

ORDINANCE COMMITTEE

A G E N D A

TOWN OF CHINCOTEAGUE

September 12, 2013 - 5:00 P.M. – Council Chambers - Town Hall

CALL TO ORDER

ROLL CALL

OPEN FORUM / PUBLIC PARTICIPATION

AGENDA ADOPTION:

1. Discuss Possible Revision to the Drainage Fill Ordinance
2. Discuss Possible Revision to Chapter 2, Article V, Finance
3. Committee Member Comments

ADJOURN:



MEMORANDUM
Town of Chincoteague, Inc.

Date: September 9, 2013
To: Ordinance Committee
Through: Robert Ritter, Town Manager
From: William Neville, Planning Director
Subject: Ordinance Control of Fill/Drainage/Flooding Issues

To improve the management of shallow flooding and drainage issues on Chincoteague Island, the Town may enforce existing ordinances that would require any land disturbance, such as lot fill, to obtain a permit first. The permit should be based on the implementation of a town wide drainage master plan and design standards that have not yet been adopted. This report recommends the completion of these guidelines along with a policy that seeks a balance between public and private responsibility for surface water drainage. (Planning Report, February 2010)

In response to community concern over sustained local flooding from the 2009 Nor'easter storms and above average rainfall that year, the Chincoteague Town Council and Planning Commission requested a review of existing and proposed ordinances to mitigate drainage issues. In addition, the Town contracted with a qualified engineering consultant to begin a drainage master plan and to pursue specific neighborhood design solutions.

A brief review of ordinances, regulations and programs that apply to coastal flooding and the placement of fill was presented for review in February 2010. Staff recommendation at that time was to develop enforceable criteria that coordinated with a drainage master plan before an expanded permit process was initiated. Town Council authorized Phase 1 and 2 of the Drainage Study, but has not yet authorized Phase 3 (Design Criteria).

Several policy issues must be resolved, such as what level of development activity may be exempted from permitting, before a Phase 3 scope of work can be finalized. The Ordinance Committee has requested this matter to be placed on the agenda for discussion on September 12, 2013.

DRAINAGE ISSUES

ISSUE #1

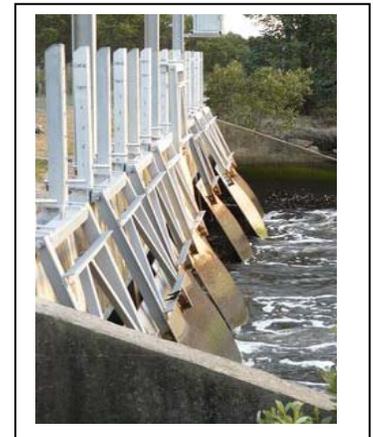
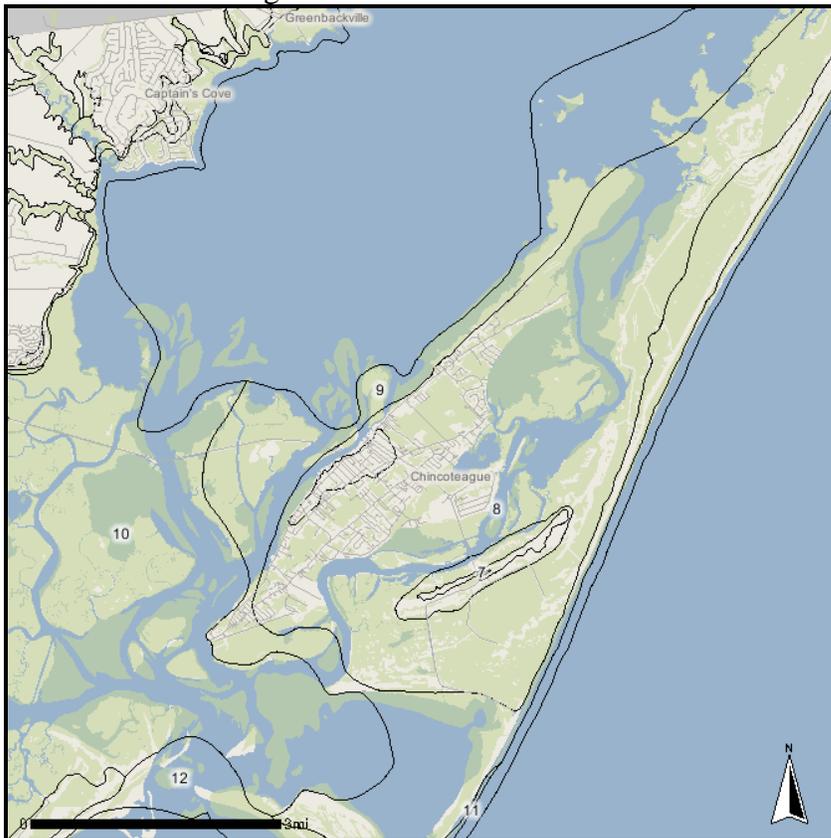
One example of a common drainage issue that has been described is the **placement of fill** on one property to eliminate the problem of standing water, and the resulting relocation of water to neighboring properties.

ISSUE #2

A related issue is the incremental **change in natural drainage patterns** on the Island as development occurs. As the pattern of ridges and basins is modified, both the storage of rainwater and the flow in drainage channels is reduced or blocked. Building and development typically increases the amount of storm water runoff and how quickly it drains so that existing ditches, pipes and channels are no longer adequate.

ISSUE #3

Seasonal **high tides and water tables** reduce the function of soil percolation and drainage ditches, swales and channels. Without some form of **event gate control** for major channel and pipe outflows, high tides temporarily prevent stormwater drainage and consume available basin storage areas.



ORDINANCE CONTROL SUMMARY

- ❖ *The management of adequate surface water drainage issues described above can be improved through the enforcement of existing Town Ordinances.*
- ❖ *This effort can and should be completed through both public and private actions.*
- ❖ *The completion of design standards for Chincoteague Island by a qualified engineering consultant is recommended.*

Individual ordinances, regulations and programs that may be used to solve the Town's drainage problems are described in more detail later in the report. For the purpose of managing specific issues, a combination of tools may be necessary. Planning Staff recommendations are provided to encourage further discussion and progress as directed by the Town Council.

Issue #1 – Placement of Fill

The **Nuisance Ordinance** (Town Code Ch. 22 Art. III) provides the most effective tool for control of fill on individual properties. The standards apply to private property, require a drainage system that assists in the removal of stagnant water, and identify property owner responsibility for maintenance. The ordinance provides a process for permits, penalties, investigation of complaints and requirements to abate the nuisance condition. Adoption of this regulation in 2002 allows for Town enforcement of selected existing compliance problems.

The Town Council may adopt a policy statement that clarifies under what conditions a public nuisance violation would be enforced and the minimum standards or physical improvements required to abate the condition. Enforcement of a land disturbance permit or exemption by the Director of Public Works should be part of an overall public information program.

Issue #2 – Change in Natural Drainage Patterns

The **Nuisance Ordinance** (Town Code Ch. 22 Art. III) may provide a tool to obtain necessary easements or improvements at the neighborhood scale where a larger drainage system has been blocked by land development fill.

The **Flood Ordinance** (Town Code Ch. 30) provides the most effective tool for control of larger development projects and the cumulative effect of changes to the natural drainage system. By defining the problem as 'shallow coastal flooding' this ordinance applies to the entire Island, all new construction and development of land, and requires a zoning permit by the Zoning Administrator.

The Town Council may authorize the preparation of design standards to improve decision making and enforcement tools. Although the flood ordinance does not provide for abatement of land development (fill) projects completed prior to the regular issuance of a zoning permit,

the Town may qualify for mitigation planning and project grants through FEMA to address existing problem areas.

The **Subdivision and Land Development Ordinance** (Town Code Appendix B) may be modified to require that new individual lot development should be responsible for offsite drainage improvements if necessary.

Issue #3 – Control Effects of High Tides/Groundwater

The **Subdivision and Land Development Ordinance** (Town Code Appendix B) is the appropriate regulation in which to require infrastructure development standards for flood control and drainage. These standards apply to both public and private construction and are based on engineering analysis to determine adequate size and capacity. The Zoning Administrator requires plan/plat approval that conforms with other regulations such as the VDOT drainage manual and applicable state/federal permits.

The **Zoning and Subdivision/Land Development Ordinance** may be modified to incorporate the design standards and mapping of a town wide drainage master plan, or to establish public improvement districts that would allow drainage improvements to be constructed and funded through a dedicated tax structure.

PUBLIC ACTION PLAN

The Town of Chincoteague Comprehensive Plan 2010 adopted four (4) policies and implementation strategies for Drainage.

- ✓ Limit the encroachment of new development on existing ditches, which are critical for drainage
- ✓ Enhance existing drainage facilities
- ✓ Favor open ditches over underground pipes where feasible because the initial costs and maintenance costs over time are lower
- ✓ Enforce a municipal ordinance to control the filling of remaining drainage channels

The following steps are recommended to take action on these strategies.

Step #1 - Council Work Session

Schedule a work session for the Town Council to review this report.

Step #2 – Resolution

Approve a Drainage Policy to clarify the Town's intent to enforce existing ordinances.

Approve a Public Nuisance Policy (or Land Disturbance Policy) to clarify and provide a standard for placement of any material that detrimentally affects drainage on public or private property.

Coordinate this policy with FEMA floodplain and Virginia DCR stormwater requirements.

Step #3 - Direct Engineering Consultant

Authorize the completion of a Drainage Master Plan for Chincoteague under the existing contract with the storm water engineering consultant to prepare design standards for implementation.

Apply for FEMA Flood Mitigation Program planning grant to assist with the cost of study

Step #4 - Develop Guidelines/Process

Request that Town Staff prepare revisions to the Town Code and/or the Land Subdivision and Development Ordinance to incorporate the Drainage Master Plan and design standards

Step #5 - Public Information

Provide information to the property and business owners of Chincoteague regarding the process for obtaining land disturbance and zoning permits for all land development activities. Inform the County government to coordinate this process with grading and erosion control permits, and the plat recordation process (note required on all plats).

Step #6 - Enforcement

Based on adopted policy statements, begin investigation of any qualified complaints under the new Ordinance. Require all current and future applications for land development to apply for land disturbance and/or zoning permit approval under the Floodplain Ordinance prior to clearing, filling or construction. Improve effectiveness of permit approval through implementation of design standards and drainage improvement projects.

TOWN CODE

❖ NUISANCE ORDINANCE (Chapter 22 - Environment)

Controls certain acts or conditions that are defined and declared to be nuisances and generally found to be unsafe, dangerous, unhealthy, injurious or disturbing to the public. By Ordinance on May 6, 2002 (rev. February 1, 2010), the Town adopted specific standards that address fill or placement of any material that detrimentally affects drainage on public or private property.

The Director of Public Works may issue a permit and require a plan, a fee and inspection on completion of work in order to control this nuisance activity. A nuisance complaint is investigated by Town officers, may include a cease and desist notice, a notice requiring abatement of the nuisance along with other penalties and legal enforcement.

Pros: Allows for control and correction of past and current issues with existing regulations

Cons: Does not include specific standards that may be understood and applied equally, or used to evaluate an effect on the 'public'

❖ FLOODPLAIN ORDINANCE (Chapter 30 – Floods)

Controls new construction and development of land including filling, grading and excavation which will cause unacceptable increases in flooding. Flood or flooding is defined to include shallow inundation. By Ordinance adopted on September 21, 2006, all uses, activities, and development occurring within any floodplain district shall be undertaken only upon the issuance of a zoning permit. Compliance with all codes, ordinances, state and federal laws is required.

The Zoning Administrator reviews a scaled drawing of the parcel of land and the proposed use of building or land with any permit application. Any other information which the Zoning Administrator may deem necessary for consideration of the application may be required, such as the provision of adequate drainage and protection of adjacent properties.

A review of information provided by an applicant is limited because a comprehensive floodplain/drainage/ storm water analysis of the Town has not been completed as a baseline for review of individual site engineering studies. If additional standards are adopted, they would apply to new development proposals but not necessarily solve existing problems.

The administration of the Town's Floodplain Ordinance has inter-connections with the National Flood Insurance Program, Hazard Mitigation Plan, and other regulations regarding wetlands and water quality.

Pros: Applies to all areas of Town based on FEMA mapping. Allows for control of current and future issues with existing regulations and defined zoning permit process. Floodplain modifications may be granted a waiver of standards by the BZA under certain criteria.

Cons: Standards are generally written for building construction and are silent on site development and drainage requirements except for subdivisions.

BZA may grant variances for small incremental changes that do not have a measurable effect on the 100 year floodplain by themselves, however they do have cumulative effects.

Use of zoning permit process under this ordinance may be complicated by FEMA standards.

Note: The following section of the Flood Ordinance was removed on September 21, 2006 with the adoption of the revised code section.

Sec. 30-43. Design criteria for utilities and facilities.

(c) Drainage facilities. All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on-site waste disposal sites. The town council may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.

❖ **ZONING ORDINANCE (Appendix A)**

Controls land uses, building and structure use, design and placement through regulations. This element of the Town Code is not typically the regulation that applies to drainage issues unless specifically required in the review of applications for rezoning, special uses or conditional uses.

The Zoning Administrator may review applications for permitted uses and issue a zoning permit separate from, or combined with, a building permit as authorized by Article VI General Provisions, Section 6.1 Zoning Permits. This process is currently only used for fences, sheds or other structures not otherwise covered by the building code. It could be more broadly used to allow Town review of grading permit applications or subdivisions less than 4 lots that are processed by Accomack County.

Any information deemed necessary for consideration of the application may be required. Checklists or design standards are needed and could be implemented through an administrative process without excluding or 'grandfathering' projects that are currently under review.

The Floodplain Ordinance is currently managed as an overlay zone to other existing zoning districts. In some communities land uses are partially or fully restricted in the floodplain by removing the underlying district regulations in high risk areas such as floodways and coastal high hazard areas. If this was preferred, a new floodplain zoning district would need to be adopted and mapped.

Pros: Allows for control of current and future issues with existing regulations and a familiar zoning permit process.

Concerns: Zoning Administrator must review applications with broad discretion and without well defined design standards regarding drainage system requirements. May be subject to legal challenge without clear guidelines. A high fee for non-compliance may be needed to encourage use of the zoning permit process.

It is not clear on the current Town Fee Schedule that land development including filling, grading and excavation is covered under a particular zoning permit.

Cons: The application requirement and process for development control or zoning permits is normally found in the Land Subdivision and Development Ordinance rather than the Zoning Ordinance.

❖ LAND SUBDIVISION AND DEVELOPMENT ORDINANCE

(Appendix B)

Controls subdivision and development of property, approval of subdivision plats and the required street and utility infrastructure. Purposes listed for the ordinance include providing for drainage and flood control, storm sewers and other public utilities, grading and drainage of streets.

The Zoning Administrator may develop forms and administrative procedures for the subdivision/site plan review and the building permit process as appropriate in his judgment. The adoption of new drainage design standards and requirements for adequate outfall may require an Amendment under Section 12 with review and public hearing by the Planning Commission and Town Council.

Pros: Allows for limited control of current and future issues with new development. Provides for performance bonds of drainage improvements and pro rata reimbursement for offsite improvements.

Cons: Does not contain specific standards regarding flooding, drainage, and land development. Revisions to this ordinance to provide additional standards for land development would only apply to future issues. Design standards should be based on additional study and recommendations from the Town's storm water management consultant.

Does not apply to individual building lots, or subdivisions less than 4 lots.

COUNTY REGULATION

❖ SEDIMENT AND EROSION CONTROL

Controls soil erosion, sediment deposition and nonagricultural runoff in order to prevent degradation of properties, stream channels, waters and other natural resources of the County of Accomack. This is a County program required to implement the Virginia Erosion and Sediment Control Law.

Chapter 22/Environment (Article IV) of the Town Code subjects the town to the erosion and sediment control ordinance of the county, and such ordinance shall be enforced by the county within the geographical boundaries of the town.

The County Director of Planning requires the approval of an erosion control plan (or variance) for any land-disturbing activity, and will conduct inspections, issue violation notices, stop work orders or penalties as provided by the regulations.

Pros: Requires new development sites to plan for storm water runoff and divert sheet flows to a stable outlet, and adequate channel, or a detention facility. Concentrated runoff must be discharged into an adequate channel, pipe or storm drain system.

Applies to past, present and future land development projects that are required to meet this regulation.

Cons: Only applies to land disturbance greater than 10,000 square feet in area, unless the project is within a subdivision. Construction of a single family residence may be issued an agreement without a plan submitted.

Design standards often do not apply or can be waived in flat, sandy conditions where the velocity of water does not cause erosion or sediment deposits.

Discharge of storm water into an adequate channel such as a roadside ditch may meet the regulation and still flood offsite properties.

❖ **STORMWATER MANAGEMENT**

Controls land development and land use conversion activities to reduce flooding, siltation, stream bank erosion and property damage through establishment of minimum criteria for treatment of stormwater runoff and water quality in Accomack County. This is a proposed County program that would be required to implement the Virginia Stormwater Management Law (currently deferred until after July 1, 2010).

Appendix B/Land Subdivision and Development of the Town Code will need to be amended to comply with the Virginia Stormwater Management Law when it becomes effective by establishing local program criteria or by requesting enforcement of the County Ordinance if adopted.

The County Director of Planning would require the approval of a concept plan and final plan (or waiver request) in conformance with the Virginia Stormwater Management Handbook and adopted local standards. A permit application would also require a long term maintenance agreement and performance bonds. There are extensive requirements for design and construction contained in the Draft Accomack County Stormwater Management Ordinance dated October 15, 2008.

Pros: Provides standards for full control and management of both quantity and quality of storm water runoff that provide reductions to pre-development levels or better.

Cons: Most standards are written for upland conditions and would require waivers and modifications in order to apply in coastal floodplain areas like the Town of Chincoteague.

Excludes single family residences not part of the development of a subdivision.

Excludes disturbance of less than 1 acre

Excludes linear development less than 1 acre of disturbance per outfall such as street/ditch improvements.

Adoption of 'stormwater management' standards carries with it the 'water quality' issue and standards for removal of nitrogen, phosphorus, and other pollution from coastal bays and waterways. Waiver provisions will be more important than enforcement for Town issues.

Note: Senate Bill No. 123 was introduced in the 2010 legislative session that would add a provision to require the developer of a single lot to provide stormwater management with land disturbance of more than 15% of the lot area.

ARTICLE V. FINANCE*

DIVISION 1. GENERALLY

Secs. 2-181—2-205. Reserved.

***Cross references**—Any ordinance or resolution promising or guaranteeing the payment of money for the town, authorizing the issuance of any bonds of the town, or any evidence of the town's indebtedness, or any contract established or obligation assumed, by the town saved from repeal, § 1-6(a)(2); any fees and charges consistent with this Code saved from repeal- § 1-6(a)(13); taxation, ch. 54.

DIVISION 2. PROCUREMENT

Subdivision I. In General

Sec. 2-206. Definitions.

The following words, terms, phrases and abbreviations, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

IFB means invitation for bids.

PO means purchase order.

PR means purchase requisition.

Purchasing agent means the town manager or his designee who is authorized and responsible for the procurement of supplies and services for town use.

RFQ means request for quotations.

Vendor means any person who or company that sells supplies or services.
(Code 1977, § 2-13)

Cross reference—Definitions generally, § 1-2.

State law reference—Definitions, Code of Virginia, § 11-37.

Sec. 2-207. Authority.

This division is enacted pursuant to the authority granted in Code of Virginia, § 11-35 et seq. (Code 1977, § 2-13)

Sec. 2-208. Objectives.

The objectives of this division shall be to:

- (1) Establish an ongoing centralized purchasing function capable of providing daily service and support on an organization-wide basis.
- (2) Introduce a greater measure of responsibility and accountability over implementation of the annual budget, specifically as related to the procurement of contractual services, materials, supplies, and capital outlay items.
- (3) Ensure realization of the principles of competitive purchasing and best buy at the least cost.
- (4) Assist management at all levels in reaching responsible, cost-effective decisions in the procurement of quality supplies and services for town use.

- (5) Formulate policies and procedures designed to systematize and enhance the efficiency of the town's procurement process and ensure procurement in a timely and proper manner.
- (6) Promote good will and clear communication in town-vendor relations and intra organization relations relative to purchasing.

- (7) Promote the realization of equal opportunity policies through procurement relations with vendors.

(Code 1977, § 2-14)

State law reference—Purpose of public procurement law, Code of Virginia, § 11-35.

Sec. 2-209. Implementation.

The town manager shall develop a purchasing procedure based on the policies and procedures established in this division and shall promulgate such administrative regulations necessary for the implementation of the standards established by this division.

(Code 1977, § 2-17-1)

Sec. 2-210. Centralized purchasing.

It shall be the policy of the town to maintain a centralized purchasing process with the town manager or his designee as purchasing agent. It shall be the purchasing agent's responsibility to administer purchasing performance, negotiate and approve term contracts in connection with town departments, consolidate purchases of like or common items, analyze prices paid for materials and equipment and generally define how to obtain savings and to coordinate purchasing procedures.

(Code 1977, § 2-15-2)

Sec. 2-211. Sources of supply.

The purchasing agent shall select sources of supply in connection with the appropriate town department. As a general policy, purchases shall be awarded, with local vendor preference, on the basis of availability, best price, delivery and quality, taking into consideration the reputation and performance capability of the suppliers.

(Code 1977, § 2-15-3)

Sec. 2-212. Commitments.

In connection with town departments, the purchasing agent shall conduct and conclude all negotiations affecting vendor selection, price, terms, delivery, etc. No one other than the purchasing agent shall commit the town to any purchase, vendor, or product. Exceptions to this include emergencies and purchases made from the petty cash fund.

(Code 1977, § 2-15-4)

Sec. 2-213. Interdepartment relations.

It shall be the policy of the town to promote an intelligent and harmonious relationship between the purchasing agent and other town departments relative to procurement.

(Code 1977, § 2-15-5)

Sec. 2-214. Vendor relations.

The purchasing agent will develop and promote a program of fairness with all vendors and salespersons.

(Code 1977, § 2-15-6)

Sec. 2-215. Expediting.

Expediting or "followup" on the delivery of materials or orders will be accomplished by the purchasing agent. Any information other town departments may acquire or be requested to acquire concerning the delivery status of ordered material should be passed on to the purchasing agent. (Code 1977, § 2-15-17)

Sec. 2-216. Tax exemption.

The town is exempt from all state and federal sales and excise taxes. (Code 1977, § 2-15-18)

Sec. 2-217. Compliance with federal grants.

The town may comply with mandatory federal requirements in grants or contracts not in conformance with this division only upon a written determination of the town council that acceptance of the applicable provisions is in the public's interest. (Code 1977, § 2-15-19)

Sec. 2-218. Vendor selection.

Vendors will be selected on a competitive basis. Bids, quotations and proposals will be solicited by newspaper advertisement, by direct mail request to prospective suppliers, and/or by telephone. Purchase orders or contracts will be awarded to the lowest and best responsible vendor. All bids, etc., may be rejected if it is in the public's interest to do so. In determining the lowest and best responsible vendor, in addition to price, the following will be considered:

- (1) The character, integrity, reputation, judgment, experience and efficiency of the vendor.
- (2) The ability, capacity and skill of the vendor to perform the contract, fill the order or provide the service.
- (3) The ability of the vendor to provide material or service promptly or within the time specified, without delay or interference-
- (4) The quality of performance by the vendor on previous contracts, orders or services.
- (5) The ability of the vendor to provide future maintenance and service for all equipment purchased from the vendor.

(Code 1977, § 2-16-1)

Sec. 2-219. Invitation for bids; opening of bids; award of bids generally.

(a) When the cost of a contract, lease or other agreement for materials, supplies, equipment or contractual services other than professional exceeds \$30,000.00 (Code of Virginia, § 11-41(F)), an invitation for bids (IFB) notice will be prepared. This notice will be published at least once in at least one official newspaper of general circulation within the community. This newspaper notice must appear not less than seven days and not more than 21 days before the due date for bid proposals. The IFB will include a general description of the items to be purchased and the bid deposit and performance bond required and shall state where bid blanks and specifications may be secured and the time and place for opening bids. The purchasing agent may also solicit sealed bids from responsible prospective suppliers by sending them a copy of such notice.

(b) Sealed bids will be opened in public by the town manager at the time and place stated in the IFB. The bids will be tabulated by the town manager. The results of the tabulation and the bid material will be examined by the town manager, the appropriate department head and the appropriate appointed committee to determine the best bid. Recommendations for the bid award will be submitted by the town manager to the town council at a public meeting. After the bid award is made by the town council, a

purchase order and/or contract shall be prepared for execution by the successful bidder. After the purchase order is issued and/or the contract signed, all bid deposits will be returned to all unsuccessful bidders.

(Code 1977, § 2-16-2)

Sec. 2-220. Request for quotations.

(a) Purchases of supplies, equipment and services of less than \$30,000.00 (Code of Virginia, § 11-41(F)) but of \$500.00 or more will require a request for quotations (RFQ). An RFQ is similar to an IFB except that legal advertising is not required and detailed specifications may not be appropriate.

(b) The following procedures will be followed in obtaining a request for quotations:

- (1) Complete a request for quotations and distribute copies to vendors.
- (2) File unopened sealed quotations received, together with a machine copy of the original request for quotations.
- (3) On the designated date, remove the quotes received from the file.
- (4) Open the quotes and determine which vendor offers the item at the lowest price and issue a purchase order to the successful vendor.

(Code 1977, § 2-16-3)

Sec. 2-221. Open market purchases.

Purchases of less than \$500.00 will be made in the open market without necessary resort to an IFB or RFQ. Every effort will be made, however, to get the lowest and best price and to share the business among responsible vendors.

(Code 1977, § 2-16-4)

Sec. 2-222. Emergency purchases.

Emergency purchases shall be exempt from this division, provided that an emergency exists which affects the public health, safety or welfare. The mayor shall certify that an emergency exists.

(Code 1977, § 2-16-7)

Sec. 2-223. Bidders' list.

With the aid of other town departments, the town manager shall compile and maintain a bidders' list. Vendors desiring to be listed shall advise the town manager, in writing, of the following:

- (1) Type of business;
- (2) Names of officers, owners or partners;
- (3) Persons authorized to sign bids, offers and contracts;
- (4) Type of equipment, supplies, materials sold and/or services provided; and
- (5) How long in the present business.

(Code 1977, § 2-15-10)

Sec. 2-224. 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 by the town or any subdivision of the town for which state funds of not more than \$30,000.00 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 2-296(c). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this division.

State law reference—Similar provisions, Code of Virginia, § 11-41.1.

Sec. 2-225. 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 therein, 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 which 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. One of the following procedures for withdrawal of a bid shall be selected by the town and stated in the advertisement for bids: (i) 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 (ii) the bidder shall submit to the town or designated official his 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 for the opening of bids. In either instance, such work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of Code of Virginia, § 11-52(D). The bids shall be opened one day following 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 in this subsection and withdraw his 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 in this subsection.

(b) The town may establish procedures for the withdrawal of bids for other than construction contracts.

(c) No bid may 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.

(d) If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

(e) 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 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.

(f) If the town denies the withdrawal of a bid under this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

(Code 1977, § 2-15-12)

State law reference—Withdrawal of bid due to error, Code of Virginia, § 11-54.

Sec. 2-226. Bid deposits.

Bid deposits or surety may be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to the return of that deposit or surety. A successful bidder, upon failure on his part to enter into a contract within the time specified after written notification of the bid award, shall forfeit, as liquidated damages, any surety deposited with the town.

(Code 1977, § 2-15-8)

State law reference—Bid bonds, Code of Virginia, § 11-57.

Sec. 2-227. Bid bonds.

(a) Except in cases of emergency, all bids or proposals for construction contracts in excess of \$100,000.00 shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in the commonwealth, as a guarantee 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 five percent of the amount bid.

(b) No forfeiture under a bid bond shall exceed the lesser of the following:

- (1) The difference between the bid for which the bond was written and the next low bid; or
- (2) The face amount of the bid bond.

(c) Nothing in this section shall preclude the town from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$100,000.00.

(Code 1977, § 2-15-14)

State law reference—Bid bonds, Code of Virginia, § 11-57.

Sec. 2-228. Alternative forms of security.

(a) 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.

(b) If approved by the town, 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 town equivalent to a corporate surety's bond.

(Code 1977, § 2-15-14)

State law reference—Similar provisions, Code of Virginia, § 11-61.

Sec. 2-229. Prequalification for construction.

(a) Any prequalification of prospective contractors for construction by the town subsequent to July 1, 1995, shall be pursuant to a prequalification process for construction projects adopted by the town. Such process shall be consistent with this section.

(b) 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 as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. Such 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

section shall be considered a trade secret or proprietary information subject to Code of Virginia, § 11-52(D).

(c) In all instances in which the town 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 section to be accomplished.

(d) 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 town shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. If a contractor is denied prequalification, the written notification to such contractor shall state the reasons for such denial of prequalification and the factual basis of such reasons.

(e) A decision by the town denying prequalification under this section shall be final and conclusive unless the contractor appeals the decision as provided in Code of Virginia, § 11-63.

(f) The town may deny prequalification to any contractor only if the town 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 town shall be sufficient to establish the financial ability of such 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 town has not contracted with a contractor in any prior construction contracts, the town 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. The town may not utilize this subsection 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) Code of Virginia, § 11-72 et seq., (ii) the Virginia Governmental Frauds Act (Code of Virginia, § 18.2498.1 et seq.), (iii) Code of Virginia, § 59.1-68.6 et seq., 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 town in a timely manner any information requested by the public body relevant to subsections (f)(1) through (6) of this section.

(g) If the town has a prequalification ordinance which provides for minority participation in municipal construction contracts, the town may also deny prequalification based on minority participation criteria; provided, however, that nothing in this subsection 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.

State law reference—Similar provisions, Code of Virginia, § 11-46.

Sec. 2-230. Use of brand names.

Unless otherwise provided in the invitation for bids, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named—it conveys the general style, type, character, and quality of the article desired—and any article which 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 accepted.

(Code 1977, § 2-15-11)

State law reference—Use of brand names, Code of Virginia, § 11-49.

Sec. 2-231. Award of bid-based contracts.

The town council will award bid-based contracts on the recommendation of the appointed reviewing committee, which is to be created in each case, and the town manager. The award will usually be to the lowest and best responsible bidder. A full and complete statement of the reasons shall be prepared by the committee and town manager and shall be filed along with other papers relating to the transaction.

(Code 1977, § 2-15-16)

Sec. 2-232. Performance and payment bonds.

(a) Upon the award of any public construction contract exceeding \$100,000.00 awarded to any prime contractor, such contractor shall furnish to the town 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. 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 material furnished or labor supplied or performed in the prosecution of the work. The term "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) 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 the commonwealth.

(c) Such bonds shall be payable to the town.

(d) Each of the bonds shall be filed with the town or a designated office or official thereof.

(e) Nothing in this section shall preclude the town from requiring payment or performance bonds for construction contracts below \$100,000.00.

(f) 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.

(Code 1977, §§ 2-15-9, 2-15-14)

State law reference—Similar provisions, Code of Virginia, § 11-58.

Sec. 2-233. Employment discrimination by contractor prohibited.

The town shall include in every contract of over \$10,000.00 the following:

(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 subsections (1)a, (1)b and (1)c of this section in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

(Code 1977, § 2-15-15)

State law reference—Employment discrimination by contractor prohibited, Code of Virginia, § 11-51.

Sec. 2-234. Retainage on construction contracts.

(a) 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 percent of the earned sum when payment is due, with not 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 which provides for similar progress payments shall be subject to the same limitations.

(Code 1977, § 2-15-13)

State law reference—Retainage on construction contracts, Code of Virginia, § 11-56.

Sec. 2-235. Deposit of certain retained funds; failure to timely complete contract.

(a) When contracting directly with contractors for public contracts of \$200,000.00 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, the town shall include in the bid proposal an option for the contractor to use an escrow account procedure for utilization of the town's retainage funds by so indicating in the space provided in the proposal documents. If 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 town within 15 calendar days after notification. If the escrow agreement form is not submitted within the 15-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 promulgated by the town shall be substantially the same as that used by the commonwealth 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, 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 which provides for similar progress payments shall be subject to this section.

State law reference—Similar provisions, Code of Virginia, § 11-56.1.

Sec. 2-236. Public construction contract provisions barring damages for unreasonable delays declared void.

(a) Any provision contained in any public construction contract entered into on or after July 1, 1991, 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 such delay is caused by acts or omissions of the town, its agents or employees and due to causes within their control is against public policy and is void and unenforceable.

(b) Subsection (a) of this section shall not be construed to render void any provision of a public construction contract that:

- (1) Allows the town to recover that portion of delay costs caused by the acts or omissions of the contractor or his 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 the town 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 town and shall pay it for a percentage of all costs incurred by the town in investigating, analyzing, negotiating, litigation and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.

State law reference—Similar provisions, Code of Virginia, § 11-56.2.

Secs. 2-237—2-265. Reserved.

Subdivision II. Purchase Orders

Sec. 2-266. When required; contents; procedures for approval.

(a) Purchase orders are required for all purchases over \$25.00. The purchase must be approved in advance of the actual purchase, except in emergency situations.

(b) The purchase order shall include the following:

- (1) Items required;
- (2) Quantity required;
- (3) Price of each item;
- (4) Date required;
- (5) Tax exempt number;
- (6) Short reason for the items required; and
- (7) Classification of expense; budget line item account number shall be shown for each line if the items are not all the same on one purchase order.

(c) Authorization levels for purchase order approval shall be as follows:

- (1) A purchase order of \$0.00 to \$500.00 may be approved by the following:
 - a. Town manager.
 - b. Finance director.
 - c. Chief of police.
 - d. Assistant chief of police (may approve only in the absence of primary authorized personnel for each department).
 - e. Public works director.
- (2) A purchase order of \$501.00 to \$1,000.00 may be approved by the following:
 - a. Town manager.
 - b. Public works director.
 - c. Chief of police.
- (3) A purchase order of \$1,001.00 to \$10,000.00 may be approved by the town manager.
- (4) A purchase order of \$10,001.00 and over may be approved by the town manager and the mayor with prior approval by the town council.

(Code 1977, § 2-18)

Sec. 2-267. Notice to vendors; tax exempt number.

All regular vendors shall be notified that an approved purchase order is required before giving credit for any item or purchase over \$25.00. The tax exempt number shall also be sent to each vendor where regular charge accounts are maintained. The tax exempt number is also printed on the purchase order, to ensure that no tax is charged to the town.

(Code 1977, § 2-18-6)

Sec. 2-268. Purchasing procedures.

As each purchase is made, the following must be accomplished:

- (1) The purchase order shall be approved if the purchase is going to be over \$25.00,
 - (2) When the purchase is made, whether over or under \$25.00, the invoice must be approved.
 - (3) After the purchase is made, the invoice must be turned in for payment.
- (Code 1977, § 2-18-3)

Sec. 2-269. Payment approval procedures.

(a) *Responsibilities of office staff.* In the approval of payment for purchase orders, the office staff will be responsible for the following:

- (1) Matching the purchase order to the appropriate invoice if the item/purchase is over \$25.00, posting invoices to accounts payable on a daily basis and ensuring that invoices are scheduled for payment prior to the due date or earlier in order to obtain prompt payment discounts.
- (2) Checking the actual purchases on the invoice to the items authorized for purchase on the purchase order, to ascertain that only authorized items were received for all purchases over \$25.00.
- (3) Mathematical verification of each invoice before approval by the town manager for all invoices whether over or under \$25.00.
- (4) No sales tax appears on the invoice.

(b) *Responsibilities of approving official:* The approving official shall verify that the following items of control have been accomplished before approving invoices for payment:

- (1) The attached purchase order was appropriately authorized.
- (2) The office staff member has verified items, quantities, and mathematical calculations on the invoices to the appropriate purchase order and the purchase order is in fact attached to the invoice.

(Code 1977, § 2-18-4)

Secs. 2-270—2-295. Reserved.

Subdivision III. Competitive Negotiation

Sec. 2-296. Procedures generally.

(a) Upon a determination made in advance by the town and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

(b) Upon a written determination made in advance by the town council 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 in subdivision 3 b of the definition of "competitive negotiation" in Code of Virginia, § 11-37. The basis for this determination shall be documented in writing.

(c) 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 town 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:

- (1) For the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000.00;
- (2) For the construction of highways and any draining, dredging, excavating, grading or similar work upon real property; or
- (3) As otherwise provided in Code of Virginia, § 11-41.2:2.

(Code 1977, § 2-16-5)

State law reference—Methods of procurement, Code of Virginia, § 11-41.

Sec. 2-297. Award of a service generally.

The town manager or his designee shall engage in individual discussions with all offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence to provide the required services. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project. These discussions may encompass nonbinding estimates of total projects costs, including where appropriate design, construction and life cycle costs. Methods to be utilized in arriving at price for services may also be discussed. At the conclusion of discussion on the basis of evaluation factors published in the request for proposals and all information developed to this point, the town manager shall select in the order of preference two or more offerors whose professional qualification and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations 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.

(Code 1977, § 2-16-6)

Sec. 2-298. Procurement of professional services.

Where the cost of a professional service is expected to exceed \$30,000.00 in the aggregate or for the sum of all phases of a contract or project, the town 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 town 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 section, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, the town 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 town 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. Should the town 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.

State law reference—Similar provisions, Code of Virginia, § 11-37.

Secs. 2-299—2-325. Reserved.

Subdivision IV: Ethics in Public Contracting

Sec. 2-326. Purpose.

The sections of this subdivision supplement, but do not supersede, other provisions of law, including but not limited to the State and Local Government Conflict of Interests Act (Code of Virginia, § 2.1-639.1 et seq.), the Virginia Governmental Frauds Act (Code of Virginia, § 18.2-498.1 et seq.), and Code of Virginia, §§ 18.2-438 et seq. and 18.2-446 et seq. The sections of this subdivision apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

State law reference—Similar provisions, Code of Virginia, § 11-72.

Sec. 2-327. Definitions.

The words defined in this section shall have the meanings set forth throughout this subdivision.

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 (Code of Virginia, § 2.1-639.1 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 the town, including elected officials or appointed members of the town council.

Cross reference—Definitions generally, § 1-2.

State law reference—Similar provisions, Code of Virginia, § 11-73.

Sec. 2-328. Penalty for violation.

Willful violation of any section of this subdivision shall constitute a misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

State law reference—Similar provisions, Code of Virginia, § 11-80.

Sec. 2-329. Proscribed participation by public employees in procurement transactions.

(a) Except as may be specifically allowed by Code of Virginia, § 2.1-639.11(A)(2) and (3), no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the town when the employee knows that:

- (1) The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or
- (2) The employee, the employee's partner, or any member of the employee's immediate family:
 - a. 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;
 - b. Has a pecuniary interest arising from the procurement transaction; or
 - c. Is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

(b) This section prohibits officers and employees who have dealt in a procurement capacity with a particular firm from accepting employment with that firm for a period of one year from cessation of the public employment, unless the officer or employee provides written notification to the town council prior to the start of employment with such private firm.

(Code 1977, § 2-15-7)

State law reference—Similar provisions, Code of Virginia, § 11-74.

Sec. 2-330. Solicitation or acceptance of 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 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 town may recover the value of anything conveyed in violation of this section.

(b) Accordingly, the town may terminate, at no charge to the town, any purchase order or contract if it is found that substantial gifts or gratuities were offered to a town employee. The town may also take disciplinary action, including dismissal, against a town employee who solicits or accepts gifts or gratuities of any value whatsoever.

(Code 1977, § 2-15-7)

State law reference—Similar provisions, Code of Virginia, § 11-75.

Sec. 2-331. 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 town unless the employee or former employee provides written notification to the town or a public official if designated by the town or both prior to commencement of employment by that bidder, offeror or contractor.

State law reference—Similar provisions, Code of Virginia, § 11-76.

Sec. 2-332. Gifts by bidders, offerors, contractors or subcontractors.

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.

State law reference—Similar provisions, Code of Virginia, § 11- 77.

Sec. 2-333. 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.

(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.

State law reference—Similar provisions, Code of Virginia, § 11-78.

Sec. 2-334. Participation in bid preparation; 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 town 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. However, the town may permit such person to submit a bid or proposal for that procurement or any portion thereof if the town determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the town.

State law reference—Similar provisions, Code of Virginia, § 11-78.1.

Sec. 2-335. Purchase of building materials, supplies or equipment from architect or engineer.

(a) 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 personal interest as defined in Code of Virginia, § 2.1-639.2.

(b) 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 which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by the town to furnish architectural or engineering services in which such person has a personal interest as defined in Code of Virginia, § 2.1-639.2.

(c) Subsections (a) and (b) of this section shall not apply in cases of emergency or for transportation-related projects conducted by the department of transportation and the Virginia Port Authority.

State law reference—Similar provisions, Code of Virginia, § 11-79.

Sec. 2-336. Certification of compliance; false statements.

(a) The town 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 this subdivision.

(b) Any public employee required to submit a certification as provided in subsection (a) of this section who knowingly makes a false statement in such certification shall be punished as provided in section 2-328.

State law reference—Similar provisions, Code of Virginia, § 11-79.1.

Sec. 2-337. Misrepresentations.

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.

State law reference—Similar provisions, Code of Virginia, § 11-79.2.

Secs. 2-338—2-380. Reserved