to carry out detailed but uninvolved written or oral instructions. Ability to deal with problems involving a few concrete variables in standardized situations.

Computer Skills

To perform this job successfully, an individual should have knowledge of Internet software; Spreadsheet software and Word Processing software.

Certificates, Licenses, Registrations

Must obtain and maintain Virginia Notary Public Commission

Physical Demands The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable

individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to sit; use hands to finger, handle, and feel; reach with hands and arms; talk and hear. The employee is occasionally required to stand and walk. The employee must occasionally lift and/or move up to 25 pounds. Specific vision abilities required by this job include close vision, color vision and ability to adjust focus.

Work Environment The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The noise level in the work environment is usually moderate.

BACKGROUND INVESTIGATION

The nature of this position requires examination and review of criminal history and credit history.

DRUG AND ALCOHOL TESTING

Position is subject to testing as provided under the Town of Berryville Drug and Alcohol Testing Policy.

This job description is not intended to be all inclusive and the employee will also perform other reasonably related duties as assigned by immediate supervisor and other management as required.

The Town of Berryville reserves the right to revise or change job duties and responsibilities as the need arises. This job description does not constitute a written or implied contract of employment.