

TOWN OF BRIDGEWATER, VIRGINIA
PROCUREMENT MANUAL

Article 1
General Provisions

1.1. Introduction.

This manual constitutes the procurement policy of the Town of Bridgewater (the “Town”). It is supplemented by certain “mandatory” provisions of the Virginia Public Procurement Act (the “Act”), as described in § 3.1. The Town may, in its discretion, elect to conduct any procurement under the Act instead of the provisions hereof.

1.2. Application.

The provisions of this manual govern the procurement of goods, services, insurance, and construction. To the maximum degree possible under state law—unless the Town has elected to proceed under the Act—these provisions supersede the provisions of the Act.

This policy shall become effective on November 1, 2015, and will replace all procurement policies previously adopted. Any contract entered into prior to November 1, 2015, shall be governed by the Town’s procurement policy in effect at the time the contract was executed.

This policy refers to various forms which may be used in the procurement process. Such forms, however, are not part of the policy. ~~and they may be amended without action by Council.~~
(Amended September 1, 2021)

1.3. Definitions.

As used in this manual, the terms listed below have the meanings ascribed to them in this section. Any term not defined has the meaning assigned by the Act, unless the context plainly indicates otherwise.

- (a) *Contract.* Any agreement, oral or written, with the Town, for the procurement of goods, services, insurance, or construction.
- (b) *Contractor.* Any person having a Contract with the Town or any Using Agency.
- (c) *Insurance.* A Contract whereby, for a stipulated consideration, one party undertakes

to compensate the other for loss or provide a defense to any claim.

- (d) *May*. Indicates authority or permission, without direction as to how it should be exercised, if at all.
- (e) *Person*. Any business, association, individual, union, committee, club, other organization or group of individuals.
- (f) *Professional Services*. Work performed by an independent Contractor within the scope of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.
- (g) *Shall*. Indicates a mandatory directive.
- (h) *Should*. Indicates a directive for which compliance is aspirational but not compelled.
- (i) *Using Agency*. Any authority, board, department, division, office, council, or other subunit of the Town that requires goods, services, insurance, or construction.

In this policy, defined nouns are generally capitalized, but no meaning should be inferred from such capitalization or the lack thereof.

Article 2 *Purchasing System*

2.1. Purchasing system.

The Town Superintendent shall direct and supervise the Town's purchasing system as the principal public purchasing official for all Using Agencies.

2.2. Authority and duties of Town Superintendent.

The Town Superintendent is responsible for procuring goods and services in accordance with this policy. The Town Superintendent may waive informalities; accept late bids and proposals; cancel an invitation to bid, request for proposal, or other solicitation; and reject all bids and proposals when necessary to protect the interests of the Town.

2.3. Delegation.

The Town Superintendent may delegate authority to purchase certain goods, services, insurance, or construction to other Town officials while retaining reasonable supervision and

accountability.

2.4. Surplus.

The Town Superintendent may declare materials, supplies, equipment, or other personal property of any Using Agency to be surplus and dispose of it in any lawful manner.

Article 3 Mandatory State Code Provisions.

3.1. Introduction.

Certain provisions of the Act apply to *all* local government purchases. The Town is not free to amend those provisions. For the most part, such provisions deal with ethical issues and special situations. For quick reference, they are summarized here, but the statutes themselves must be consulted.

Beyond the mandatory state-code provisions, however, state law is not incorporated herein, unless there is a specific provision incorporating it.

3.2. Term contracts for Architectural and Professional Engineering Services.

This statute allows the Town to award a Contract for architectural or professional engineering services for multiple construction projects that require similar experience and expertise. The statute imposes restrictions on term length and fees. The Town may also award contracts to more than one offeror so long as the Request for Proposal so indicates and procedures are in place for distributing projects among selected contractors. Note that this provision is mandatory only for contracts expected to exceed \$60,000. (Va. Code, § 2.2-4303.1)

3.3. State Aid Projects.

This section requires Competitive Sealed Bidding or Competitive Negotiation for projects in which over \$50,000 in state funds are expended. (Va. Code, § 2.2-4305)

3.4. Construction-Management; Design-Build Projects.

This section allows local governments to undertake construction-management and design-build projects. Depending upon the type of project, the Town must adopt and comply with procedures and standards approved by the Secretary of Administration and the Division of

Engineering and Buildings of the Department of General Services. If you are considering a project of this type, you should consult with the Town Attorney. (Va. Code, § 2.2-4308)

3.5. *Employment Discrimination by Contractors.*

In any contract of more than \$10,000, the Town must include language forbidding the Contractor from engaging in certain employment discrimination. The Town must also require the Contractor to include the language in any subcontract or purchase order of more than \$10,000. (Va. Code, § 2.2-4311)

3.6. *Brand Names.*

Unless an invitation to bid expressly allows only a certain brand, a bidder may specify alternatives to the brand names mentioned in the invitation. The Town can accept any brand that it deems to be equivalent to the specified brand. Bear in mind, however, that the Town may also limit bidders to a single brand, if it expressly states such a limitation in the ITB. (Va. Code, § 2.2-4315)

3.7. *Prequalification.*

Prequalification involves bidding in which only selected, or “prequalified,” bidders are allowed to bid on a project. The statute governs the method of prequalification. Generally speaking, it is difficult to refuse to prequalify a bidder, although it may be necessary occasionally. Please consult the Town Attorney prior to undertaking prequalification. (Va. Code, § 2.2-4317)

3.8. *Withdrawal of Erroneous Bids.*

This section allows bidders for a construction Contract to withdraw bids that reflect clerical errors. The statute sets forth two different withdrawal procedures, and localities must choose one or the other. The Town follows the simpler method under Va. Code § 2.2-4330(B)(1), which requires that bidders give notice of withdrawal within two business days of the bid opening. The Town has five business days to issue a decision on a request to withdraw a bid. It would be wise to consult the Town Attorney whenever this issue arises. (Va. Code, § 2.2-4330)

3.9. *Retainage.*

Retainage on construction Contracts cannot exceed five percent. Additionally, for a few Contracts, the Town’s bid documents must include an option by which the successful bidder can elect to have the retainage placed into an escrow account. This option applies to Contracts which (i) are greater than \$200,000, **and** (ii) relate to the construction of highways, roads, streets, bridges,

parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, or the installation of water, gas, sewer lines or pumping stations. (Va. Code, §§ 2.2-4333 & 4334)

3.10. Damages for Delay by Governing Body.

The Town cannot require Contractors to waive any right to damages caused by the *Town's* delay in performance. (Va. Code, § 2.2-4335)

3.11. Bonds.

For some Contracts, bid bonds, performance bonds, and payment bonds are required. In lieu of a bid, performance, or payment bond, the bidder may provide a certified check, cashier's check, or cash escrow in the face amount required for the bond. (Va. Code, § 2.2-4336 through 4338)

3.12. Professional Services.

Professional Services (except for legal services) must be procured through Competitive Negotiation where the cost of the Professional Service is expected to exceed ~~\$60,000~~ \$80,000 in the aggregate. (Va. Code, § 2.2-4343(A)(12)) (*Amended September 1, 2021*)

3.13. Contracts with Religious Organizations.

This section applies only to projects funded by grants provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. (Va. Code, § 2.2-4343.1)

3.14. Ethics in Public Contracting.

These sections prohibit kickbacks, conflicts of interest, gifts from bidders, and the purchase of building materials from architects or engineers rendering design services. (Va. Code, § 2.2-4367 through 4377)

Article 4
Exceptions to Requirement For Competitive Procurement

4.1. Purchases from governmental sources.

Purchases from governmental agencies are not covered by the Act or this procurement

policy. There are no procedural requirements for such purchases. (Va. Code, § 2.2-4303(A)).

4.2 *Small purchases. (Amended October 11, 2016)*

- (a) *Generally.* The Town may award single or term Contracts for
 - (i) Professional Services less than or equal to ~~\$60,000~~ \$80,000; (*Amended September 1, 2021*)
 - (iA) Transportation-related construction services less than or equal to \$25,000. (*Added October 11, 2016*)
 - (ii) Non-professional services less Non-professional services less than or equal to \$100,000
 - (iii) Goods less than or equal to \$100,000; (*Amended October 11, 2016*)without competitive procurement by utilizing the following procedure:
 - (1) Identify at least three potential suppliers, if practicable, for the items being purchased. (*Amended October 11, 2016*)
 - (2) ~~Obtain~~ Request pricing from those suppliers identified, again if practicable. Verbal proposals are acceptable, as are advertisements and world-wide-web pages, so long as they are current. A supplier failing to respond after seven days may be deemed non-responsive, but the best practice is to encourage quotes from all suppliers contacted. (*Amended October 11, 2016, September 1, 2021*)
 - (3) Award the Contract to the supplier offering the lowest price, in the absence of an articulated reason to award it to someone else.
- (b) *Micro-Purchases.* For purchases of goods or services of less than \$1,000, the Town may also award Contracts without any procurement process whatsoever so long as the officer making the purchase has no reason to believe that equivalent goods or services are available at a lower cost elsewhere. (*Added October 11, 2016*)

4.3 *Cooperative Procurement.*

The Town can purchase goods using a procurement process instituted by another governmental entity. In other words, the Town can purchase goods or services previously procured by a municipality, county, state, or national government, on the same material terms as applied to the prior purchase. In a departure from the Act, the prior procurement documents need *not* have provided for cooperative procurement. The Town can, for example, purchase police vehicles under the “state bid,” whether or not the state bid anticipates cooperative procurement. (*Cf.* Va. Code, §§ 2.2-4304, 2.2-4343(A)(12).)

4.4. Sole source.

The Town may negotiate and award a contract without competitive procurement after determining that there is only one source practicably available. The basis for the determination shall be documented in writing. (*Cf.* Va. Code, § 2.2-4303(E).)

4.5. Legal services.

The Town may enter into Contracts for legal services, expert witnesses, and services associated with litigation or regulatory proceedings without competitive procurement. (Va. Code, § 2.2-4344(A)(2).)

4.6. Emergencies.

An Emergency exists when, in the opinion of a Using Agency, (i) a breakdown in an essential service occurs or threatens to occur, or (ii) circumstances arise in which goods, services, or construction is needed for immediate use in work which may affect the public's safety, health, welfare, or property. If an Emergency occurs during office hours, the Using Agency shall immediately notify the Town Superintendent, who may either purchase or authorize the purchase of the needed goods or services. If the Town Superintendent is unavailable, the Using Agency may purchase any goods or services needed to meet such existing emergency. As soon as practicable, the head of the Using Agency shall send a requisition and a copy of the delivery receipt to the Town Superintendent with a written explanation of the circumstances of the Emergency. (*Cf.* Va. Code, §§ 2.2-4303(F), 2.2-4343(A)(12).)

4.7. Federal funds.

Some of the Town's purchases may involve the use of federal funds or grants that are conditioned upon complying with federal laws or regulations. ~~that differ from the Town's policy. In those circumstances, the Town Superintendent should comply with federal rules, when doing so is in the Town's interest.~~ Such purchases shall comply with the Federal Funds Policy in the Appendix.

Article 5
Methods of Source Selection

5.1. *Competitive Sealed Bidding.*

- (a) When used. Competitive Sealed Bidding (“CSB”) may be used for any type of contract, except for professional services. In addition, it must be used to procure construction unless (i) the Town makes a written determination that CSB is not practicable or is not fiscally advantageous and (ii) the project is a design-build project, or is for construction of highways or any drainage, dredging, excavation, grading, or similar work upon real property.
- (b) Process. Competitive Sealed Bidding consists of the following:
- (1) Contract File. The first step of CSB is the opening of a contract file that will include all documents pertaining to the procurement. The file is open for public inspection and should be retained for at least five years. (Note that bidders can designate portions of their bids as proprietary under Va. Code § 2.2-4342 to shield those portions from public disclosure. If questions arise as to whether the public should be allowed access to a particular bid, consult the Town Attorney.)
 - (2) Invitation to Bid. The invitation to bid (“ITB”) is the most critical part of the competitive sealed bidding process. The ITB should be a *specific* and *complete* expression of the Town’s needs with respect to a certain contract. The invitation should specify a date and time for the opening of bids and a later date and time for the awarding of the contract. It is also important that the ITB contain the appropriate disclaimers and legal provisions. Form 1.1 covers some of the basic issues, but can be tailored to a particular situation. In many circumstances, Form 3.0, which deals with insurance issues, should also be included.
 - (i) *Prequalification and Debarment.* Some potential bidders may not be allowed to bid. Any process utilized by the Town to prequalify potential bidders must conform to the provisions of Va. Code, § 2.2-4317.

Debarment is a little different. If prequalification is a method used to put good apples in a barrel, debarment is a method used to take rotten

apples out of the barrel. If, for example, the Town learns that one of the construction firms on its construction source list has been involved in the commission of fraud in the performance of a public contract, debarment should be initiated. The debarment process is set forth in greater detail in Section 6.1.

Prequalification and debarment are legally significant actions. The Town Attorney should be consulted before undertaking either one.

- (3) Advertisement & Posting. Notice of the ITB should be advertised and posted at least 10 days before the date set for opening bids. Form 1.2 may be used for this purpose. The notice should be published in any newspaper of general circulation, and may be posted in the Town office, the Town website, and the Department of General Services' central electronic procurement website. Publication is not mandatory for the Town, but generally speaking, it would be unwise not to publish. Bids may also be solicited directly from potential contractors.
- (4) Clarifications and Revisions. Potential bidders may submit questions or comments concerning the job specifications in writing. It is not *per se* improper to receive such comments or questions verbally. However, any response should be in the form of an addendum issued to all known potential bidders.
- (5) Bid Opening. Open and announce the bids publicly and keep the Contract file available for public inspection (except with respect to proprietary information, as described above). Generally speaking, the Contract should not be awarded at the bid opening.
- (6) Evaluation of the Bids. It is important to remember that the bids need not be evaluated on cost alone. To the extent set forth in the ITB, many other factors can be considered such as special qualifications of potential contractors, life-cycle costing, value analysis, inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.
 - (i) *Determination of Nonresponsibility.* In evaluating the bids, the Town must determine whether the apparent low bidder is "responsible." A determination of nonresponsibility is made when the lowest bidder is found not to be a responsible bidder for a particular contract. For example, a determination of nonresponsibility might be made where a

“Mom-and-Pop” home repair contractor submits the lowest bid for the construction of a multi-million-dollar water-treatment facility. For a smaller contract, the Mom-and-Pop contractor might be perfectly responsible.

This determination is not a penalty for improper conduct. Instead, the determination of nonresponsibility protects the Town from bidders who overestimate their capabilities and risk the waste of public funds.

Nonresponsible bidders are notified of the determination of nonresponsibility in writing by certified mail, return receipt requested. A determination of nonresponsibility may be appealed according to the administrative appeals procedure described in Section 6.3. The state policy regarding nonresponsibility is codified at Va. Code § 2.2-4359. The statute is useful for guidance, but it is a non-mandatory provision that does not apply to the Town. Nonresponsibility is another sensitive area in which the Town Attorney should be consulted.

- (ii) *Negotiation with Lowest Bidder.* Negotiations with the lowest responsible bidder are allowed when the bid exceeds the Town’s cost estimate for the procurement. The negotiations should be conducted in accordance with the following procedures:
 - (A) The Town Superintendent shall advise the lowest responsible bidder, in writing, that the low bid exceeds the Town’s cost estimate for the procurement. He may suggest a reduction in scope for the proposed purchase, and invite the lowest responsible bidder to amend its bid proposal.
 - (B) Repetitive informal discussions may be conducted with the lowest responsible bidder for purposes of obtaining a Contract within the Town’s cost estimate.
 - (C) The lowest responsible bidder may submit an addendum to its bid that includes the change in scope for the proposed purchase, the reduction in price, and the new Contract value.
 - (D) If the proposed addendum is acceptable to the Town, the Town should award a Contract within the Town’s cost estimate to the lowest responsible bidder based upon the amended bid.

- (E) If the Town and the lowest responsible bidder cannot negotiate a Contract within the Town’s cost estimate, all bids should be rejected.

(*Cf.* Va. Code, § 2.2-4318.)

- (7) Awarding the Contract. At this stage, the terms of the Contract should already have been set by the ITB. Accordingly, the Contract may be awarded with a simple letter informing the successful bidder that its bid has been accepted. Any details left open in the bid documents—for instance a start date—should be addressed in the letter. At times, it might be appropriate to draft and sign a more formal Contract document. Please contact the Town Attorney if you believe such a document is warranted.

5.2. *Competitive Negotiation (“CN”).*

- (a) When used. CN **must** be used to procure Professional Services. Competitive negotiation **can** be used for almost any type of other Contract, except for construction. (CN can be used to procure construction **only** if (i) the Town makes a written determination that CSB is not practicable or is not fiscally advantageous **and** (ii) the project is a design-build project, or is for construction of highways, or the drainage, dredging, excavation, grading, or similar work upon real property.)

When Competitive Sealed Bidding and Competitive Negotiation are both permissible, the nature of the items being procured should be examined for characteristics that are better suited to a particular procurement process. CN probably makes more sense than CSB when procuring expensive or specialized equipment. For instance, competitive negotiation would allow vendors to discuss differences between two types of computer networks.

- (b) Process. Competitive Negotiation generally consists of the following:
 - (1) Contract File. The Contract file includes all documents pertaining to the procurement. The file is open for public inspection and should be retained for at least five years. (Note that bidders can designate portions of their bids as proprietary under Va. Code § 2.2-4342 to shield those portions from public disclosure.) If questions arise as to whether the public should be allowed access to a particular bid, consult the Town Attorney.
 - (2) Request for Proposal (“RFP”). Unlike competitive sealed bidding, competitive negotiation calls for the Town to negotiate a Contract with the successful

offeror. Accordingly, the RFP is somewhat less critical than its counterpart, the ITB.

Still, the RFP should establish the Town's contractual expectations and indicate whether a numerical scoring system will be used to evaluate proposals. Forms 2.0 and 2.1 may be used for this purpose.

Where the RFP relates to professional services, it *shall not* request cost estimates for the services to be rendered. Other RFP's should request a price, and they should state that price will be factor in considering the RFP.

(3) Advertisement & Posting. Notice of the RFP should be advertised and posted at least 10 days before the deadline for receiving proposals. Form 2.2 may be used for this purpose. The notice should be published in any newspaper of general circulation, and may be posted in the Town office, the Town website, and the Department of General Services' central electronic procurement website. Publication is not mandatory for the Town,¹ but generally speaking, it would be unwise not to publish. Proposals may also be solicited directly from potential contractors.

(4) Evaluation of Offers. At this stage of the Competitive Negotiation, the law distinguishes between Professional Services and everything else.

(A) *Professional Services.* With respect to Professional Services, the Town should evaluate the proposals based solely on professional competence. Next, interviews are scheduled with at least the two offerors ranked highest. In these interviews, the parties can discuss professional qualifications, the project under consideration, the project cost, and the offerors can be asked to provide a non-binding estimate of the cost of their services. (Note: If one offeror is clearly superior to all others, the Town can elect in writing to bypass the interviews and start Contract negotiations with that one.)

After the discussions, the Town again ranks the offerors, and enters into Contract negotiations with the highest-ranking offeror. If a Contract can be negotiated with that offeror at a fair and reasonable price, then the contract is awarded. Otherwise, negotiations are

¹ Technically, under Va. Code §§ 2.2-4302.2(A)(2) and 2.2-4343(A)(12), publication is mandatory for Professional-Service contracts expected to exceed ~~\$60,000~~ \$80,000. (Amended September 1, 2021)

terminated with the first offeror, and the Town moves on to the next-ranked offeror, until a Contract can be awarded.

- (B) *Goods, non-professional services, and construction.* For goods, construction, and non-professional services, the proposals are ranked by price and any other specifications set forth in the RFP. Interviews are conducted with at least the two offerors ranked highest. In these interviews, the Town should obtain binding prices. After the interviews are complete, the Town should award the contract to offeror with the best proposal.

Again, if one offeror is clearly more qualified than the others—and the Town so finds in writing—the Town can simply interview that single offeror.

- (5) Awarding the Contract. In Competitive Negotiation, the award of a Contract is not quite as simple as in Competitive Sealed Bidding. The Contract, for example, might include parts of the discussions with the offeror. At this stage, the Town Attorney can draft a simple agreement or review any contract submitted by the offeror.

5.3. *Auctions.*

The Town Superintendent may authorize the purchase of goods, products, or commodities from a public auction when doing so is in the best interests of the Town. In addition, goods and non-professional services other than construction may be purchased by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates may not be made by online public auction or reverse auction.

5.4 *Job-order Contracting.*

- (a) *When used—Construction.* The Town may purchase certain types of construction by establishing a book of unit prices and then selecting a Contractor to perform work as needed using the prices, quantities, and specifications in the book. A job-order contract may include multiple jobs if the jobs require similar experience and expertise and are clearly identified in the solicitation.

- (1) *Restrictions.* Job-order contracting is subject to the following restrictions:

- (i) *Contract Term.* A job-order contract must be limited to a term of one year or when the sum of all jobs performed in a single one-year term

reaches \$5 million, whichever occurs first. The Town may renew a job-order contract for up to two additional one-year terms. Any unused space in the \$5 million cap cannot be carried forward to any subsequent term.

- (ii) *Fee limits.* Individual job orders shall not exceed \$500,000. An order may not be split with the intent of keeping a job order until the maximum dollar amount.
- (iii) *Process.* A job-order contract may be awarded through either competitive sealed bidding or competitive negotiation. Those procurement processes are set forth in Sections 5.1(b) and 5.2(b).

(b) *When used—Services.* Services may also be procured through job-order contracting, but if the services are Professional, the Contract must be expected to cost \$60,000 or less.

- (1) *Protocol.* Job-contract procurement for services shall be undertaken using Competitive Negotiation described in Section 5.2 above.
- (2) *Pricing.* Prices for individual services or hourly rates shall be made part of the Contract.
- (3) *Term.* Such Contracts may extend for two years, and they may provide for two more one-year renewals by the Town. In no event, however, shall more than \$60,000 be paid under any such contract for Professional Services.

(*Cf.* Va. Code, § 2.2-4343(A)(12).)

Article 6

Administrative Remedies

6.1. Debarment.²

- (a) *When used.* The Town Superintendent may, in the public interest, debar a prospective contractor from participating in the Town’s competitive procurement. The existence of grounds for debarment, however, does not *require* debarment. The

² Recall that debarment and prequalification are similar in some ways. Prequalification is not set out in this manual, because the state prequalification statute is a mandatory provision. Debarment procedures may be local, and the Town has created its own procedures here.

seriousness of the grounds and any mitigating factors should be considered in making any debarment decision.

- (b) Grounds. The Town Superintendent may debar a prospective contractor for any of the following grounds:
- (1) Conviction of or entry of a civil judgment for
 - (i) Fraud or any criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract.
 - (ii) Violating federal or state antitrust statutes relating to the submission of offers.
 - (iii) Embezzlement, theft, forgery, bribery, falsification, destruction of records, making false statements, or receiving stolen property.
 - (iv) Any other offense that reflects a lack of business integrity or business honesty and directly affects the responsibility of a contractor or subcontractor.
 - (2) Breach of the terms of a government contract or subcontract so serious as to justify debarment, including:
 - (i) Willfully failing to perform in accordance with the terms of a contract.
 - (ii) A history of failing to perform or of performing unsatisfactorily under a contract.
 - (3) Any other cause of so serious or compelling that it affects the present responsibility of a contractor or subcontractor.
- (c) Process. The debarment process is governed by the following procedures:
- (1) Notice of consideration. The prospective Contractor shall be advised that debarment is being considered. The notice should be by certified mail, return receipt requested. The notice shall include the reasons for the proposed debarment.
 - (2) Challenge. Within 10 days of the date of the notice, the prospective Contractor may submit information challenging the proposed debarment.
 - (3) Decision. The Town Superintendent shall render a written decision within 15 days of receiving the prospective Contractor's rebuttal information. Any debarment should be for a time period that reflects the seriousness of the

cause.

- (4) Appeal. The Town Superintendent's decision is final unless the prospective Contractor files a timely Letter of Appeal pursuant to the administrative appeals procedure described in Section 6.3.

(Cf. Va. Code, § 2.2-4321.)

6.2. Contractual Claims Process.

All contractual claims for money or other relief shall be adjudicated using the following procedure:

- (a) Notice. The Contractor shall give written notice of his or her intention to file a contractual claim to the Town Superintendent at the time of the event or the beginning of the work upon which the claim is based.
- (b) Claim. Contractual claims must be submitted in writing to the Town Superintendent no later than 60 days after final payment.
- (c) Decision. The Town Superintendent or an authorized designee shall make a written decision addressing the claim within 90 days of submission.
- (d) Appeal. The decision of the Town Superintendent will be final unless the contractor files a timely Letter of Appeal pursuant to the administrative appeals procedure described in Section 6.3.

6.3 Administrative Appeals Procedure.

- (a) Appealable decisions. Any Contractor may appeal a decision addressing a Contract claim. In addition, any bidder or offeror, or person debarred or denied prequalification, may appeal
 - (i) An award or a decision to award a contract.
 - (ii) A decision refusing to allow the withdrawal of Appellant's bid.
 - (iii) A denial of Appellant's prequalification.
 - (iv) The Appellant's debarment.
 - (v) A determination of the Appellant's nonresponsibility.
- (b) Appeals process. All administrative appeals shall be adjudicated using the following procedure:
 - (1) Institution. A person entitled to appeal a decision listed in paragraph (a) by

filing a Letter of Appeal with the Town Superintendent within 10 days of the date of the decision being challenged. No appeal will be allowed if the Letter of Appeal is untimely.

- (2) Sufficiency of Letter of Appeal. The Letter of Appeal shall specify the basis for the appeal, the relief sought, and whether a hearing is requested.
 - (3) Decision Without Hearing. If a hearing is not expressly requested, the Town Superintendent shall render a written decision within 10 days of receiving the Letter of Appeal.
 - (4) Hearing & Decision. If a hearing is requested, it shall be held within 30 days of receipt of the Letter of Appeal. The hearing will be conducted by a disinterested arbiter appointed by the Town Superintendent. The arbiter should be an attorney-at-law. Each party will have the opportunity to present pertinent information during the hearing. The hearing shall be an informal administrative proceeding, rather than a judicial-like trial, but it is nevertheless the appellant's burden to produce evidence sufficient to show that the Superintendent's decision was erroneous. The hearing shall be recorded and should be transcribed. A final decision with findings of fact will be issued within 21 days of the hearing.
- (c) Judicial Review. For matters which are appealable under paragraph (a), the process set out in paragraph (b) is a mandatory pre-requisite to the filing of any judicial action against the Town. After the completion of such process, however, such a judicial action may be filed within 21 days of the issuance of the arbiter's decision and not afterward. Such arbiter's decision shall be presumed correct and shall not be set aside unless (i) it reflects a material legal error or (ii) it is factually unsupported by the record of the arbiter's hearing. The arbiter is entitled to assess the credibility of all witnesses and such assessments shall not be attacked judicially.

Appendix



FEDERAL FUNDS POLICY

I. Introduction

This manual sets forth the policies and procedures used by the Town of Bridgewater, Virginia to administer federal funds. The manual contains the internal controls and grant management standards used by the Town to ensure that all federal funds are lawfully expended. Employees are expected to review this manual to gain familiarity and understanding of our rules and practices.

For the most part, our federal funds come to us through VDOT projects, but they can come in many other forms. Whenever we are receiving governmental assistance, please discuss this policy with the Treasurer.

II. Financial Management System

The Town maintains—and will continue to maintain—a proper financial management system (i) to receive direct and state-administered grants and (ii) to expend funds associated with a grant award. Certain fiscal controls and procedures must be in place to ensure that all financial management system requirements are met. Failure to meet a requirement may result in return of funds or termination of the award.

III. Financial Management Standards

The standards for financial management systems are found at [2 C.F.R. § 200.302](#). The required standards include

Identification

The Town must identify, in its accounts, all federal awards received and expended and the federal programs under which they were received. Federal program and award identification must include, as applicable, the [CFDA](#) title and number, federal award identification number and year, name of the federal agency, and, if applicable, name of the pass-through entity.

Financial Reporting



Grant says...

Hyperlinks bring you more detail than I can set out here.

Appendix

Accurate, current, and complete disclosure of the financial results of each federal award or programs must be made in accordance with the financial reporting requirements set forth in the Government Accounting Standards Board on the Schedule of Federal Awards, and in accordance with Generally Accepted Accounting Principles.



Grant says...

We don't expect you to know all of these standards. Rely on the Treasurer who will

Accounting Records

The Town must maintain records which adequately identify the source and application of funds provided for federally assisted activities. These records must contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest, and be supported by source documentation.

Internal Controls

Effective control and accountability must be maintained for all funds, real and personal property, and other assets. The Town must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

"Internal controls" are tools to help program and financial managers achieve results and safeguard the integrity of their program. Internal controls should be designed to provide reasonable assurance that the following objectives are achieved:

- Effectiveness and efficiency of operations;
- Adequate safeguarding of property;
- Assurance that property and money are spent in accordance with grant program and to further the selected objectives, and
- Compliance with applicable laws and regulations.

Budget Control

Actual expenditures or outlays must be compared with budgeted amounts for each federal award.

Cash Management

The Town must maintain written procedures to implement the cash management requirements found in [2 CFR § 200.302](#) and [2 CFR § 200.305](#).

Allowable Costs

Expenditures must be aligned with items in the project budget and appropriations in the Town budget.

Appendix

Any changes or variations from the approved project budget and grant application need prior approval from the awarding authority.

When considering the allowability of a particular cost, the Manager or one of the Assistant Managers will consult with the Treasurer and review the proposed cost to determine whether it is an allowable use of federal grant funds before obligating and spending those funds on the proposed good or service.

Allowability Determinations

All costs supported by federal funds must meet the standards outlined in [2 CFR Part 200, Subpart E](#).

Remember that expenditures must comply with Subpart E **and with** Town policies **and with** the terms of the grant and grant application.



Grant says...

Subpart E sets out some general rules

but also has some

very specific rules for

In just about every case, you should consult Subpart E

about any cost in question, but generally, here are the four key questions:

1. Is the proposed cost reasonable?
2. Is the proposed cost consistent with project budget, grant, and grant application?
3. Is it necessary for the project?
4. Are there specific federal limitations on this type of expenditure?

IV. Overview of the Financial Management/Accounting System

For all projects governed by this Manual

- All accounts payable and expenditures will be tracked by the Treasurer in the Town's accounting system, MCSJ, and by secondary excel spreadsheets.
- Project budgets—in Excel spreadsheets—will be developed by the P9 employee in charge of the project and maintained in the project folder within the [LogicalDoc](#) records retention system. The P9 in charge of the project should review the estimates in the budget at least monthly, using expenditure data generated by the Treasurer.
- Purchase orders and related procurement documents are likewise stored within the LogicalDoc system.
- Federal funds are tracked in the MCSJ system by general ledger number.
- The Treasurer is responsible for completing the [SEFA](#) to the specifications of the Auditor. The Town Manager will review it.

Appendix

Town Accounting Records

The accounts of the Town and its discretely presented component units (the Town, Industrial Development Authority, and Sipe Center Live³) are organized on the basis of funds, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts, which comprise assets, liabilities, fund equities, revenues and expenditures, or expenses, as appropriate. The various funds are summarized by governmental or enterprise activities in the general-purpose financial statements, while component units are reported in separate documents.

Federal Cash Management Policy/Procedures

The Town will comply with applicable procedures for payment minimizing the time between the transfer of funds and disbursement by the Town, in accordance with the Cash Management Improvement Act at [31 CFR Part 205](#). Generally, the Town receives payment on a reimbursement basis, and we prefer receiving reimbursing funds after the pertinent expense.



*Grant says...
Avoid drawing
federal money that
won't be spent for a
while.*

However, if the Town receives an advance in federal grant funds, after the adoption of this Manual, the Town will remit interest earned on the advanced payment quarterly to the federal agency. The Town may retain interest amounts up to \$500 per year for administrative expenses. [2 CFR § 200.305\(b\)\(9\)](#).

Payment Methods

Reimbursements

The Town will initially charge federal grant expenditures to nonfederal funds, should they exist for the particular project and the particular expenditure.

The Town will request reimbursement for actual expenditures incurred under the federal grants. All reimbursements are based on actual disbursements, not on obligations.

Consistent with state and federal requirements, the Town will maintain source documentation supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make such documentation available for review upon request.

Reimbursements of actual expenditures do not require interest calculations.

Advances



*Grant says...
Unless absolutely
necessary don't draw
advances. We'll pay
first and get*

³ Sipe Center Live is not an instrumentality of the Town of Bridgewater.

Appendix

To the extent the Town receives advance payments of federal grant funds; the Town will strive to expend the federal funds on allowable expenditures as expeditiously as possible. Specifically, the Town attempts to expend all drawn downs of federal funds within **72 hours** of receipt.

The Town will hold federal advance payments in interest-bearing accounts, unless an allowable exception applies. The Town will begin to calculate interest earned on cash balances once funds are deposited into the Town's account.

Interest will be calculated quarterly. Total federal grant cash balances will be calculated on cash balances per grant and applying the Town's actual interest rate. Within 30 days of the end of the quarter, the Town will remit interest earned on federal grants. The Town may retain up to \$500 of interest earned per year.

Timely Obligation of Funds

When Obligations are Made

Obligations are orders placed for property and services that require payment by the Town during the same or a future period.

The following table illustrates when funds are determined to be obligated under federal regulations:

| If the obligation is for: | The obligation is made: |
|--|---|
| Acquisition of property | On the date which the Town makes a binding written commitment to acquire the property |
| Personal services by an employee of the Town | When the services are performed |
| Personal services by a contractor who is not an employee of the Town | On the date which the Town makes a binding written commitment to obtain the services |
| Public utility services | When the Town receives the services |
| Rental of property | When the Town uses the property |
| Travel | When the travel is taken |

Appendix

Period of Performance of Federal Funds

All obligations must occur on or between the beginning and ending dates of the grant project, which will be designated in the Grant Award Notice.

The Town must close-out all obligations incurred within 120 days after end of the funding period, unless an extension is authorized. [2 C.F.R. § 200.344](#).

Any funds not obligated within the period of availability or liquidated within the appropriate timeframe are said to lapse and must be returned to the awarding agency. Consequently, the Town closely monitors grant spending throughout the grant cycle.

Procurement System

Generally, the Town's Procurement Policy, found [here](#), controls purchases of goods and services in federal projects. However, where more restrictive federal standards apply, they supersede the Procurement Policy.

At minimum, check these federal regulations before procuring goods or services in a federal project: [2 C.F.R. §§ 200.318, 200.319, 200.320](#),⁴ [200.321, 200.322, 200.323, 200.324](#), and [200.325](#).

Contracts for small purchases and micro purchases should contain the language set out in the addendum below. (*September 1, 2021*)

V. Conflicts of Interest in Federal Projects

No employee, officer, or agent ("Staff Member") may participate in the selection, award, or



Grant says...

Here are some take-aways from the federal regulations, but always check the text!

200.318: Time and materials contracts can only be used in special circumstances and **there must be a cap!**

200.319: Specifying **particular brands** is not allowed.

200.320: Despite the other federal regulations, we are generally safe following our own **small purchase and micro-purchase procedures** (but document everything).

200.321: We must take steps to assure that **minority and women's businesses** are used when possible (even in small purchases).

200.322: We must include a **preference for goods produced or manufactured in the United States**.

200.323: In appropriate cases, we must procure goods containing **specified amounts of reclaimed materials**.

200.324: For large contracts, we must perform our own **cost analysis**.

200.325: Upon request of the TIC or the

⁴ Our Procurement Policy's thresholds for micro-purchases and small purchases are adopted for the purposes of § 200.320(a)(1)(iii) and (a)(2)(ii).

Appendix

administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the Staff Member, any member of his or her immediate family, his or her partner, or an organization which employs (or is about to employ) any of them, has a financial or other interest in (or a tangible personal benefit from) a firm considered for a contract.

The officers, employees, and agents of the Town may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Violation of any of the foregoing provisions of this Part V shall subject a Town employee, officer, or agent to disciplinary action under the Town's Personnel Policy. *(September 1, 2021; 2 CFR § 200.318(c))*

The Town must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with the Federal awarding agency's policy. [2 CFR 200.113](#) further requires that, the Town disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Should the Town ever have more than \$10 million in active grants, cooperative agreements, and procurement contracts involving federal funds, the provisions of [Part 200, Appendix II](#) apply.

The Town's procedures must avoid acquisition of unnecessary or duplicative items.

Appendix

FEDERAL ADDENDUM

SMALL PURCHASES

This addendum applies to the attached contract dated _____.

1. If this is a “time and materials contract,” i.e., a contract in which the final cost is the sum of the contractor’s actual expenses and hourly rates for labor, the Town must initial below to signify its finding that no other type of contract is suitable.

TOWN INITIALS: _____.

2. With respect to the subject matter of this contract, I have conducted a reasonable search for qualified small, minority-owned, and women’s businesses, and I have solicited quotations from any found. Further, I have considered whether dividing the contract into smaller pieces or changing the delivery schedule in reasonable ways could encourage participation by such businesses.

Should the contractor award any sub-contracts, it shall take all necessary steps listed in [2 CFR § 200.321](#) to encourage participation by such businesses.

3. The ceiling price for this contract is \$_____. In no event will the Town be liable to the contractor for more than this amount.

4. If a brand name is specified in the accompanying contract, a product certified as equal by the Town (in writing) may be used in its place.

5. The contractor shall fully comply with the requirements stipulated in Subpart C of [2 CFR 180.300](#), entitled “Responsibilities of Participants Regarding Doing Business with Other Persons.” It is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR 180.300, entitled “Covered Transactions,” includes a term or condition requiring compliance with Subpart C. The contractor also is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transaction. The contractor acknowledges that failing to disclose the information required under 2 CFR 180.300 may result in the termination of the award, or pursuance of other available remedies, including suspension and debarment. Contractors may access the excluded parties list via the System for Award Management at <https://sam.gov>.

Town Initials

Contractor Initials

