

## Chapter 26

### PROCUREMENT POLICY

**[HISTORY: Adopted by the Town Council of the Town of Grottoes 8-19-1982. Amendments noted where applicable.]**

#### ARTICLE I

##### Policy Provisions

**§ 26-1. Statutory authority.** [Amended 7-28-2008]

By act of the General Assembly of Virginia as provided in Title 2.2, Chapter 43, Virginia Public Procurement Act,<sup>1</sup>as amended, the Town Council of Grottoes, Virginia, is authorized and directed to adopt, by ordinance, certain policies and procedures pertaining to governmental procurement from nongovernmental sources to the end that the Town of Grottoes obtains high quality goods and services at reasonable cost and that all public procurement procedures be conducted in a fair and impartial manner. Therefore, be it ordained by the Council of the Town of Grottoes, Virginia, for the purposes herein set out, that the following be adopted as the Grottoes Public Procurement Ordinance.

**§ 26-2. Purpose.**

The purpose of this chapter is to provide for the fair and equitable treatment of all persons involved in public purchasing by this Town, to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

**§ 26-3. Applicability.**

This chapter applies to contracts for the procurement of goods, services, insurance and construction entered into by this Town involving every expenditure for public purchasing irrespective of its source. Where any 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, the Town may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the governing body that acceptance of the grant or contact 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.

**§ 26-4. Effective date; applicability.**

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<sup>1</sup>. Editor's Note: See § 2.2-4300 et seq., Code of Virginia.

This chapter shall become effective January 1, 1983. The provisions of this chapter shall not apply to those contracts entered into prior to January 1, 1983, which shall continue to be governed by the procurement policies and regulations of the Town in effect at the time contracts were executed.

**§ 26-5. Definitions.**

A. Any terms defined in §§ 11-37<sup>2</sup> and 11-73<sup>3</sup> of the Code of Virginia which are used in this chapter shall have the meanings provided in said statutory sections. <sup>4</sup> [Added 7-8-1996]

B. Defined terms.

**BRAND NAME OR EQUAL SPECIFICATION** — A specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance and other salient characteristics needed to meet Town requirements and which provides for the submission of equivalent products.

**BRAND NAME SPECIFICATION** — A specification limited to one or more items by manufacturers' names or catalog numbers.

**BUSINESS** — Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture or any other private legal entity.

**COMPETITIVE NEGOTIATION** — A method of contractor selection that includes the following elements: [Added 7-28-2008]

- (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 and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.
- (2) Public notice of the request for proposal at least 10 days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites. Effective July 1, 2002, publishing by state agencies, departments and institutions on the public Internet procurement website designated by the Department of General

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<sup>2</sup>. Editor's Note: Section 11-37 of the Code of Virginia 1950 was repealed Acts 2001, c. 844. See now § 2.2-4301 of the Code of Virginia as amended 7-1-2008.

<sup>3</sup>. Editor's Note: Section 11-73 of the Code of Virginia 1950 was repealed Acts 2001, c. 844. See now § 2.2-4368 of the Code of Virginia.

<sup>4</sup>. Editor's Note: The following definitions, which were formerly part of this chapter, were deleted 7-8-1996: "construction," "goods," "informality," "public body," "responsible bidder or offeror," "responsive bidder" and "services."

Services shall be required. In addition, proposals may be solicited directly from potential contractors.

- (3) Procurement of professional services.
  - (a) 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. 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. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subsection, 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, 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. 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.
  - (b) 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.
  - (c) A contract for architectural or professional engineering services relating to construction projects may be negotiated by a public body for multiple projects, provided the projects require similar experience and expertise, the nature of the projects is clearly identified in the request for proposal, and the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this subsection, whichever occurs first. For state public bodies, such contract, except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Transportation

Commissioner, may be renewable for four additional one-year terms at the option of the public body. For local public bodies, such contract may be renewable for two additional one-year terms at the option of the public body. Under such contract, the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed; except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the sum of all projects performed in one contract term shall not exceed \$500,000 or, in the case of a state agency, as defined in § 2.2-4347, Code of Virginia, such greater amount as may be determined by the Director of the Department of General Services, not to exceed \$1,000,000, except that in any locality or any authority or sanitation district with a population in excess of 80,000, the sum of all such projects shall not exceed \$5,000,000; and except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the project fee of any single project shall not exceed \$100,000 or, in the case of a state agency, such greater amount as may be determined by the Director of the Department of General Services, not to exceed \$200,000, except that in any locality or any authority or sanitation district with a population in excess of 80,000, such fee shall not exceed \$1,000,000. Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror, provided the request for proposal so states and the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. For contracts for environmental location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the sum of all projects in one contract term shall not exceed \$2,000,000, and such contract may be renewable for two additional one-year terms at the option of the Commissioner.

- (d) Multiphase professional services contracts satisfactory and advantageous to the Department of Transportation for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.
- (e) Multiphase professional services contracts satisfactory and advantageous to a local public body for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when 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 the procurement of any such contract, the local public body shall state the anticipated intended total scope of the project and determine, in writing, that the nature of the work is such that the best interests of such public body require awarding the contract.

- (4) Procurement of other than professional services. 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. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole 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 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.

**CONTRACT** — All types of Town agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.

**CONTRACT MODIFICATION** — Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties of the contract.

**EMPLOYEE** — An individual drawing a salary or wages from the Town, whether elected or not; any noncompensated individual performing personal services for the Town or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of this Town and noncompensated individual serving as an elected official of the Town.

**GOVERNING BODY** — The Town Council.

**INSURANCE** — A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.

**INVITATION FOR BIDS** — All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any "invitation for bids."

**PERSON** — Any business, individual, union, committee, club, other organization, or group of individuals.

**SMALL BUSINESS** — A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

**SPECIFICATION** — Any description of the physical or functional characteristics, or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a good, service or construction item for delivery.

**TOWN** — The Town of Grottoes.

**TOWN COUNCIL** — The Council of the Town of Grottoes.

**TOWN PURCHASING AGENT or AGENT** — The purchasing agent of the Town of Grottoes.

**§ 26-6. Competitive sealed bidding.**

- A. Conditions for use. 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. Competitive bidding on state-aid projects. No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of \$100,000 or more, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of procedure for the advertising for bids and letting of the contract shall conform, mutatis mutandis, to this chapter. No person or firm shall be eligible to bid on any such contract nor to have the same awarded to him or her or it who has been engaged as architect or engineer for the same project.
- C. Employment discrimination by contractor prohibited. Every contract of over \$10,000 shall include the provisions in Subsection C(1) and (2) below:
  - (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 or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    - (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 Subsection C(1)(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.

D. Prequalification of bidders.

- (1) The Town Council or its purchasing agent is authorized to prequalify bidders prior to any solicitation of bids, whether for goods, services, insurance or construction, by requiring prospective bidders to submit such information as the Town Council or its purchasing agent shall deem appropriate, including samples, financial reports and references; provided, however, that opportunity to prequalify shall be given to any prospective bidder who has not been suspended or debarred under this chapter.
- (2) The Town Council or its purchasing agent may refuse to prequalify a prospective contractor, provided that written reasons for refusing to prequalify are made a part of the record in each case. The decision of the Town Council or its purchasing agent shall be final.
- (3) In considering any request for prequalification, the Town Council or its purchasing agent shall determine whether there is reason to believe that the bidder possesses the management, financial soundness and history of performance which indicate apparent ability to successfully complete the plans and specifications of the invitations for bid. The Town Council or its purchasing agent may employ standard forms designed to elicit necessary information or may design other forms for that purpose.
- (4) Prequalification of a bidder shall not constitute a conclusive determination that the bidder is responsible, and such bidder may be rejected as not responsible on the basis of subsequently discovered information.
- (5) Failure of a bidder to prequalify with respect to a given procurement shall not bar the bidder from seeking prequalification as to future procurements, or from bidding on procurements which do not require prequalification.

E. Notice of invitation to bid.

- (1) Notice inviting bids shall be published once in at least one official newspaper in Rockingham County or the City of Harrisonburg and at least 10 days preceding the last day set for the receipt of proposals. The newspaper notice required herein shall include a general description of the articles to be purchased or sold and shall state where bid blanks and specifications may be secured and the time and place for opening bids.
- (2) The Town Council or its purchasing agent may also solicit sealed bids from all responsible prospective suppliers or contractors.

F. Use of brand names. Unless otherwise provided in the invitation to bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer names; it conveys the general style, type, character and quality of the article desired, and any article which 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.

- G. Comments on specifications. For complex equipment, supplies or repair, prebid conferences with prospective bidders are desirable after draft specifications have been prepared. Such conferences help to detect unclear provisions and tend to widen competition by removing unnecessarily restrictive language. Conferences on purchasing bids will be called by the Town Council or its purchasing agent and attended by an appropriate committee member and, if necessary, the Town Attorney.
- H. Bid bonds on construction contracts.
  - (1) Except in cases of emergency, all bids or proposals for construction contracts in excess of \$25,000 shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guaranty that if the contract is awarded to such bidder that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 5% of the amount bid.
  - (2) No forfeiture under a bid bond shall exceed the lesser of the difference between the bid for which the bond was written and the next low bid, or the face amount of the bid bond.
- I. Bonds for other than construction contracts.
  - (1) At the discretion of the Town Council or its purchasing agent, bidders may be required to submit with their bid a bid bond or a certified check, in an amount to be determined by the Town Council or its purchasing agent and specified in the invitation to bid, which shall be forfeited to the Town as liquidated damages upon the bidder's failure to furnish any required performance or payment bonds in connection with a contract awarded to him or her.
  - (2) The Town Council or its purchasing agent may require successful bidders to furnish a performance bond and/or a payment bond at the expense of the successful bidder, in amounts to be determined by the Town Council or its purchasing agent and specified in the invitation to bid, to insure the satisfactory completions of the work for which a contract or purchase order is awarded.
- J. Rejection of bids. An invitation for bids, a request for proposals or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part when the Town Council determines that it is in the best interest of the Town to do so. The reasons therefor shall be made a part of the record in the matter.
- K. Bid openings. Bids shall be opened in public at the time and place stated in the public notices. A tabulation on all bids received shall be posted for public inspection.
- L. Withdrawal of bid due to error.
  - (1) A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided that 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 materials 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.

- (2) The procedure for bid withdrawal must be stated in the advertisement for bids.
  - (3) The Town Council or its purchasing agent shall select one of the following procedures for withdrawal of bids:
    - (a) The bidder shall give notice, in writing, of his claim of right to withdraw his or her bid within two business days after the conclusion of the bid opening procedure.
    - (b) The bidder shall submit to the governing body or designated official his or her original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed by the Town for the submission of bids. Thereafter, 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 or her bid. The contract shall not be awarded by the Town until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.
  - (4) Procedures for the withdrawal of bids for other than construction contracts may be established by the Town Council or its purchasing agent.
  - (5) No bid may be withdrawn under this section when the result would be the awarding of the contract to, or another bid of, the same bidder or another bidder in which the ownership of the withdrawing bidder is more than 5%.
  - (6) If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
  - (7) 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.
  - (8) If the governing body denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder, in writing, stating the reasons for its decision.
- M. Bid evaluation. Evaluation of bids shall be based upon the requirements set forth in the invitation, 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.

N. Bid award.

- (1) Bids shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided in the invitation to bid, awards may be made to more than one bidder.
- (2) Unless canceled or rejected, a responsible 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 Town may negotiate with the apparent low bidder to obtain a contract price within available funds.
- (3) When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the Town Clerk and filed with the other papers relating to the transaction.

O. Tie bids. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder.

P. Retainage on construction contracts. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% of the earned sum when payment is due, with not more than 5% being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

Q. Performance and payment bonds.

- (1) Upon the award of any public construction contract exceeding \$25,000 awarded to any prime contractor, such contractor shall furnish to the Town the following bonds:
  - (a) 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.
  - (b) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded or to any subcontractors in the prosecution of the work provided for in such contract and shall be conditioned upon the prompt payment for all such materials furnished or labor supplied or performed in the prosecution 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.

- (2) Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.
- (3) Bonds shall be made payable to the Town.
- (4) Each of the bonds shall be filed with the Town which awarded the contract or a designated office or official thereof.
- (5) Nothing in this section shall preclude the Town Council or its purchasing agent from requiring payment or performance bonds for construction contracts below \$25,000.
- (6) Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor, conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

R. Action on performance bond. No action against the surety on a performance bonds shall be brought unless within one year after completion of the contract, including the expiration of all warranties and guaranties, or the discovery of the defect or breach of warranty, if the action is for such.

S. Actions on payment bonds.

- (1) Subject to the provisions of Subsections S(2) hereof, any claimant who has performed labor or furnished materials in accordance with the contract for which a payment bond has been given, and who has not been paid in full therefor before the expiration of 90 days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he or she claims payment, may bring an action on such payment bond to recover any amount due him or her for such labor or material and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.
- (2) Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under § 26-6Q, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he or she has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he or she claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under § 26-6Q, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice

to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his or her office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performance or materials furnished shall not be subject to the time limitations stated in this subsection.

- (3) Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

T. Alternative forms of security.

- (1) In lieu of a bid, payment or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.
- (2) 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 bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Town equivalent to the corporate surety bond.

**§ 26-7. Sole source procurement.**

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.

**§ 26-8. Emergency purchases.**

- A. 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 shall be included in the contract file.
- B. An emergency shall be deemed to exist when a breakdown in machinery or equipment and/or a threatened termination of essential services or a dangerous condition develops or when any unforeseen circumstances arise causing curtailment or diminution of an essential service or where materials or services are needed to prevent losses of life or property.

**§ 26-9. Small purchases permitted.** [Amended 7-8-1996; 7-28-2008]

Any contract not exceeding \$50,000 may be made in accordance with small purchase procedures as stated below; provided, however, that contract requirements shall not be artificially divided so as to constitute a small purchase under this section.

**§ 26-9.1. Small purchase procedures.** [Added 7-28-2008]

- A. Insofar as it is practical, no fewer than three businesses shall be solicited to submit quotations. The date and amount of each quotation shall be recorded and maintained as a public record.
- B. Award shall be made to one of the businesses from which a quote was submitted, insofar as the quotes meet the requirements stated in the specifications issued by the agent.

**§ 26-10. Exempt purchases.**

The following transactions are hereby exempt from the provisions of this chapter.

- A. Purchases from the State Penitentiary or state contracts from the State Purchasing Department warehouse.
- B. Legal services. [Amended 7-8-1996]
- C. Purchases for special police work when the Chief of Police certifies to the Town Council or Chairman of the Police Committee that items are needed for undercover police operations.

**§ 26-11. Surplus property.**

- A. All using agencies shall submit to the Town Council or its purchasing agent at such time and in such form as he or she shall prescribe reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out or scrapped.
- B. The Town Council or its purchasing agent shall have the authority to transfer surplus stock to other using agencies.
- C. The Town Council or its purchasing agent shall have the authority to sell all supplies which have been unsuitable for public use or to exchange the same for or trade in the same on new supplies.

ARTICLE II  
**Ethics**

**§ 26-12. Purpose.** [Amended 7-8-1996]

The provisions of this article supplement, but do not supersede, other provisions of law, including but not limited to the Virginia Conflict of Interests Act (§ 2.1-639.1 et seq.<sup>5</sup>), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions of this chapter apply notwithstanding the fact

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<sup>5</sup>. Editor's Note: Section 2.1-639.1 was repealed Acts 2001, c. 844. See now § 2.2-3100 et seq. of the Code of Virginia, as amended 7-1-2008.

that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.<sup>6</sup>

**§ 26-13. Participation by public employees in transactions.**

No public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the governing body when the employee knows that:

- A. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
- B. The employee, the employee's partner or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like or is employed in a capacity involving personal and substantial participation in the procurement transaction or owns or controls an interest of more than 5%;
- C. The employee, the employee's partner or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- D. The employee, the employee's partner or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment with a bidder, offeror or contractor.

**§ 26-14. Gifts.**

- 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 or money, service or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The Town may recover the value of anything conveyed in violation of this section.
- 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.

**§ 26-15. Disclosure of subsequent employment.**

No public employee or former public employee having official responsibility for procurement transaction 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

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<sup>6</sup> Editor's Note: The definitions of "immediate family," "official responsibility," "pecuniary interest arising from the procurement," "procurement transaction" and "public employee," which immediately followed this section, were deleted 7-8-1996.

the Town, unless the employee or former employee provides written notification to the governing body/designated official, or both, prior to commencement of employment by that bidder, offeror or contractor.

**§ 26-16. Prohibited acts.**

- A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
- B. No subcontractor or supplier shall make or offer to make kickbacks as described in this section.
- C. No person shall demand or receive any payment, loan, subscription, advance, 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 Town and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

**§ 26-17. Prohibited purchases.**

Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the Town shall be sold by or purchased from any person employed as an independent contractor by the Town to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a pecuniary interest.

**§ 26-18. Violations and penalties.**

Willful violation of any provision of this chapter shall constitute a Class 1 misdemeanor with penalties as provided in § 1-7, General penalty, of Chapter 1, General Provisions. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

ARTICLE III  
**Procurement of Energy Services**  
[Added 4-11-2002]

**§ 26-19. Findings.**

Competitive sealed bidding and competitive negotiation for the procurement of energy services are not fiscally advantageous to the public because the procurement process for energy services must be flexible enough to respond to quickly changing market

conditions in which energy prices can fluctuate considerably on a daily or even hourly basis.

**§ 26-20. Procurement process approved.**

The aggregation and joint procurement of the energy services pursuant to the Joint Powers Agreement is hereby approved.

**§ 26-21. Steering committee services approved.**

The provision of steering committee services pursuant to the Joint Powers Agreement is hereby approved.

**§ 26-22. Agreement, terms and conditions approved.**

The Joint Powers Agreement and the performance of the terms and conditions thereof on behalf of the Town of Grottoes are hereby authorized and approved.

**§ 26-23. Delivery of agreement.** [Amended 2-8-2010]

The Town Manager is hereby authorized and directed to execute and deliver the Joint Powers Agreement on behalf of the Town of Grottoes in substantially the form presented to this meeting.

**§ 26-24. Payment obligations.**

The payment obligations of the Town of Grottoes pursuant to the provisions hereof and the Joint Powers Agreement shall be subject to annual appropriation of requisite funds therefor by the Town Council.